Chapter – IV

Inter-State Migrants-
The Law and Judiciary
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INTER – STATE MIGRANTS – THE LAW AND JUDICIARY

4.1 Law on Unorganised Sector – An Overview

The Law relating to Labour and employment in India is primarily known under the broad category of Industrial Law. The history of Labour legislation in India is interwoven with the history of British colonialism. The original colonial legislation underwent substantial modifications in the post – colonial era because independent India called for a clear partnership between labour and capital. The various labour movements have been instrumental in the enacting of Laws protecting the workers in the 19th and 20th centuries. The International Labour Organisation, founded in 1919 also emphasized the need for protecting workers in India.

The framers of Indian Constitution also paid due attention to the amelioration of the working class of the country. The relevance of the dignity of human labour and the need for protecting and safeguarding the interest of labour as human beings has been enshrined in Part III (Articles 16, 19, 23 & 24) and Part IV (Articles 39,41,42,43,43A & 54) of the Constitution of India keeping in line with Fundamental Rights and Directive Principles of State Policy. The Indian Constitution has made a specific mention of the duties that the State owes to labour, to their economic upliftment and social regeneration. The entire Labour Legislations of India basically originates from the Directive Principles of State Policy (DPSP) of the Constitution. The Directive Principles of State Policy have been reflected almost in all our labour legislations.
India is a federal form of Government. Labour is a subject in the concurrent list of the Indian Constitution. By virtue of the powers conferred by the Constitution both Central and State Governments are competent to legislate on labour matters and administer the same. Thus, with the advent of Industrial revolution and framing of the Indian Constitution several numbers of Labour Laws are enacted in India to protect and safeguard the interest of the working force. The protection of Labour and the improvement of their economic conditions through various labour laws are taken up not only because workers are poor, lacked bargaining power, Directives of the Constitution, but also in order to implement various International Conventions of the International Labour Organisation relating to labour ratified by India from time to time. The Legislations enacted by the parliament can be categorized as follows;

(i) Labour Laws enacted by the Central Government, where the Central Government has the sole responsibility for enforcement.¹

(ii) Labour Laws enacted by Central Government and enforced both by Central and State Governments.

(iii) Labour Laws enacted by Central Government and enforced by the State Governments.

(iv) Labour Laws enacted and enforced by the various State Governments which apply to respective states.

In India, Labourers can be classified into two main categories, viz

(i) Organised Labour and

(ii) Unorganised Labour

¹ Entry No.55, 61 and 65 in the Union list of the Constitution of India.
An important distinction that is popularly made now a day in all discussions relating to labour legislation is between workers in the organised / formal sector and those in the unorganised / informal sector. In local terms, organised sector in India refers to licensed organizations, that is, those who are registered. The term ‘organised’ is generally used to enterprises or employees in which 10 or more employees work together.

The concept of an unorganised sector began to receive world – wide attention in the early 1970s when the International Labour Organisation initiated serious efforts to identify and study them. Since then, the informal sector has been the subject of several studies. In India, however, the term, unorganised sector is of recent origin and has been in use only during the last two decades. The term ‘unorganised sector’ could not be defined and identified solely on the basis of the nature of work of the workers or on the basis of the number of employees in the undertaking and also not on the level of organisation. However, the First National Commission of Labour (NCL), under the chairmanship of Justice Gajendragadkar, defined the unorganised sector as that part of as the workforce who have not been able to organise in pursuit of a common objective because of constraints such as (a) casual nature of employment, (b) ignorance and illiteracy, (c) small size of establishments with low capital investment per person employed, (d) scattered nature of establishments and (e) superior strength of the employer operating singly or in combination.2

Unorganised sector is a vast and significant segment of Indian economy in terms of its economic worth through their economic contribution and growing number of the workers the sector engages. Inspite of their considerable contribution, the

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unorganised sector lack adequate protection. There are huge numbers of Labour Laws enacted in Independent India to regularise and regulate the employment procedure for the workers in the unorganised sector. There are labour laws that apply wholly or partly to unorganised sector. There is a wide variety of employments in the unorganised sector. The unorganised sector comprises the various categories of workers including those who are migrating for seeking employment as migrant worker. There are unorganised workers in the organised sector also. The vast majority of the migrant workers fall in the unorganised sector.

It is agreed that workers, who move from state to state seeking employment on temporary or seasonal basis without becoming the permanent residents of the state where they work are known as Inter-State Migrant Worker. Migrant Worker is thus essentially temporary or seasonal in character, it comes and goes. The term ‘Migrant Worker’ is also associated with the concepts of contract labour and bonded labour. The important Labour Laws involved in regulating migrant workers are the Inter-State Migrant Workers Act, 1979, the Bonded Labour (Abolition) Act, 1976 and Contract Labour (Regulation and Abolition) Act, 1970. Inter-State Migrant Workers form a large part of Contract Labour with the additional and aggravating character of having come from another state. In its turn, contract labour is by and large bonded labour. Contract and Migrant Labour, sub-species of bonded labour is peculiar in Indian industries. All three share one other characteristic. In the light of the above, it will be useful to examine the provisions of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 along with other labour laws and their success, if any, in securing the intended reliefs and benefits to the Inter-State Migrant Workers in the country. The box 4.1 shows the existing Labour Laws in India relevant for migrant workers.
Labour Laws in India Relevant for Migrant Workers

- Employees Compensation Act
- Trade Unions Act
- Payment of Wages Act
- Industrial Disputes Act
- Minimum Wages Act
- Employees State Insurance Act
- Employees Provident Funds Act
- Maternity Benefit Act
- Payment of Bonus Act
- Contract Labour Act
- Payment of Gratuity Act
- Equal Remuneration Act
- Bonded Labour System Act
- Inter-State Migrant Workmen Act
- Building and other Constructions Workers Act
- Building Workers Welfare Cess Act
- Unorganised Social Security Act

There are special sectoral laws including Inter-State Migrant Law, Contract Labour Act, Bonded Labour Act, Building and Construction Workers Act and Building Workers Welfare Cess Act. These Acts are directly or indirectly applicable to the workers in the unorganized sectors. These sectoral laws either abolish or
prohibit an abominable practice like bonded labour or they seek to regulate exploitative condition by regulating conditions of service etc.

4.2 Law on Contract Labour

The system of recruitment of contract labour through contractor has taken deep roots in many industries in India. ‘Contract labour’ can be distinguished from direct labour in terms of employment, relationship with the principal establishment and method of wage payment. Unlike direct labour which is borne by the pay or muster roll of the establishment and entitled to be paid wages directly, contract labour by and large is neither borne by the pay roll nor is paid directly. The establishment which forms ‘out work’ to a contractor or contractors does not own any direct responsibility in regard to their labour.

The advantages to the employer in employing contract labour are:

(i) Production at lower cost.
(ii) Engaging labour without having to extend fringe benefits, such as leave wages, employees state insurance or provident fund contribution and bonus;
(iii) General reduction of the overhead cost and the administrative burden of maintaining an establishment; and
(iv) The sheer economy of framing out contracts for manufacture of certain components rather than investing capital and installing plants for their manufactures.

However, the system of employment of contract labour is not free from evil. The protection received by contract labour varies according to the situation. The

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problems and abuses resulting from engagement of contract labour had attracted the
attention of the Government from time to time. In the pre – independence era, in 1929
the Royal Commission⁴ submitted its report mentioning about the existence of an
“intermediary” named ‘jobber’ and recommended certain measures to reduce the
influence of the ‘jobber’. The Royal Commission on labour recommended the legal
abolition of contract system because it enables the principal employer to escape most
of the provisions of the Labour Law. The labour investigation committee under the
chairmanship of Sir Rege recognised the need for contract labour yet urged for its
abolition where necessary and regulation of conditions of service in others where its
continuance was unavoidable⁵.

The second planning commission while formulating the second five year plan
had observed that the major problems relating to contract labour consisted of
regulation as well as channelisation of their working conditions and ensuring their
continuous employment.⁶ The suggestions made by second planning commission in
1956 show that though the commission was not unmindful of the fact that abolition of
the contract labour system would result in displacement of labour but recommended
only alternative employment and not absorption of the contract labour in the
establishment⁷.

The first National Commission on Labour made an indepth study of the
problem of the Contract Labour.⁸ While admitting the inevitability of Contract Labour
under certain conditions, the National Commission on Labour in India expressed the

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⁴ Appointed by the British Government in the year 1929 to study and report all the aspects of
Labour. It is also known as ‘Whitely Commission’.
⁵ Labour Investigation Committee Report, ,1946, P.79.
⁶ As quoted in K.D.Srivastava and R.K.Srivastava, Contract Labour (Regulation and Abolition)
Act, 1970, P.1
view that “a stricter regulation of contract work is called for where it is essential to engage such labour, the general direction of policy being its abolition altogether in due course.”\(^9\) The commission in its report found that contract labour is disorganised; that the system works to the advantage of the employer and disadvantage to the contract labour and recommended that it should be abolished.\(^10\) While recommending abolition of contract labour system altogether, it was emphasised that such facilities which other regular workers enjoyed, should be made available to contract labour if for some unavoidable reasons the contract labour had to stay.

The judiciary in its part also discouraged the practice of employment of contract labour and criticized the system of middle men since such workers were not getting wages according to law and lack of conducive working conditions\(^11\). Consequently, in order to do away with the primitive system of contract labour the Parliament of India passed Contract Labour (Regulation and Abolition) Act in the year 1970. The primary objectives of the Act are to stop exploitation of contract labourers by contractors and establishments. The Act does not provide for a total abolition of contract labour system but it provides for abolition of contract labour in appropriate cases.\(^12\) The Act streamlining the system of contract labour by giving the benefits of various labour laws. This Act has been enacted for a twin purpose, viz.,

(i) To abolish the contract labour and

(ii) To regulate the working conditions of contract labour wherever such employment is required in the interest of the Industry.

\(^10\) Ibid
\(^12\) R.K.Panda V SAIL (1994(5) SCC 304 ) and Deena Nath V National Fertilizer Ltd,AIR 1992SC 451
The Contractor Labour (Regulation and Abolition) Act, 1970 defines Contract Labour. A workman shall be deemed to be employed as “Contract Labour” in or in connection with the work of an establishment when he is hired in or in connection with such by or through a contractor with or without the knowledge of principal employer. The Act is applicable to any establishment in which 20 or more workers are either currently employed or were employed at any time during the preceding 12 months as contract labour and to any contractor who currently employs or has employed at any time during the preceding 12 months, 20 or more workers. A contract labourer is a worker employed through a contract either directly employed by an employer or by a labour contractor. The Act is not applicable to establishments which carry on work of a causal, irregular or occasional nature. The Act seeks to regulate contract labour and to prohibit employment of contract labour in certain circumstances after consultation with Central Board or the State Board by notification in the official gazette keeping in view with the relevant factors as mentioned under the provisions of the Act. Wherever it is not practicable to abolish the system of contract labour, the Act provides for its regulation so as to ensure better service conditions and basic amenities.

The Act lays down mode of registration of establishments employing contract labour. No principal employer is permitted to employ contract labour unless registration has been obtained from the registering officer appointed under the provisions of the Act. Similarly, the contractors who intend to undertake or execute work through contract labour must obtain license from the licensing officer appointed under the Act. Such licences are granted on certain conditions specified therein, such

13 Section 2 (b)
14 Section 1 (4)
15 Section 1 (5)
as hours of work, fixation of wages and other essential amenities to be provided to contract labour. The contractor is expected to take care of the welfare and health of the contract labourers. The facilities to be provided at the work site include canteens, Rest rooms, first-aid facilities and other facilities such as dining hall, drinking water, latrines, urinals, washing facilities etc. If contractor fails to provide amenities required to be provided, the principal employer is liable to provide within the specified time and all expenses incurred by the principal employer in providing the amenities may be recovered by the principal employer from the contractor. The contractor is responsible for payment of wages and the same must be made in the presence of the authorized representative of the principal employer. If the contractor fails to pay wages to the contract labour or makes short payment the principal employer shall be liable to make payment of wages and recover the same from the contractor.

In order to provide effective system of registration of establishment and grant of licenses to contractors, the Act empowers the Appropriate Government to appoint registering and licensing officer with powers of revocation of registration and licenses in appropriate case. To carry out efficient and effective administration of the Act Central Advisory Board and State Advisory Board are constituted by the appropriate government. Like other labour laws this Act also makes provision for appointment of inspecting staff to ensure effective compliance of the provisions of the Act.

The Contract Labour (Regulation and Abolition) Act has been in force for the last forty-four years. During these forty-four long years several changes have occurred in the Industrial sector, particularly after opening the economy in the early nineties and globalization, the Industrial Scenario in India has changed completely.
The judgment of the Hon’ble Supreme Court in *Steel Authority of India case*\(^{16}\) which caused us to refer back to the history, the purpose and the object of the Act. The background of the Act, which is almost fully covered in the case of *Standard Vacuum Refining Company of India Ltd V Its workmen*\(^{17}\), which emphasized on the condition then prevailing that in the absence of any legislation dealing with the conditions of service of the contract labour, the workers were being exploited by the Industrialists. In the said judgment, the Supreme Court had rightly given the guidelines to the government and as a matter of necessity, the bill which was placed before Parliament in the year 1967, resulted in the Contract Labour (Regulation and Abolition) Act in 1970. The Constitutional validity of the Act was upheld by Supreme Court in *Gammon India Ltd V Union of India*\(^{18}\). However, the court decisions given from 1960 till date have been inconsistent with the aims and objectives of the Act and the interpretations placed by the judiciary in various cases of contract labour have also added to the failure of achieving the desired results.

Inter-State Migrant Workers form a large part of contract labour with the additional and aggravating character of having come from another state. Therefore, initially the Contract Labour Act was enacted to regulate the Inter-State Migrant Workers in certain circumstances. The Provisions of the Contract Labour Act does not adequately protect the interest of the workers who migrated from the native State to other state in search of their livelihood, because of the violation of labour law that apply to Contract Labour and Migrant Law.

Output and Profitability have assumed greater importance, encouraging some employers to bypass or find loopholes in the laws enacted for the protection of the

\(^{16}\) Steel Authority of India Ltd V National Union Water Front Workers, 2001 SCC (L & S) 1121.

\(^{17}\) 1999, SCC (L & S) 765.

\(^{18}\) 1997, 4 SCC (L&S) 252.
interests of the workers, with the sole objective of achieving higher productivity which in turn has affected the employer – employee relationship one of such legislation is CLRA Act 1970. In order to avoid the clutches of law the principal employer prefers to engage workers on contract and not on his rolls.

The Contract labours in most of the cases are a floating community who has no alternative but to leave their places of residence and go wherever they find employment in whatever possible manner. In several cases there is a large scale of exploitation in wages, conditions of work, working hours and security of employment of the needy workers who have no alternative but to accept the terms offered by the contractors / principal employers. Insufficiency of provisions of the law has resulted non delivering the intended justice to contract labour. Apart from these, the machinery created by the government is hopelessly inadequate to enforce the provisions of the Act.

The whole issue is that the contract workers themselves are too scared to fight their own cases. They do not dare to complain against anybody because of the dread of the intimidation by the principal employers and contractors. If anybody dares, he loses his job. Therefore, they have accepted all forms of exploitation as their *fiat accompli*.

The compact committee\textsuperscript{19} constituted in 1977 recommended the enactment of a separate central legislation to regulate the employment of Inter- State Migrant Workmen as it was felt that the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 even after necessary amendments would not adequately take care of the variety of malpractices indulged in by the contractors. This gave a way for the birth of the Inter- State Migrant Workmen Legislation.

\textsuperscript{19} Government of India, Ministry of Labour, “Compact Committee” submitted its report 1978.
4.3 Legal Regime on Bonded Labour

Bonded labour or debt bondage is probably the least known form of slavery today, and yet it is the most widely used method of enslaving people. A person becomes a bonded labourer when their labour is demanded as a means of repayment for a loan. A large number of rural landless labourers in India have been the victims of the practice of bonded labour. The bonded labour system has been a great evil in various states of our country and it is very appropriately held to be a barbarous black spot in the modern civilized and progressive society. The system of bonded labour is a direct outcome of certain categories of indebtedness that have been prevailing for a long time involving certain economically exploited helpless and weaker sections of society.

Indian law as well as International Law prohibits the use of bonded labour. Under its own fundamental law and as a party to International instruments, India is obliged to prohibit all forms of bonded labour system. There are various ILO Conventions which prohibit forced or compulsory labour. The term forced or compulsory labour shall mean all work or service, which is exacted, from any person under the menace of any penalty and for which the said person has not offered himself voluntarily\(^{20}\). India has also ratified the ILO convention (No.29 of 1930) on forced / bonded labour. As per ILOs report on stopping forced labour, 2001, the term bonded labour refers to a worker who rendered service under condition of bondage of arising from economic consideration, notably indebtedness through a loan or an advance. Where debt is the root cause of bondage the implication is that the worker (or dependent or heirs) is tied to a particular creditor for a specified or unspecified period until the loan is repaid. In India, the bonded labour system originated from the uneven

\(^{20}\) ILO Forced Labour Convention, 1930 (No.29) (Article 2(i))
social structure characterized by feudal and semi-feudal conditions. Article 23(1) of the Constitution of India, relating to fundamental rights, states that the “traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law”. Thus, where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words ‘forced labour’ under Article 23 of the Constitution. The word ‘force’ must therefore be construed to include not only physical or legal force, but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage.

It is very significant to note that use of bonded labour also contravenes the provisions of Article 21 of the Constitution. In Bandhua Mukti Morcha V Union of India 21 where question of bondage and rehabilitation of some labourers was involved. This case relied upon an earlier judgment of the Supreme Court in Francis Coralie V Union Territory of Delhi.22 Wherein Justice P.N.Bhagwati observed, “It is the fundamental right of everyone in this country … to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Article 41 and 42 and at least, therefore, it must include protection of the health and strength of the workers men and women, of the tender age of children against abuse, opportunities and facilities for children to

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21 AIR 1984 SC 802,
22 AIR 1981 SC 746
develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity, and no State has the right to take any action which will deprive person of the enjoyment of these basic essentials”.

In Orissa, the Inter-State Migrant Labour are known as Dadan labour. The system of employment of Dadan labour is prevalent not only in Orissa but other States also. The compact Committee\(^{23}\) appointed by the government of India examined the whole question of Dadan labour of Orissa and suggested measures of eliminating the abuses of the system. The compact Committee in its report observed that the “characteristics of the Dadan labour systems resembled in some cases to bonded labour system.” Vasudha Dhagamwar rightly treats “migrants – cum – contract – cum bonded labourers” in one bracket.\(^{24}\)

Article 23(1) of the Constitution prohibits “begar” and other similar forms of forced labour and further provides that any contravention of the said prohibition shall be an offence punishable in accordance with law. Article 35 (a) (ii) of the Constitution not only confers the power on parliament to provide for punishment for the contravention of the said provisions of Article 23 (1) but expressly takes away the power of the State legislature to make any legislation with regard to the said matter. Accordingly, the Bonded Labour System (Abolition) Ordinance was promulgated in 1975. By the said Ordinance, the bonded labour system was abolished and the bonded labourers were freed and discharged from any obligation to render any bonded labour

\(^{23}\) Compact Committee Appointed in 1977 by Government of India and Submitted its Report in 1978

and their bonded debts were also extinguished. The Ordinance further affords protection to the free bonded labourers from eviction from their homestead. Contraventions of the Provisions of the Ordinance have been made offences punishable in accordance with Law. Provisions for the follow-up measures and economic rehabilitations of the freed bonded labourers have also been made in the Ordinance. Later on, it was replaced by the Bonded Labour System (Abolition) Act, 1976. Thus, in pursuance of the Article 23 of the Constitution of India the bonded labour system has been abolished formally by law and declared illegal.

The bonded Labour System (Abolition) Act, 1976 defines the ‘bonded labour system’ as the system of forced, or partly forced, labour under which a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that,

(i) in consideration of an advance obtained by him or by any of his lineal ascendants or descendants (whether or not such advance is evidenced by any document) and in consideration of the interest if any, due on such advance, or
(ii) in pursuance of any customary or social obligation, or
(iii) in pursuance of any obligation devolving on him by successions, or
(iv) for any economic consideration received by him or by any of this lineal ascendants or descendants, or
(v) by reason of his birth in any particular community,

he would –

25 For detailed Objects and Reasons, see Gazette of India, Extraordinary, Part.II dated 9.2 1976 at PP. 135 -144.
render, by himself or through any member of his family, or any person dependent on him, labour or service to the creditor, or for the benefit of the creditor, for a specified period or for an unspecified period or for an unspecified period, either without wages or for nominal wages, or

(2) forfeit the freedom of employment or their means of livelihood for a specified period or for an unspecified period, or

(3) forfeit the right to move freely throughout the territory of India, or

(4) forfeit the right to appropriate or sell at market value any of his property or product of his labour or the labour of a member of his family or any person dependent on him, and includes the system of forced, or partly forced, labour under which a surety for a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that in the event of the failure of the debtor to repay the debt, he would render the bonded labour on behalf of the debtor.26

Bonded Labour is prohibited in India by the above specific law and by Articles 21 and 23 of the Constitution. After the commencement of the Bonded Labour System (Abolition) Act, 1976, the Bonded Labourers stand freed and discharged from any obligation to render to bonded labour. This Act provided that if there is any agreement or instrument or custom which requires such bonded labour, it shall stand inoperative after the commencement of the Act. Any liability to repay bonded debt shall stand extinguished27. The property of the bonded labourers shall stand freed and discharged from mortgage, charge, lien or encumbrances and shall be

26 Section 2(g)
27 Section 6
restored to the possession of the bonded labourers28. Freed bonded labourer shall not be evicted from the home land29. It seeks to provide for the economic and social rehabilitation of the freed bonded labourers. For the Compliance of the provisions of the Act, the State Government is authorized to confer such powers and impose such duties on a District Magistrate as it deems fit for the purpose30. The State Government has been made responsible for implementation of the provisions of the Act. The Act provides for constitution of vigilance committee in each district and each sub-division with wide powers31.

Therefore, the Act frees all bonded labourers, cancels any outstanding debts against them, prohibits the creation of any new bondage agreements and orders the State to economically rehabilitate freed bonded labourers.

Despite the statutory prohibition, bonded labour is widely practiced. In many cases Bonded Labour have been liberated and set free in accordance with the law and given cash and transport expenses to go their native places. But as the characteristics of migrant labour, they again drift towards the old places of work and take employment as there is no gainful employment at their native places. In this aspect, the significance legislation of bonded labour did not protect the bonded migrant labourers and failed to prevent their exploitation.

Broadly speaking, the abolition of bonded labour implies the identification, release and rehabilitation. Although the Act does not define rehabilitation, the ministry of labour, Government of India has launched a scheme under which the Central and State Governments contribute equally to the rehabilitation assistance

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28 Section 7  
29 Section 8  
30 Section 10  
31 Section 13
allowance of Rs.20,000/- due each freed bonded labourer.32 But, by and large the process of rehabilitation is poor and is frequently delayed, particularly in the case of Inter-State Bonded Migrant Labourers. Thus it is the responsibility of the Government to ensure protection for the migrant-cum-bonded labourers.

Existence of bonded labour system in any form is a slur on the civilized human society. Eradication of bonded labourers is not a onetime event. It can occur and recur any time in any Industry. The need of the hour is to focus on safeguards for release of bonded labourers and prevention from their lapsing into bondage again. Identification, release and rehabilitation should be simultaneous. There should not be any gap between identification and in the same way between release and start of rehabilitation process. Bonded labour was legally abolished in 1976 without identifying and addressing the root causes, without formulating an integrate and long term strategy. Hence it remains prevalent in many states of India with weak enforcement of the law by the Governments. The strategies to eradicate and eliminate bonded labour need to go beyond the symptoms to address the root causes. The multifaceted and deeply rooted nature of those causes requires an integrated and long term strategy.

4.4 Inter – State Migrant Law- Historical Background

Freedom of movement in any part of territory of India and freedom to carry any avocation of one’s choice is a fundamental right guaranteed by Article 19 of the Constitution of India. Every citizen of India has got Constitutional fundamental right that he can reside and settle in any part of India and can do any legal work for his livelihood that means any person can leave his home State to other State in India in

32 Available at http://www.hrw.org. accessed on 08.03.2014.
search of employment. This freedom of movement is considered ideal for the
development of any free and liberal economy. However, such free movements
themselves create stresses and strains in the economic system.

The system of employment of Inter – State Migrant Labour (known in Orissa
as Dadan Labour) is an exploitative system prevalent in Orissa and in some other
States. In Orissa, Dadan labour is recruited from various parts of the State through
contractors or agents were called sardars / khatadars for work outside the State in
large construction projects. This system lends itself to various abuses. Sardars
promised at the time of recruitment that wages calculated on piece rate basis would be
settled every month but that promise was not usually kept. Once the worker came
under clutches of the contractor he took him to a far off place on payment of railways
fare only. No working hours were fixed for Inter – State Migrant Workers and they
had to work on all the days in a week under extremely bad working conditions. The
provisions of the various labour laws were not being observed in their case and they
were subjected to various malpractices.

The twenty – eighth sessions of the labour minister’s conference held in 1976
in New Delhi. This conference considered the question of protection and welfare of
dadan labour recommended the setting up of a small compact committee to go into the
whole questions and to suggest measure for eliminating the abuses prevalent in this
system. The Inter – State Migrant Workmen are generally illiterate, unorganized and
normally to work under extremely adverse conditions and in the view of this hardship,
some administrative and legislative arrangements both in the state from where they
are recruited and also in the state where they are engaged for work are necessary to
secure effective protection against their exploitation.
The compact committee\textsuperscript{33} which was constituted in 1977 under the chairmanship of shri. D. Bandopadhyay recommended in its report in 1978 for the enactment of a separate central legislation to regulate the employment of Inter – State migrant Workers as it was felt the provisions of the Contract Labour (Regulation and Abolition) Act, 1970, even after necessary amendments would not adequately taken care of the variety of malpractices indulged in by the contractors / sardars / khaledars, etc. and the facilities required to be provided to these workmen in view of the peculiar circumstances in which they have to work.

The recommendations of the compact committee have been examined in consultation with the State government and the ministries of the government of India and the suggestions made by them have been taken into account in formulating the proposals for legislation. These events and causes are responsible for the birth of “Inter- State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, a special and significant protective legislation to the Inter – State Migrant Workers was passed in the year 1979.

The present study is a socio-legal one and particularly concerned with Inter – State migrant Workers and the Law with special reference to their employment status and position in construction industry. Therefore, it is essential in the present study to examine the provisions of the Act in detail for its proper evaluation and assessment of the working of the Act.

\textsuperscript{33} Appointed by the Government of India, Ministry of Labour.
4.5 **Law on Inter – State Migrants**

The Act applies to every establishment in which five or more Inter – State Migrant Workers are employed or were employed on any day of the preceding 12 months. The Act also likewise applies to every contractor who employs or employed five or more Inter – State migrant Workers during the preceding twelve months. The Act defines an Inter – State Migrant Workman as any person who is recruited by or through a contractor in any state under an agreement or other arrangement for employment in an establishment in another state, whether with or without the knowledge of the principal employer in relation to such establishment.

In order to consider a person as Inter – State Migrant Workman the following four conditions are to be satisfied under the Act.

(i) The worker should be recruited by a ‘Contractor’ in one state. (ie, Home State of the worker)

(ii) The recruitment should be for employment in an establishment in another State. (ie, Host State)

(iii) The recruitment may be made by an agreement or by any other arrangement.

(iv) The recruitment may be made with or without the knowledge of the principal employer of an Industrial Establishment of the Host State.

The Act empowers the appropriate Government to appoint registering officers. Every principal employer of an establishment to which this Act applies makes an application to the registering officers for the registration of the

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34 Section 1 (4) (a) and (b)
35 Section 2 (1) (e)
36 Section 3
establishment.\textsuperscript{37} The registration of the principal employer is compulsory if the Inter-State Migrant Workers are employed or intended to be employed in his establishment. The registering officer shall register the establishment and issue a certificate of registration within one month after the receipt of the application from the principal employer if the application for registration is complete in all respects\textsuperscript{38}.

If the application for registration is incomplete the registering officer is required to return the application to the principal employer of the establishment\textsuperscript{39}. The Act contemplates a situation where the registering officer does not grant registration certificate within one month or he does not return the application treating it incomplete, the registering officer shall within 15 days from the receipt of the application rather an application in the form of a reminder from the principal employer, register the establishment and issue the registration certificate\textsuperscript{40}. Section 4 of the Act shows that when an application for registration under the Act is moved the registering officer is required either to register the establishment or to return the application on the ground that it is not complete as required.

The Act empowers the registering officer to revoke the registration certificate issued if he is satisfied that the registration has been obtained by misrepresentation or suppression of any material fact or it has become useless or ineffective for any other reasons, after giving the principal employer an opportunity of being heard and after obtaining prior approval of the appropriate Government\textsuperscript{41}. This Act also empowers the registering officer to suspend the operation of the certificate pending such revocation for such period as may be specified in the order and serve the order by the

\begin{footnotesize}
\begin{itemize}
\item \textsuperscript{37} Section 4
\item \textsuperscript{38} Section 4 (2) (a)
\item \textsuperscript{39} Section 4 (2) (b)
\item \textsuperscript{40} Section 4 (3)
\item \textsuperscript{41} Section 5
\end{itemize}
\end{footnotesize}
registered post to the principal employer. It must contain the reasons why such action is being taken. The Act prohibits the principal employer to employ Inter – State Migrant Workmen without obtaining a certificate of registration. The Act does not prohibit employment of Inter – State Migrant workers if the registration application is pending before the registering officer.

As already stated, Inter-State Migrant workmen under the Act means “any person who is recruited by or through a contractor in one state, under an agreement or other arrangement for employment in an establishment in another state”. In this process of recruitment and employment, the role of contractor is most important who recruits the migrant workers in a state and supplies them to an establishment in another state for employment. In order to regulate the process, the Act empowers the appropriate government to appoint licensing officers. The appropriate government may define the jurisdiction and powers of the licensing officer at the time of appointment.

The Act prohibits the contractor to recruit any person in a state for the purpose of employment in another state except under and in accordance with a license issued by the licensing officer appointed by the Central Government or the State Government, as the case may be who has jurisdiction to the area wherein the recruitment is made. Similarly, the contractor is prohibited to employ as workmen for the execution of the work in any establishment in any state, persons from another state except under and in accordance with a license issued in that behalf by the central

42 Section 5
43 Section 6
44 Section 7
45 ibid
46 ibid
47 Section 8
government or the State government who has jurisdiction to the area wherein the establishment is situated.\textsuperscript{48} Therefore, every contractor is required to obtain a license from the licensing officer appointed under the Act, both for employing migrant workers in any establishment as also for the purpose of recruiting any person in a state for the purpose of employing him in any establishment situated in another state.

The license under the Act may contain the terms and conditions of the agreement or other arrangement under which the workmen will be recruited, the remuneration payable, hours of work, fixation of wages and other essential amenities to be provided to the Inter-State Migrant Workmen as deemed fit by the appropriate government in accordance with the rules and shall be issued on payment of prescribed fees.\textsuperscript{49} However, for any special reasons the licensing officer may require the applicant to furnish security for the performance of the conditions of the license.\textsuperscript{50} The security required to be furnished shall be reasonable on the basis of the number of workmen employed, the wages payable to them, the facilities which shall be afforded to them and other relevant factors.\textsuperscript{51}

The Act makes it illegal for a contractor either to recruit a person in a state for the purpose of employing him in any establishment situated in another state, or to employ a migrant worker for execution of any work in any establishment in any state without having obtained a license under the Act and in violation of the conditions of such a license.

The Act prescribes procedure for making application by the contractor and grant of license by the licensing officer. Every application for grant of license is

\textsuperscript{48} Section 8
\textsuperscript{49} Section 8 (2)
\textsuperscript{50} ibid
\textsuperscript{51} Section 8 (3)
required to be made in the prescribed form and it must contain the particulars regarding the location of the establishment, the nature of process, operation or work for which inter-state migrant workmen are employed. The licensing officer may make investigation in respect of the application received by following prescribed procedure and the license granted under the Act is valid for a specified period and may be renewed from time to time.

The Act lays down the conditions under which the license issued may be revoked or suspended or the security or any part thereof furnished by the contractor may be forfeited. The licensing officer on being satisfied can revoke license and forfeit the security furnished by the contractor, if (i) the license has been obtained by misrepresentation or suspension of material facts or (ii) the holder of the license has failed to comply (without a reasonable cause) any of the conditions of the license or (iii) the holder of the license contravened any of the provisions of the Act or rules made there under. The order of the revocation or forfeiture of security shall be made after the holder of the license has been given reasonable opportunity of being heard. The action contemplated under section 10 of the Act shall be without prejudice to any other penalty to which the holder of the license may be liable under this Act. The licensing officer is also authorized to suspend the operation of the license, pending such revocation one or forfeiture of security. The licensing officer may also vary or amend a license granted under the Act.
The Act makes provision of appeal against the orders made under section 4, section 5, section 8 or section 10 within 30 days on which the order is communicated to an appellate officer who shall be a person nominated in this behalf by the appropriate government and on receipt of an appeal after giving the appellant an opportunity of being heard dispose of the appeal as soon as possible.\footnote{Section 13}

The Inter – State Migrant Workmen Act clearly enumerates the duties, obligations and other arrangements to be made by the contractors in connection with Inter – State Migrant Workmen. Section 12 of the Act deals such duties and obligations of the contractors. According to the section the contractor must furnish the particulars regarding the recruitment of Inter – State Migrant Workers within 15 days from the date of recruitment to the relevant authorities in the state from which an Inter – State Migrant workmen is recruited and in the state in which such workmen is employed. Where any change occurs in any of the particulars so furnished such change shall be notified to the relevant authorities of both the states. The contractor must issue all the Inter – State Migrant workers with a pass book containing the worker’s photograph and indicating in Hindi and English or in the language known to the workman. The pass book must contain the name and place of employment wherein the workman is employed, the period of employment, wage rates and mode of payment, displacement allowance payable, return – fare payable to the workman on the expiry of the period of employment, any deductions made from wages and other particulars. The contractors must furnish information to the authorities of both the states about the termination of employment with a declaration that wages and other dues of the workman and the fare for return journey back to his state payable have
been paid. The contractor is required to maintain the pass book up–to–date and cause it to be retained with the Inter–State Migrant workman concerned.

The Act provides wage security to the Inter–State Migrant Workmen. The wage rates, holidays, hours of work and other conditions of service of Inter–State Migrant workmen shall be the same as those applicable to other workmen if they perform the same or similar kind of work in the establishment. In no case the Inter–State Migrant Workmen be paid less than minimum wages fixed under the Minimum Wages Act, 1948 and the wages payable to the Inter–State Migrant Workmen shall be paid in cash notwithstanding any other mode of payment of wages is in operation under any other law for the time being in force.

The contractor is required to pay displacement allowance to every Inter–State Migrant Workman at the time of recruitment and the allowance shall be equal to fifty percent of the monthly wages payable to the worker or seventy–five rupees whichever is higher. The amount paid to workmen as displacement allowance shall not be refundable and shall be in addition to the wages or other amounts payable to him. The Inter–State Migrant Workmen are entitled to displacement allowance for the simple reason that they have to migrate to some other place for employment leaving the native place. Similarly, the contractor is further required to pay journey allowance of sum not less than the fare from the place of residence of the Inter–State Migrant Workman in his state to the place of work in the other state both for the outward and return journey besides payment of wages during the period of his journey.

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59 Section 13
60 ibid
61 Section 14
62 ibid
as if he is on duty. The contractor has to ensure regular payment of wages, equal pay for equal work irrespective of sex, suitable conditions of work and to provide and maintain suitable residential accommodation, medical facilities on free of charge, protective clothing and report to the specified authorities of both the states and also the next of kin of the workman any instances of serious bodily injury or fatal accident of the workman.

Section 17 the Act fixes the responsibility for payment of wages to Inter – State Migrant Workers and to ensure payment within prescribed period. The contractor shall be responsible for payment of wages to each Inter – State Migrant Workmen employed by him and such wages shall be paid before the expiry of prescribed wage period. Every principal employer shall nominate a representative duly authorized by him to be present at the time of disbursement of wages and he is required to certify the amount paid as wages in the prescribed manner so that no deduction could be made out of wages payable to the Migrant Workman. Similarly the contractor is bound to ensure the disbursement of wages in the presence of authorized representative of the principal employer. In case the contractor fails to make payment of wages within the prescribed period or makes short payment, the principal employer shall be liable to make payment of the wages in full or the unpaid balance due to the Inter- State Migrant Workman employed by the contractor and recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

The allowances required to be paid under section 14 or section 15 to an Inter-State Migrant Workman employed in an establishment is not paid by the contractor or

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63 Section 15.
64 Section 16.
any facility specified in section 16 is not provided for the benefit of such workman, then such allowance or facility shall be provided by the principal employer. All the allowances paid by the principal employer or all the expenses incurred by him in providing such facility may be recovered by him from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt by the contractor.

Under Section 19, it is the duty of every contractor and every principal employer to ensure that any loan given by such contractor of principal employer to any Inter-State Migrant Workmen does not remain outstanding after the completion of the period of employment under the said contractor or principal employer. The obligation of Inter-State Migrant Workmen to repay any debt obtained from the contractor or principal employer and remaining unsatisfied before the completion of such employment is deemed to have been extinguished on completion of the employment. Also no suit or other proceedings shall be in any court or before any authority for the recovery of such debt or any part thereof. This is intended to safeguard the interest of migrant worker. The Act makes clear that the loan which remains unsatisfied and the period of employment is completed the loan is deemed to be extinguished and no case can be filed for recovery.

Section 20 of the Act empowers the appropriate government to appoint such persons as it thinks fit to be inspectors for the purpose of this Act defining the local limits within which they shall exercise their powers. This Section enumerates the powers of the inspectors. If the inspector has reasonable grounds to believe that any Inter-State Migrant Workmen are employed in any premises or place, he may enter at

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65 Section 18
66 Ibid.,
all reasonable hours with such assistants who are in the service of the government or any local or other public authority, such premises or place for the purpose of satisfying himself whether the provisions of this relating to payment of wages, conditions of service or facilities to be provided to such migrant workmen are being complied with. For that purpose he may examine registers or records or notices. He may also examine any person found in the premises to identify whether he is an Inter – State Migrant Workman. Inspectors has power to seize or takes copies of such registers, records of wages or notices which in his opinion are relevant to constitute an offence under the Act. The section empowers the State government also to appoint inspectors to satisfy itself whether the provisions of this Act are being complied with in relation to workmen belonging to that state employed in any establishment in another state. But no such order shall be issued without the concurrence of the state government in which such workmen are employed or without the concurrence of the central government if the establishment where they are employed is pertaining to any industry carried on by or under the authority of the central government.

Section 21 of the Act is a deeming provision. This Section states that Inter- State Migrant Workmen shall be deemed to be employed and actually worked in the establishment or as the case may be the first establishment in connection with work which they are doing from the date of their recruitment for the purpose of the enactments specified in the schedule of the Act. It is clear that the date of recruitment and the date of employment in any establishment where they are made available by the contractors may be different. It is therefore, date of recruitment shall be deemed to be the date of employment for certain labour enactments so that they may be entitled to the benefits of the provisions of the enactments specified in the schedule such as Employees Compensation Act, Payment of Wages Act, Industrial Disputes Act,
Employees State Insurance Act, Employee’s Provident Fund Act and the Maternity Benefit Act.

Section 22 of the Act deals with adjudication of Industrial Disputes relating to migrant workmen. This Section empowers the Central Government in case it is the appropriate government, to refer such a dispute to the authorities (specified in Chapter II of the Industrial Disputes Act) in the state wherein the establishment is situated or in the state where recruitment was made, provided the workman concerned makes an application on the ground that he has returned to that state after completion of his work. In case the Central Government is not the appropriate Government, the Act similarly empowers the State Government to refer such a dispute to any one of the authorities in the state wherein recruitment was made if the migrant worker makes a request on the ground that he has returned to that state after completion of his work, provided that such an application is made within six months of his return to his state. No such reference shall be made except after obtaining the concurrence of the state Government in which the establishment is situated.

Section 22 contemplates the situation where the migrant workman moves an application for transfer of proceeding during the pendency of the case. It provides that if during the pendency of the proceeding an application for transfer of such proceeding to the corresponding authority in the state of recruitment is moved by migrant workman stating that he has returned back to the state of recruitment after completion of his employment that authority shall forward that application to the central government or the state government, as the case may be, where such recruitment was made and transfer pending proceeding in the prescribed manner to such authority as may be specified in this behalf by that Government. This Section
expressly provides that if the Central Government is satisfied that it is expedient in the interests of justice, may by order in writing with reasons withdraw any proceeding relating to an Inter-State Migrant Workman pending before an authority in which the establishment is situated and transfer it to authority in the State where he was recruited. This section also provides that the authority to which any such proceeding is transferred is empowered to proceed either afresh or from the stage at which it was so transferred. Further it provides the procedure for transfer of pending proceeding in connection with industrial dispute of the migrant workman in the state where dispute arose to the state where he was recruited.

Every principal employer and every contractor is required to maintain such registers and records regarding the particulars of the Inter-State Migrant Workmen employed, the nature of work performed but such workmen, the rate of wages paid to the workmen and such other particulars and it is also required that notices in the prescribed form containing particulars about hours of work, nature of duty and such other information shall be kept exhibited within the premises of the establishment by the principal employer and the contractor concerned.

Section 24 of the Act provides for punishment for the person who obstructs an inspector in discharge of his duties under this Act or willfully neglects to afford the inspector or the authorized person any reasonable facility for making any inspection, inquiry or investigation etc. The punishment may extend to two years of imprisonment or with fines which may extend to two years of imprisonment or with fines which may extend to two thousand rupees or with both. The Act imposes punishment with imprisonment which may extend to one year or with fine which may

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67 Section 23
extend to one thousand rupees or with both on any person who contravenes any provisions of this Act or any rules made there under regulating the employment of Inter – State Migrant Workmen or contravenes any condition of a license granted under this Act and in case of continuing contravention an additional fine may be imposed which may extend to one hundred rupees per day during which such contravention continues after conviction for the first such contravention.68

Section 26 deals that if any person contravenes any of the provisions of this Act or of any rules made there under for which no other penalty is elsewhere provided, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to two thousand rupees, or with both.

Section 27 of the Act makes provision for punishment where an offence has been committed by a company. In such event, every person who at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company itself, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Protection is given to a person who proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence. In such a situation such person shall not be liable for the same. This section provides further that if the offence has been committed by the company and it has been proved that the offence was committed with the consent or connivance of, or is attribute to any neglect on the part of any director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. According to this section,

68 Section 25
company means any body corporate and includes a firm or other association of individuals and director in relation to a firm means a partner in the firm.

Section 28 deals cognizance of offence. The cognizance of any offence under the Act can be taken by the court only when complaint is made by or with the previous sanction in writing of an inspector or authorized person and no court inferior to that of metropolitan Magistrate or a first class Judicial Magistrate shall try any offence punishable under this Act.

Section 29 of the Act says about limitation of prosecutions. The period of limitation of prosecution is three months from the date on which the alleged commission of the offence came to the knowledge of the inspector or the authorised person concerned but the period of limitation is six months in cases where the offence consists of disobedience of the written orders of the inspector or authorized person as the case may be and the period shall be counted from the date on which offence is alleged to have been committed.

Section 30 of the Act gives an overriding effect over any other law, agreement or contract of service etc., which are inconsistent with the provisions of this Act. However, if under any other law, agreement or contracts of service the Inter-State Migrant Workmen are getting more favourable benefits, then these benefits shall continue and the Inter-State Migrant Workmen will continue to get other benefits also from this Act.

Section 31 of the Act empowers the appropriate Government to exempt any establishment or class of establishments or any contractor or class of contractors or any Inter-State Migrant Workmen in such establishment or class of such workmen.
from the operation or application of all or any of the provisions of the Act or rules made thereunder, if that Government is satisfied that it is just and proper to do so having regard to the methods of recruitment and the conditions of employment in such establishments and all other relevant circumstances.

Section 32 provides protection to any registering officer, licensing officer or any other employee of the Government for anything done in good faith or intended to be done in good faith in pursuance of the Act or any rule or order made thereunder, from any suit, prosecution or other legal proceedings. Similarly, no suit or other legal proceedings shall lie against the Government itself for any damage caused or likely to be caused by anything done or intended to be done in pursuance of this Act or any rule or notification or order made or issued thereunder.

Section 33 empowers the Central Government to give directions to any State Governments to execute the provisions of the Act in the State concerned.

Section 34 confers powers on the Central Government to make such provisions as appears to it to be necessary or expedient for removing the difficulty experienced in giving effect to the provisions of this Act. The Act empowers the appropriate Government to make rules to carry out the provisions of the Act on matters related registration of an establishment, license, security, appeals, wage rates, holidays, hours of work, conditions of service, wage period, allowances or facilities powers of the inspectors, forms of registers and records and legal aid to Inter – State Migrant Workmen\(^69\).

\(^69\) Section 35
The Central Government in exercise of the powers conferred by Section 35 has made the rules namely Inter-State Migrant Workmen Central Rules, 1980. The Tamilnadu Government has made the rules namely Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) (Tamilnadu) Rules, 1983 in exercise of the powers conferred under Section 35 of the Act.

Section 36 of the Act has repealed the Orissa Dadan Labour (Control and Regulation) Act, 1975 and also repealed any law corresponding to that Act, in force, in any State. However, this Section provides that anything done or any action taken under the repealed law, in so far as such thing or action is not inconsistent with the provisions of this Act shall continue to be in force accordingly until superseded by anything done or any action taken under this Act.

4.6 Comparative Provisions of the Law on Contract Labour and Migrant

The Contract Labour Act and the Inter – State Migrant Workmen Act are designed to protect the worker against the exploitation and the evils of the contracting system. The main objective of these laws is to eradicate the evils and prevent exploitations. The present study already stated that the term migrant Labour is also associated with the concept of contract labour. Therefore it is necessary to examine the concrete provisions of contract labour Act and the migrant law.

- Most of the words specified in the contract labour Act is reproduced in the the Inter – State Migrant Workmen Act. The definitions of an appropriate government, contractor, controlled industry, establishment, Principal employer and workman are the same.
• The definition of the Inter – State Migrant Workmen is similar to the conditions under which a workman is deemed to be a contract labourer under the Contract Labour Act.

• The definitions of Principal Employer in both the Acts are similar and it includes the heads of the departments of central and State Governments, on whose behalf the Contractor has undertaken the work.

• The recruitment of contract Labour whether Inter – State or local by the contractor need not be with the knowledge of the principal employer.

• Both the Acts seek to regulate the terms of employment and conditions of service of migrant worker through a licensing procedure. Both the Acts requires registration of the employers and licensing of the contractors.

• The contractor is required to give the workmen a pass book with details of place of employment, wages, allowance, return fare payable, deductions and any other particulars prescribed. Under the Contract Labour Act, the contractor and principal employer are required to display publicly the terms and conditions of work.

• Both the Acts provides for inspections and penalties for violation of the law.

• Both the contract Labour Act and the Inter – State Migrant Workmen Act lay down that no court shall take cognizance of any offences under these Acts unless the complaint is made by or with the written sanction of the inspector and that the cases shall be heard by first class Judicial officers.

• There is a limitation period in both the Acts, No court, the Acts provide, shall take cognizance if the complaint is not made within three months from the date on which the inspector came to know of the offence where the inspector had passed a written order and it had been disobeyed, then the limitation
period is extended by another three months. After that, the Migrant contract workers have no recourse to justice.

4.7 Flaws in Inter-State Migrant Law

The present study after examining and analysing the provisions of the Inter-State Migrant Law in depth found the following flaws in the Inter-State Migrant Law.

- The Act does not apply to all individual migrant Labour. The Act leaving a sizable number of migrant workers out of its purview by applying its provisions to every industrial establishment / Contractor into which five or more migrant workmen are employed.

- The responsibility for enforcement of the provisions of the Act lies with the Central Government if it is the appropriate Government. Similarly, the responsibility for enforcement of the provisions of the Act lies with the Government of the host State in which the establishment is located and also with the Government of the Home State from where the workmen have been recruited. Generally, one State Government does not want to interfere in the jurisdiction of the other state where the enforcement responsibility lies with both the States. This is a serious hurdle for the effective enforcement of the Act.

- According to the Act, the Inter-State Migrant Workmen means who is recruited by or through a contractor in one state under an agreement or other arrangement for employment in an establishment in another state whether with or without the knowledge of the Principal Employer. The Act recognizes only those workers who are recruited by or through a contractor as inter-state migrant worker. Workers migrating on his own and employed individually
outside his own state or workers migrating without such contractors are not covered under the purview of the Act.

In this aspect, this Act does not safeguard the interest of all migrant workmen who leave their state on his own in a much more distressed condition and take shelter of employer directly without such contractors in another state to earn their livelihood. Hence, the definition of Inter – State Migrant Workmen in the Act is discriminatory in terms of extending the benefits.

- The Act was designed to protect the workers against the evils of contracting system and also to eradicate the evils of contracting system. But the Act encouraging ‘Contracting System’ by making the recruitment of Inter- State Migrant Workman by or through a contractor under a agreement or other arrangement for employment. It is to be noted that the primary objective of the contract labour act is ‘abolition of contract labour’ and it is regulating the working conditions of contract labour only wherever such employment is required. It is interesting to note that the Royal Commission on Labour, the National Commission on Labour and the Judiciary all have discouraged the practice of employment of workers through or by contractor. Therefore the ‘system of contract labour’ remains intact in the migrant law even after passing a special legislation for its abolition.

- The Act permit to recruit Inter – State Migrant Workman through or by contractor for employment under an agreement or other arrangement. The Act state that recruitment by or through contractor may be made with or without knowledge of the principal employer. Therefore, this Act does not bring contractors and migrant workers directly under the principal employer. Apart from this, Migrant workers are almost always as a rule, engaged through
contractors. In such cases, there is no direct relationship between migrant workers and the principal employer. In the absence of direct relationship between the employer and employee, the migrant workers can only seek assistance through the contractors. Thus, the migrant workers don’t always enjoy formal employer – employee relationship in their workplace. As a result of this, the principal employers do not consider the migrant workers as their workers as they are recruited and brought by contractors. It looks anomalous that migrant workers can receive the limited benefits of the existing labour laws only if there is an Employer – Employee relationship.

- Many migrant workers who enter the host state through the contractor may leave the principal employer or may change the principal employer or workplace. An Inter – State Migrant Workman who is recruited by or through a contractor under an agreement, switches his work to another employer is not entitled to the protection admissible under the Act.

- The important feature of migrant worker is lack of continuity or stability in employment. There is no provision in this protective legislation to provide security for employment. In the absence of security for employment, migration of workers is likely to persist with all its attendant consequences.

- The Act in its provision state that no contractor shall recruit or employed migrant workmen except valid license. But there is no corresponding provision for the obligation of the principal employer that not to get work through unlicensed contractor.

- There is no provision in the Act for specifying the duties and obligations of principal employers. The liabilities of the principal employer are also not specifically specified.
The Act does not hold the contractor responsible for any breach of the provisions of the Act because there is no provision in this Act for specifying the liabilities of the contractor (or) making the contractor liable for any breach of the Act.

The Act provides that the state from which migrant workmen are recruited may appoint inspectors for the purposes of satisfying itself that the provisions of the Act are being complied with in respect of such workmen who are employed in another state. However, the appointment of such inspector is dependent upon the concurrence of the Government of the receiving states in which such workmen are employed\textsuperscript{70}. Concurrence has been hard to come by whatever may be the reasons. Generally, the State Government do not want inspectors from another state to operate within their jurisdiction for whatever reasons.

Sections 22 of the Act permit the Inter – State Migrant Workman to raise an industrial dispute arising out of his employment either in the host state or in the home state after his return to the state after the completion of the contract of employment. He will also be permitted to apply for the transfer of proceedings in relation to an industrial dispute pending before an authority in the host state to the corresponding authority in the home state on the ground that he has returned to the state after completion of his contract. The formal request for transferring the proceedings to their home state must be made within a period of 6 months from their return from the host state in which they were employed. This is also again subject to the concurrence of the host state

\textsuperscript{70} Section 20(3).
in which the migrant workers were employed and such concurrence is not be easily possible in practice.

- Everybody is responsible for the effective implementation of any law. In this aspect the Act providing penalties for the offences committed by the principal employer and contractor. But this Act is silent regarding the penalties to the inspectors who do not perform or exercise their duties diligently for the effective implementation of the Act.

- Section 27 of the gives a loophole to a company or every person for escaping from prosecution by pleading that the offence was committed without his knowledge. This seems to be the defective proposition.

- The penalties provided for violation of the provisions of the Act are not sufficiently stringent. Moreover the Act does not provide for making the violation of the Act a cognizable offence\(^\text{71}\). The offence is Non – Cognizable.

- The Act gives protection in suit, prosecution or legal proceedings to registering officer, licensing officer or any other employee of the government from prosecution for acts done in good faith and also gives protection on the Government from claiming damages\(^\text{72}\).

- The Act is silent on permitting the third parties to file complaints against defaulter for violation of the Act.

The Text contained in the below box 4.2 highlights the proposed amendment of Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979

\(^{71}\) Section 28  
\(^{72}\) Section 32
Box 4.2
Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Amendment Bill, 2011

On the recommendation of working group constituted by Indian Labour Conference held at New Delhi on 20-21 February, 2009, a Tripartite group was constituted to examine the provisions of inter-state migrant workmen Act, 1979. The group examined various provisions of the Act and reviewed the problems faced by the migrant workers, existing provisions of the Act, enforcement machinery, problem in implementation of the Act, etc. The group has submitted its report and the report have been placed before Indian Labour Conference held on 23-24 November, 2010.

The Task force constituted for amendment of labour laws concerning women and children, recommended that the title of the Act may be changed inorder to make it gender neutral. This recommendation of the task force has been accepted and amendment in the title of the Act changing it as “The Inter-State Migrant Worker (Regulation of Employment and Conditions of Service) Act, 1979 has been proposed. The Union Cabinet gave its approval to amend the title of the inter-state migrant workmen (Regulation of employment and conditions of service) Act, 1979 to “inter-state migrant workers (Regulation of employment and conditions of service) Act, 1979” by introducing a bill, namely the inter-state migrant workmen (Regulation of employment and conditions of service) amendment bill, 2011 (appendix-III) (Page 6-7). The Act will become gender neutral by amending its title and replacing the word “workman and workmen” by the words “worker and workers” respectively.*

* Available at Lawyersclub India.com accessed on 03.01.2013
4.8 Inter – State Migrant and other Labour Laws

The vast majority of migrant workers fall in the unorganized sector. India has many labour laws in statute books. All the labour laws do not cover workers engaged in unorganized sector. There are labour laws that apply wholly or partly to this sector. Apart from the Inter – State Migrant Law the provisions of various labour laws like Employees Compensation Act, Payment of Wages Act, Industrial Disputes Act, Employees State Insurance Act, the Employees Provident Fund Act and Maternity Benefit Act are also applicable to migrant workers.

The present study concerning to Inter – State Migrant Workers, in this chapter makes an attempt to covers the labour Laws specified in the schedule of the Inter – State Migrant Workmen Act, 1979. The enactments specified in the schedule are;

- The Employees Compensation Act, 1923.
- The Payment of Wages Act, 1936.
- The Industrial Disputes Act, 1947.
- The Employees State Insurance Act, 1948.

Therefore it is necessary to go in detail into the enactments by mentioning the relevant provisions of the Inter – State Migrant Workmen Act.

Section 21 of the Inter – State Migrant Workmen Act simply states that the Inter – State Migrant Workmen shall be deemed to be employed and actually worked.
in the establishment or as the case may, the first establishment in connection with work which they are doing from the date of their recruitment for the purposes of the enactments specified in the schedule appended to the Act. It is pertinent to note that the date of recruitment and the date of employment in any establishment where they are made available by the contractors may be different. However, this section provides that the date of recruitment shall be deemed to be the date of employment for certain Labour enactments. So that the Inter – State Migrant Workers may be entitled to the benefits of the provisions of the enactments specified in the schedule of the Act.

- Employees Compensation Act 1923 is one of the earliest pieces of labour legislation. This law applies to the unorganised sectors and to those in the organized sector who are not covered by the Employees State Insurance Scheme which is conceptually considered to be superior to the Employees Compensation Act 1923. This Act has been enacted to heal / cure the wounds of the industrial workers. This Act providing compensation for an accident arising out of and in the course of employment. This laudable legislation has been circumscribed by severe limitations in the case of Inter- State Migrant Workman. The Inter- State Migrant Workman Act put an obligation upon the contractor to report the concerned authority of both the state and next of the kin of the migrant workman in case of fatal accident or serious injury to any such workmen. The inherent philosophy is that an untoward event resulting in death or serious bodily injury does not go unnoticed or unreported.

There are certain hurdles to the Inter-State Migrant Workmen in claiming compensation from the commissioner. Language barrier is a major hurdle. The Inter-State Migrant does not know the language of the state to which they are recruited for
employment. They are not sons of the host state. They are totally unfamiliar with the court language and procedures. Generally, in practice, accidents causing fatal or serious bodily injury are neither reported to the concerned authorities nor to the next kin of the migrant workman as required by the Inter-State Migrant Law. It could be intimated to the dependants of the deceased workman only by the co-workers.

The difficulty of filing the claim petition by the concerned dependants of the deceased workman is the next problem. The commissioner for workmen’s compensation is in the host state where the cause of action arose which may be too far away from the home state of the migrant. It is definitely beyond the capacity of the dependents of the deceased migrant to approach him directly. They, therefore, submit the claim petition to the local enforcement authority of the home state who may forward it to the commissioner for workmen’s compensation of the host state where the accident took place. On receipt of the claim petition, the commissioner of the host state may initiate the legal proceedings including issue of notice to both parties, tendering of evidence and hearing. Due to the language barrier, illiteracy and poor economic conditions etc the dependents concerned find it difficult to appear before the commissioner of the host state. They are helpless to establish their bonafide claims by adducing evidence. Therefore, the claim petition may be decided by default and all hopes of getting compensation may become vain.

The only way to rectify the above is transfer of such cases to the commissioner for employee compensation of the home state of the migrant workman. Such a transfer is permissible under section 21(1) of the Employees Compensation Act. Section 21 of the Act was amended with a view to clarify the jurisdiction of the
commissioner for deciding claim of compensation. The amended section 21 has been specifically introduced in the Act in order to benefit and facilitate the claimant.

Section 21 (1) (b) clearly provides that the claim petition may be filed by the claimant where the claimant ordinarily resides. The expression “ordinarily resides” means where the person claiming compensation normally resides at the time of filing the claim petition. The provision to section 21 (1) which is also relevant for present controversy, provides that in case Commissioner, other than the Commissioner having jurisdiction over the area in which the accident took place, entertains the claim petition then he shall give a notice to the Commissioner having jurisdiction over the area and the State Government concerned.

The idea behind introduction of this amendment is that migrant labourers all over the country often go elsewhere to earn their livelihood. When an accident takes place then in order to facilitate the claimants they may make their claims not necessarily at the place where the accident took place but also at the place where they ordinarily reside. The amendment in 1995 was done with a very laudable object; otherwise it could cause hardship to the claimant to claim compensation under the Act. It is not possible for poor workmen or their dependents who reside in one part of the country and shift from one place to another for their livelihood to necessarily go to the place of accident for filing a claim petition, because of the financial and other hardship. It would entail the poor claimant travelling from one place to another for getting compensation.

- Wage regulation and Wage determination in India has been achieved by various instruments. The instruments are the payment of Wages Act, 1936 and the Minimum Wages Act, 1948. In order to carry out the objectives of
wages legislation, the Inter-State Migrant Act impose a duty on every contractor to specify the proposed rates of wages, modes of payment of wages and deductions made from the wages in the passbook issued to the migrant workmen. The Inter-State Migrant Act ensure regular payment wages, equal pay for equal work irrespective of sex and wages payable to the migrant should be paid in cash. The Act further state that the contractor should be responsible for payment of wages and the same should be made in the presence of authorized representative of the principal employer. When the contractor fails to make payment of wages then the principal employer is liable to make payment of the wages. The above all to the migrant workman is laid down in accordance with the Payment of Wages Act, Minimum Wages Act and Equal Remuneration Act. The Inter-State Migrant Act states that migrant workman should in no case be paid less than the wages fixed under the Minimum Wages Act, 1948.

- **Industrial Disputes Act 1947** is an Act for the investigation and settlement of Industrial Disputes. The Inter-State Migrant Workmen Act consist a provision regarding industrial disputes in relation to Inter-State Migrant Workmen. An Inter-State Migrant Workman can raise an industrial dispute to the appropriate authorities of the appropriate government either in the host state wherein the establishment is situated or in the home state wherein the recruitment was made. The Inter-State Migrant Workman can make the application in the Home State only on the ground that he has returned to Home State after the completion of his employment. The application must be made within a period of 6 months from the date of his return to the state

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74 Section 22 of ISMW Act, 1979
wherein the recruitment was made. In such circumstances the concurrence of the Government of the State wherein the establishment concerned is situated is essential. The dispute or difference may be in connection with employment or non-employment or the terms of employment or the conditions of labour of an Inter-State Migrant Workman.

The Inter-State Migrant Workmen Act permits transfer of any pending proceeding in respect of an Industrial dispute from the Host State to Home State on the ground that he has returned to the Home State after the completion of the work. The application for that should be made to the authorities by the Inter-State Migrant Workman. It is clear from the above that an Inter-State Migrant Workman can invoke the relevant provisions of the Industrial Disputes Act or can approach any authorities specified therein with the help of Section 22 of the Inter-State Migrant Workmen Act in respect of an Industrial Dispute.

- Employees Provident Funds Act, 1952 providing certain retirement benefits, which is steadily being extended to sectors of the unorganized sector, especially where the employer is clearly identifiable. This Act to provide for the institution of Provident funds, Pension Fund and deposit linked insurance fund for employees in factories and other establishment. The Act applies to every establishment which is a factory engaged in any industry specified in schedule 1 of the Act and in which twenty or more persons are employed and to any other establishment employing twenty or more persons or class of such establishments which the Central Government may by notification in the official Gazette specify in this behalf. The expression ‘employee’ under this Act includes any person employed by or through a contractor in or in connection with the work of the establishment. The Inter-State Migrant
Workmen, may get benefits and protection of the Provident Fund Act from the date of recruitment.

- The Employees State Insurance Act, 1948 provides for certain benefits to employees in case of sickness, maternity and employment injury. This Act applies to all factories including government factories but it does not apply to the employees who are employed in seasonal factories. ‘Employee’ for the purposes of this Act means any person employed for wages in or in connection with the work of a factory or an establishment to which this Act applies.

The appropriate Government may extend the provisions of this Act or any of them to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise. Employee who is directly employed by the principal employer or who is employed by or through an immediate employer or whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service is covered under the Act. An Inter – State Migrant Workman comes under the purview of this Act from the date of recruitment. Hence an Inter – State Migrant Workman from the date of recruitment may entitle the benefits of the Employees State Insurance Act.

- In the sphere of Industrial Law, the Women have been assigned a special position in view of their unique characteristics, physically and mentally. The Constitution of India contains number of provisions to protect the interest of woman. The mandate given in the constitution to the state has resulted in number of protective, beneficial and health provisions made in various enactments for the benefit of women. Article 42 of the Constitution of India
directs the state to make provision for securing just and humane conditions of work and for maternity relief. In pursuance of this objective, the parliament has passed the Maternity Benefit Act, 1961.

This Act is the most important enactment dealing with the women working in factories, mines, plantations and other industrial establishments. The Act has been passed to regulate the employment of women in certain establishments for certain periods before and after child-birth and to provide for maternity benefit and certain other benefits. ‘Woman’ under this means a woman employed whether directly or through any agency, for wages in any establishment. However, a woman worker is entitled to claim maternity benefit only whom she has actually worked 80 days in the twelve months immediately preceding the date of her expected delivery in an establishment of the employer from whom she claims maternity benefit. An Inter-State female migrant worker may enjoy the benefits provided in the Maternity Benefit Act, 1961 from the date of recruitment. This Act is applicable to notified establishments. Its coverage can therefore extend to the unorganized sector also, though in practice it is rare.

- Trade Union Act, 1926 is also applicable to migrant workers. Inter-State Migrant Workers may form Trade Union or they may become member of any Trade Union. However it is subject to conditions, rules and requirements laid down under the Trade Unions Act, 1926.
- The Unorganized Workers Social Security Act, 2008 was enacted to provide social security and welfare of unorganized sector workers. This Act was enacted on the recommendation of the second National Commission on
Labour. The Act ensuring the welfare and well-being of workers in the unorganized sector, such as agriculture workers, construction workers, Beedi workers, Handloom workers, Leather workers, etc. The beneficiaries of this legislation are home-based workers, self-employed workers and wage workers. These workers may be generally found in unorganized sector but may also be found in organized sector if they are not covered by any of the Acts specified in schedule II of the Act. The Acts specified in the schedule are Employees Compensation Act 1923, Industrial Disputes Act, 1947, Employees State Insurance Act, 1948, Employees Provident Funds Act, 1952, Maternity Benefit Act, 1961 and Payment of Gratuity Act, 1972. The provisions of this Act shall apply to those workers who are unorganized workers within the meaning of section 2 (m) of the Act including those in the organized sector provided they are not covered by the Act specified in schedule II. The workers who are covered by the scheduled Acts cannot claim benefit of Unorganized Workers Social Security Act 2008. This Act brings the “migrant workers” under the definition of wage worker.

The text contained in the Box 4.3 highlights the key provisions of the Unorganized Workers Social Security Act, 2008

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75 Second National Commission Labour was appointed by Government of India in 2002 under the Chairmanship of Shri.Ravindravarma.

76 “unorganized worker” which means a home based worker, self employed worker or a wage worker in the unorganized sector and includes a worker in the organized sector who is not covered by any of the Acts mentioned in Schedule II of this Act.

77 Section 2(n)
Box 4.3

Key Provisions of the Unorganized Workers Social Security Act, 2008

- The scope of the Act will extend to all workers in the unorganized sector, whether, employee directly or through an agency or contractor, whether a casual or temporary worker, a migrant worker and workers employed by households including domestic workers – self employed or employed for wages.
- Central Government shall formulate and notify suitable welfare schemes for unorganized on matters relating to life and disability cover, health and maternity benefits, old age protection etc.
- State Government may formulate and notify suitable welfare schemes for unorganized workers relating to Provident Fund, Employment injury benefit, Housing, Educational scheme for children, skill upgradation of workers, funeral assistance and old age homes etc.
- Central and State Governments shall constitute National Social Security Board and State Social Security Board respectively for the administration and coordination of the Act at Central and State levels.
- State Government may setup workers facilitation centers to facilitate the enrolment of the registered unorganized workers in social security schemes, assist unorganized worker to obtain registration etc.
- The Act laid down the eligibility conditions for registration and social security benefits.
- The Act consist provisions regarding funding for the notified schemes of the concerned Government.
4.9 **Inter-State Migrant Workmen (RECS) (Tamilnadu) Rules 1983**

In exercise of the powers conferred by section 35 of the Inter-State Migrant Act, 1979, Tamilnadu Government framed the Rules in 1983 the Inter-State Migrant Workmen for the Regulation of employment and conditions of service. The state rules provide the following;

- The Rule providing the procedure for Registration of establishments employing inter-state migrant workmen.
- The Rule prescribing procedure for licensing of contractors.
- The Rule laid down the duties of the contractor as to regard to particulars of migrant workman, return fare and pass book etc.,
- The Rule prescribes the Rates of wages, Wage period, Payment of wages, mode of payment etc.,
- Rules relating to Medical and other facilities to migrant workmen to be provided to migrant workmen.
- The Rule cast duty upon the employer Maintain registers and Records
- Providing Legal Aid to Migrant Workmen

4.10 **Judicial Response to Migrant Workers**

The Indian Judiciary is an arm of social revolution. Judiciary is the apex authority in upholding the equality. It is established fact that judiciary is the third organ of the Government in any democracy. Judiciary is the guardian of the Fundamental Rights of the people. Truly, the Supreme Court of India has been called upon to safeguard the rights of the people and play the role of guardian of the social
revolution\textsuperscript{78}. It is the great tribunal which has to draw the line between individual liberty and social control\textsuperscript{79}. Supreme Court of India is the highest court of appeal in civil and criminal matters and also the highest and final interpreter of the general law of the country. The judiciary has definitely become the last resort of the desperate poor.

When labour laws are not enforced by relevant authorities, appellate judiciary has to ensure modicum implementation\textsuperscript{80}. The capital point remains namely, when the executive as governing agency tends to act in lawless ways\textsuperscript{81}, Judicial activism becomes necessary. The Judiciary plays role in protecting and safeguarding the poor and the weakest of weak, unorganized labour.

The Judiciary in India recognized several rights of workers in unorganized sector by its various judicial decisions. Judiciary has also shown serious concern on the appalling conditions of Inter – State Migrant Workmen, a category of unorganized sector. In this Juncture, the present study examine the various momentous judicial decisions of the High Courts and the Apex Court of India, the observation made by them on migrant workers and evaluate the role of the judiciary in protecting and safeguarding the interest of migrant workers.

\subsection*{Damodar Panda \textit{v} State of Orissa\textsuperscript{82}}

In this case, the Supreme Court directed “that every State / Union Territory in India shall be obliged to permit officers of the originating State of migrant labour for

\begin{itemize}
\item \textsuperscript{79} Sri Alladi Krishnaswamy Aiyer, Member of Drafting Committee, ibid.
\item \textsuperscript{80} South Gujarat University, “working and living conditions of the Surat Textile Workers: A Study” (1985), cited in Migrant Labour and Related Issues, Vidyut Joshi (Ed.) P.257 (Oxford and IBH Publishing Co. Pvt. Ltd, New Delhi)
\item \textsuperscript{82} AIR, 1990 SC 10901
\end{itemize}
holding proper inquiries within the limits of the recipient State for enforcement of the Act and no recipient State shall place any embargo or hindrance in such process.” The directions of the Supreme Court in the above judgment were conveyed to all State Governments and Union Territories. There should be no difficulty in appointing Inspectors by the originating State under Section 20 (3) of the Act without any hindrance or objection, by the recipient State for carrying out inspection in the State where the migrant workman is employed.

➢ **ASIAD Case**\(^83\): The case arose out of the denial of minimum wages, to workmen engaged in various Asiad project and non-enforcement of various Labour Laws.

The People’s Union for Democratic Rights (PUDR) an organisation formed for the protection of democratic rights, brought to the notice of the Supreme Court in 1981 for non-observance of labour laws, including the Inter-State Migrant Workmen Act, in relation to workmen employed in the construction work of various projects connected with Asian Games held at New Delhi. The judgement of the case is an epoch making judgement which has not only made a distinct contribution to Labour Law but has displayed the creative attitude of judges to protect the interests of the weaker sections of the society.

In this case, the court state that magistrates and Judges in the country must view violations of labour laws with strictness and whenever any violations of labour laws are established before them, they should punish the errant employers by imposing adequate punishment. The Labour Laws are enacted for improving the conditions of workers and employer cannot be allowed to buy off immunity against

\(^83\) Peoples Union for Democratic Rights and other \(v\) Union of India and others \(AIR\ 1982, SC, 1473.\)
violations of labour laws by paying a paltry fine which they would not mind paying, because by violating the Labour Laws they would be making profit which would far exceed the amount of the fine. If violations of labour laws are to be punished with meagre fines, it would be impossible to ensure observance of the Labour Laws and the Labour Laws would be reduced to nullify. They would remain merely paper tigers without any teeth or claws.

The court held that the rights and benefits conferred on the workmen employed by a contractor under the provisions of the contract labour (Regulation and Abolition) Act, 1979 and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 clearly intended to ensure basic human dignity to the workmen and if the workmen are deprived of any of these rights and benefits to which they are entitled under the provisions of these two pieces of social welfare legislation, that would clearly be a violation of Article 21 of the Constitution. It was also held that non-payment of minimum wage to the workers engaged in construction work would amount to not only violation of minimum Wages Act, but also Article 23 of the Constitution, which intends to prevent forced labour and begar. The Court ruled the Minimum wage for the time being in force, or if the wage payable is higher than the minimum, such higher wage shall be paid by the contractors to the workmen directly, without the intervention of the Jamadars, and that the Jamadars shall not be entitled to deduct or recover any amount from the minimum wage payable to the workmen as and by way of commission or otherwise.

In this case, the Supreme Court has championed the cause of several person engaged in construction work of Asiad Projects and rendered Justice.
Salal Project Case

This is one of those cases by way of public interest litigation where positive results have been achieved for the benefit of the workmen employed on the Salal Hydro Electric Project as a result of judicial intervention. The litigation started on the basis of a news in Indian Express dated 26 August, 1982 that a large number of workmen from different states including the state of Orissa were working on the Salal Hydro Electric Project in difficult conditions and they were denied the benefits of various labour laws and were subjected to exploitation by the contractors to whom different portions the work were entrusted by the Central Government. PUDR addressed a letter to Mr. Justice D.A. Desai enclosing a copy of the news report and requested him to treat the letter as writ petition so that Justice may be done to the poor labourers working the Salal Hydro Electric Project. The letter was treated as writ petition and observed: “The Union of India, the Delhi Administration and the Delhi Development Authority cannot fold their hands in despair and become silent spectators of the breach of a constitutional prohibition being committed by their own contractors. It cannot ignore such violation and sit quiet by adopting a non-interfering attitude and taking shelter under the excuse that the violation is being committed by the contractors and not by it. It is obvious, therefore, that the Union of India, the Delhi Administration and Delhi Development Authority cannot escape their obligation to the workmen to ensure observance of these labour laws by the contractors and if these labour laws are not complied with by the contractors, the workmen would clearly have a cause of action against the Union of India, the Delhi Administration and Delhi Development Authority.” On the delay in appointing authorities under the Act the Court observed:

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“Unfortunately the bureaucratic apparatus for implementing the provisions contained in the Act and the Rules was not set up by the Central Government for a period of more than 20 months and it was only in the month of June, 1982 that the Central Government notified various authorities such as Registering Officers, Licensing officers and Inspectors.”

Under Section 20(3) of the ISMW Act provides that the officers of the originating state can make enquiries in the recipient state provided the recipient state grant permission to the originating state. This was coming in the way of proper implementation of the Act. To overcome this problem, the Supreme Court observed:

This is a beneficial legislation for satisfying the provisions of the Constitution and the obligation in international agreements to which India is a party and passed the order that “every State / Union Territory in India shall be obliged to permit officers of the originating state of migrant labour for holding proper inquiries within the limits of the recipient state for enforcement of the Act and no recipient state shall place any embargo or hindrance in such process.

In this case the court added that if there are any advances repayable by the workmen to the khatedars they may be paid by the workmen to khatedars after they receive the full amount of wages due to them. But on no account can any deduction be made from such wages and they must be paid to the workmen directly without the intervention of any middleman. The court further added, “The Central Government must ensure and that is the direction we give, that every payment of wages whether it
be normal wages or overtime wages, shall be made directly to the workmen without deductions…“85

➢ Faridabad Stone Quarries Case86

This is another significant case. The petitioner in this case made a survey of some stone quarries in Faridabad district of Haryana State and found that there were a large number of migrant labourers from various states who were working in these stone quarries under inhuman and intolerable conditions and many of whom were bonded labourers. The petitioner addressed a letter to the Supreme Court pointing out the miserable working conditions of these labourers. These conditions were the clear violation of the labour laws. The most serious one was the loss of valuable lives due to tuberculosis on an account of stone dust pollution. There was illegal system of thekedars (ie) middle man who extracted poor miner’s wages as their ill- gotten commission. It was a case of non – implementation and non – observance of various provisions of the constitution and various laws in regard to the labourers working in the stone quarries. The petition was moved to end the miseries, sufferings of these workers who were the victims of most inhuman exploitation. A broad connotation to the definition of contractor was given in this case. It was held that if there is any agreement or understanding between the Jamadar, Thikadar on the one hand and the owner of the stone crushers on the other, that the Jamadar or Thnikadar will ensure a certain rate of output of stone to be fed to the stone crusher the Jamadar or the Thikadar would be the ‘contractor’.

The Asiad case and the Faridabad stone quarries case is an eye – opener of the grim reality of the tragic situation involved in migration of scores of workers 85


86 Bandhu Mukti Morcha v’ Union of India, AIR 1984 SC 802. It is also known as Bandhu Mukti Morcha Case.
employed in brick kilns, stone quarries, building and construction Industry. It comes as a breath of fresh air, as a beacon light, a guiding star for Government, the enforcement agency, the planners, administrator and the Social activities and provides a ray of hope for the deprived and distressed, the illiterate and the expression less\textsuperscript{87}.

- **Neeraja Chaudhary Case\textsuperscript{88}**

  This case is not directly related to migrant workmen law but concerns the Bonded Labour Abolition Act, 1976. However, the trinity of bonded labour, Migrant Labour and contract labour concerns the weaker segment of the society; contract and inter-state migrant workmen will be treated as bonded labour.

- **Sibi Thomas v State of Kerala\textsuperscript{89}**

  In this case, the Kerala High Court held that “on a perusal of the different provisions of the Migrant Workmen (Regulation of Employment and Conditions of Service) Act, this court finds that any establishment or any contractor under such establishment, who has procured or brought employees from other states even under some oral or other arrangement, is covered by the provisions under the Act.

- **Rajan Kudumbathil v Union of India\textsuperscript{90}**

  In this case the problems faced by migrant labourers in the state of Kerala were highlighted. This case came before the Hon’ble Highcourt of Kerala for the following directions

\textsuperscript{87} Laxmidhar Mishra, “Migration – Factors, Policies and Programmes” in , Vidyut Joshi (Ed), Migrant Labour and Related Issues, PP.311 and 312 (Oxford & IBH publishing Co.pvt Ltd, New Delhi, 1987).

\textsuperscript{88} Neeraja Chaudhary v State of Madhya Pradesh, AIR 1984 SC 1099.

\textsuperscript{89} Crl.MC.No.988/2012, High Court of Kerala at Ernakulam

\textsuperscript{90} WP(c). No. 15393 of 2009(s) Highcourt of Kerala at Ernakulam
To take an assessment of the migrant labourers in various parts of the state and to prepare a comprehensive scheme for making rehabilitation and welfare of such labourers and their family members in accordance with inter-state migrant workmen (Regulation of Employment and conditions of service) Act, 1979 and the rules made thereunder:

To implement the provisions contained in Inter-State migrant workmen (Regulation of Employment and conditions of service) Act, 1979 and the Rules.

The Hon’ble Highcourt of Kerala disposed the case with the following directions.

Ensure that a proper study or assessment is made as regards the migrant labourers who are working in various parts of Kerala.

A methodology shall be evolved to get migrant workers registered at the Panchayat/corporation/District level to issue photo Identify cards, making it mandatory for employers to report about such migrant workers to the competent authority, if these workers are engaged by them.

A comprehensive programme for providing the migrant workers basic amenities can be considered by the Government under a scheme which can be drawn up for the purpose in tune with provisions contained in the 1979 Act.

National Campaign Committee Case

This case is connected with the implementation certain sections of Building and Other Construction Workers (Regulation of the Employment and Conditions of

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Service) Act, 1996 and Building and Other Construction Workers Welfare Cess Act, 1996. In a landmark judgement in this case the Hon’ble Supreme court came down heavily on the Central Government and all the State Governments for not implementing the provisions of the above Acts. It directed the states to implement the following measures without delay.

- The Welfare Boards have to be constituted by each State with adequate full-time staff within three months.
- The welfare Boards will have to meet at least once in two months or as specified in the rules, to discharge their statutory functions.
- Awareness should be built up, about the registration of building workers and about the benefits available under the Act. There should be effective use of media, All India Radio and Doordarshan, for awareness programmes regarding the Act, the benefits available there under and procedures for availing the benefits.
- Each State Government shall appoint registering officers and set up centers in each district to receive and register the applications and issue receipts for the applications.
- Registered trade unions, legal services authorities and NGOs are to be encouraged to assist the workers to submit applications for registration and for seeking benefits.
- All contracts with the Governments shall require registration of workers under the Act and extension of benefits to such workers under the Act.
- Steps to be taken to collect the cess under the Cess Act continuously.
• The benefits under the Act have to be extended to the registered workers within a stipulated time-frame, preferably within six months.

• The Member-Secretary of the Welfare Boards and the Labour Secretary shall be responsible for due implementation of the provisions of the Act. The Labour Ministry of each State shall carry out special drives to implement the provisions of the Act.

• The Comptroller and Auditor General should audit the entire implementation of the Act and use of the funds.

• All the Boards shall submit a comprehensive report as required under the Act and the Rules to the respective Government.

A close scrutiny of the above said judicial decisions of the High Courts and the Apex Court demonstrate that judiciary has taken an extremely serious note of the exploitation of the migrant workers on one hand and non – observance of various labour laws on the other hand. In some above cases the Supreme Court through public interest litigation issued directions to the concerned authorities and the contractors for the exploitation of the migrant workers as well as gearing up the enforcement machinery to observe and promote the labour laws concerning for the protection of the migrant workers. However, the number of cases taking into account decided by the judiciary on migrant workers shown that it occasionally comes to the rescue of migrant labour and makes pronouncements and observation to fill the gap in the Justice delivery system. The rare occasional role played by the judiciary raises doubts about its interest in protection of migrant labour. It is important to mention in this study that in number of cases nowhere the affected migrant workmen approached the
judiciary for redressing their grievances against the delinquent employer, contractor and authorities. It seems that the migrant workers are not capable of taking advantages of the various labour laws through the judiciary because of their lower strata in the society and their miserable plight in the country.