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Migrant Labourers: Laws for them till date and were they helpful in uplifting their life?: A quick analysis

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ABSTRACT

It was for 1st time in Indian history that during pandemic the migrant labourers have been identified and been recognized as humans but sadly, it was when they have gone through miseries. The law has always been weak towards these poor citizens and they have always got step treatment. Here, the author discusses the laws that have been formulated for them since the time of independence. The author has analysed whether they have helped labourers or were they just on papers leaving them suffering. It was also observed that even the recent bills introduced were as well incompetent and would hardly help the migrant labourers. This is a sad plight for an important class of our society who play major role in the country's development as well in the economy.

Keywords: Labourers, labour laws, migrant, India

I. INTRODUCTION

In India, the labourers have always been silent sufferers and migrant labourers suffer the most. Since ages there has been laws formulated but there is no implementation of the same. Life is unjust with this class of people. The laws referred here are since independence till today and has been analysed as to what is the true picture about it. The country cannot progress where a big chunk of population is left unattended and neglected. We as country and as citizen of India must join hands to bring ray of hope in their life as it is said, "its' better to be late than never".

II. LAWS FOR MIGRANT LABOURERS

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S. No.	Legal Provisions (Article No. etc.)	Details	Pertaining to which List (Union/State/ Concurrent)	Implications for Migrants
1	Item no. 55, List 1	Regulation of labour and safety in mines and oilfields.	Union List	<p>This item indirectly refers to broad term labour which would cover both organized and unorganized sector labourers. It refers to safety regulations to be formed which would protect labourers from poor working conditions risking their life. Interpretation of this item will cover migrant labourers as well. This is a prominent clause as any carelessness will risk a labourer's life. Parliament can enact laws directly over it as it is of national importance. Here state government has got no role to play.</p> <p>Labourers in general are getting benefits out of this as there is check and balance on the mines and oilfields industries/factories to maintain safety protocols but sometimes they may try to escape their responsibility towards unorganized sector migrated labourers saying the item did not mention the word.</p>
2	Item no. 81	Inter-State migration; inter-State quarantine	Union List	Item no. 81 is exclusively focused on Inter-State migration. Here Central Government is completely responsible for this taking care of labourers under Inter-State migration. Central government can legislate on the subject as and when need

				<p>arises. State government has no decision making power in this regard.</p> <p>The number of inter-state migration workers is enormous and it will be a challenge to bring them under one umbrella. Even if Central Government is able to do it, there will be constraints in implementing the same. The employers and contractors' are happy cutting corners towards liability, roping them in will not be easy. Once they are under one roof, the country will have sustainable growth and equity.</p>
3	Item no. 22, List III	Trade unions; industrial and labour disputes.	Concurrent List	<p>Both Central and State list is responsible on these subjects for trade unions, industrial and labour disputes.</p> <p>Union and State Government are waning to be the provider of proper conditions for migrated workers. The repercussion has been quiet evident. Many employers and contractors have avoided the registration process of the labourers till date so as to escape liabilities towards labourers. Many a times, they throw the labourers without even paying wages; they work in poor working conditions. It is important for Union and State Government to intervene and bring rules and regulation covering unorganized sector and migrated workers so that liability can be held. Although this is a big decision, it is high time to bring the change. There are many decisions</p>

				<p>intentionally avoided by the Government and are taken basis on vote politics.</p> <p>Trade unions focus more on fee paying members and they hardly show any interest for the unorganized sector and inter-state migration workers.</p> <p>Unorganized sector including Inter-state migration workers are being neglected by their own powerful brethren. They are neglected since long. Government intervention is required to integrate and improve the system to an extent that even one labourer's woe does not go unheard.</p>
4	Item no. 23, List III	Social security and social insurance; employment and unemployment	Concurrent List	<p>Both Central and State Government are responsible for bringing schemes for marginalized community including unorganized sector labourers covering Migrant inter-state ones. To implement this item of the list, it is important for both central and state government to join hands together so as they can understand it better before formulating and implementing.</p> <p>Regarding employment and unemployment, if social security benefit is to be provided, important check list requires being prepared so that undue advantage is not taken. Sometimes when you get things free without efforts, you wish not to work knowing money will come in terms of benefits. This practice should not be encouraged.</p>
5	Item no.	Welfare of	Concurrent	Both Central and State government

	24 List III	labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits.	List	<p>responsibility is held to formulate rules and regulations for the welfare of labour including conditions of work, provident funds, employers' liability, workmen's compensation, invalidity and old age pensions and maternity benefits. Neither of them could deny their role in this perspective.</p> <p>Although when we see it clearly, the migrant labourers especially the unregistered one have always been exploited and their rights have hardly been recognized. If we see in the present Item, it talks about provident fund, employers' liability, and maternity benefits. Maternity benefits are still not provided to them in Maternity Benefit Act as well. Now here still they are struggling with their basic rights to be fulfilled, what to say about these premium rights. First of all it is important to get them registered, once that is done; it will be feasible to ensure them with these rights as till date they are scattered.</p>
6	Item no. 25, List III	Education, including technical education, medical education and universities, subject to	Concurrent List	<p>Item no. 25 gives hint about providing training both technical and vocational to the labourers. Central and State Government can take this seriously as it is country which is going to be benefitted if their work force is skilled and trained.</p> <p>Migrant labourers are definitely going to be benefitted by it as they can have more employment opportunities, once trained</p>

		the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour.		their say may increase and also it may lead to decrease exploitation.
7	Article 14-18	Right to Equality	Fundamental Rights (Constitution of India)	<p>Fundamental rights are basic rights granted to all citizens of India. When we talk about Right to equality, it guarantees equal rights for everyone irrespective of religion, gender, caste, race or place of birth. Also the state is to provide equal employment opportunity and ensure no discrimination on basis of caste or religion.</p> <p>When we see this law in the light of migrant workers, their basic human rights are not protected; right to equality is a distant dream. They are abused at different levels. Employment even if provided to migrant labourers is at the cost of cheap wages and poor working conditions along with compromise of risking life. Discrimination is not only in religion and caste but also as human (rich/poor). Strong steps are need of the time to remove this problem from roots.</p>

8.	Article 19-22	Right to Freedom	Fundamental Rights (Constitution of India)	<p>In right to freedom, right to practice any professions and freedom to reside in any part of the country covers migrant labourers. Any citizen can seek employment opportunities throughout India and can freely reside anywhere in the territory of India.</p> <p>In reality when we look into, residing and living a quality life has much difference. Poor migrant labours reside where they get work but where their stay has inhumane conditions having no drinking water, proper electricity or even housing facilities. Government intervention is important to ensure the basic benefits nation-wide to marginalized community so that where ever they go in search of employment are ensured at least basic facilities.</p> <p>In profession, the employer and contractor need to understand their accountability towards this class and stop taking undue advantages at cost of their life and wages. They require adopting humane approach and sensitivity towards this community.</p>
9	Article 23-24	Right against Exploitation	Fundamental Rights (Constitution of India)	<p>This right implies the prohibition of traffic in human beings, beggars and other forms of forced labour. Basically it focuses on prohibition of children in factories. Under constitution it has been completely prohibited the employment of children under 14 years in hazardous conditions.</p> <p>Migrant workers are already vulnerable</p>

				<p>with empty pockets and when they are offered work in any form, they have no choice to think about it being right or wrong. Constitution has been very strict in prohibiting the same. The Government should intervene and protect this class especially children who may have bright future in schools rather than working in life threatening environment. Strict penalty requires to be imposed on one ignores it. Inhumane practices should never be encouraged at any cost.</p> <p>Infact children should go to school and receive education which is their fundamental right under educational rights (Article 29-30)</p>
10	Article 32	Right to Constitutional Remedies	Fundamental Rights (Constitution of India)	<p>Fundamental rights as discussed above are basic rights given to each and every citizen under the territory of India and thus remedies are provided to citizens if their rights are violated. Government has no permission to curb the fights of any citizen. If it happens, aggrieved party can move to court of law seeking justice.</p> <p>Migrant labourers hardly know their rights; it is beyond imagination that they will seek court for justice. We must not forget that in India the justice mechanism is extremely delayed and is expensive. How can this labour even think of approaching court? Changes are required at all fronts to make the life easy for this class.</p>

11	Article 38	Promote the welfare of the people by securing a social order through justice— social, economic and political— and to minimise inequalities in income, status, facilities and opportunities	Directive Principles of State Policy (DPSP)	<p>DPSP is the non-justiciable rights unlike Fundamental rights which are justifiable rights. DPSP cannot be challenged by court of law. At the time when Central/ State government enacts rules and regulations, they have to keep in mind the directives of DPSP.</p> <p>Many a times, Government has different strategy in mind to attract vote banks thus may ignore welfare of larger community. In our country, there is huge gap between have and have-nots. Migrant labourers' issue is complex and at the same time requires urgent attention to bring their life at ease. Proper handholding, capacity building, vocational training, implementation of minimum wages, proper health facilities are the some of the steps to be taken for the betterment.</p>
12	Article 39	Secure citizens: Right to adequate means of livelihood for all citizens Equitable distribution of material resources of	Directive Principles of State Policy (DPSP)	<p>Equal pay for equal work is always seen to be abused, the migrant labourers are mostly not registered anywhere and thus it makes them more vulnerable. To bring check and balance, integration is important. Once integrated, the implementation will automatically take place and the employer or contractor will fear penalty and liability before abusing or exploiting the migrant workers. Each citizen has been granted right to livelihood but in reality birth decides whether you are</p>

		<p>the community for the common good</p> <p>Prevention of concentration of wealth and means of production</p> <p>Equal pay for equal work for men and women</p> <p>Preservation of the health and strength of workers and children against forcible abuse</p> <p>Opportunities for the healthy development of children</p>		<p>born with silver spoon or not. Employers and contractor should never collect wealth at the cost of cutting the wages and providing poor working condition which is in practice.</p> <p>The poor working condition sometimes bring darkness to their whole life in case there is permanent damage or death. Life of each human is important, Government need to keep a check through it's stakeholders that this practice is not encouraged. Children should be prevented from any type of abuse or exploitation. Government must identify other stakeholders and work together to prevent it. Child is seed and if nourished properly, they would contribute to the asset building and growth of nation. India's future depends on them. If education quality and hospitals' health facilities are improved in the country, it will bring drastic change in the life of migrant labourers and their children.</p>
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13	Article 39A	Promote equal justice and free legal aid to the poor	Directive Principles of State Policy (DPSP)	<p>Every human has right to justice, but there are other factors to taken care of in the path of justice. Finance is big hurdle in the life of poor. They have always been abused or exploited as they are ignorant toward law or their rights. Thus there is a facility of free legal aid so that equal justice can be promoted.</p> <p>Although it is on paper, a public prosecutor is often overloaded with cases and taking care of each and every case becomes a routine task which many a times cause injustice to a poor soul. Homework is required to increase human resource so that none of them goes unaddressed. A migrant labourer is hardly aware about the legal rights. Awareness programme is to be conducted so that they are aware of their rights and only then they would realise the injustice and would reach court of law seeking justice.</p>
14	Article 41	In cases of unemployment, old age, sickness and disablement, secure citizens: Right to work Right to education	Directive Principles of State Policy (DPSP)	<p>Here it is advised to look after unemployed, old age, sick and disable.</p> <p>For migrant labourers, they are so unfortunate that when they are healthy, they are given an environment to fall sick and so thinking that they are provided unemployment allowanced, old age pension and other benefits is a distant dream. In India social security schemes have many loopholes and migrant labourers who stay away from their homeland would hardly get any benefit in</p>

		Right to public assistance		the foreign land where they are employed. The social security schemes needs to have nation-wide implementation so that wherever they are, can seek benefit.
15	Article 42	Make provision for just and humane conditions of work and maternity relief	Directive Principles of State Policy (DPSP)	<p>Government is advised to legislate for just and humane conditions and maternity benefits.</p> <p>When we talk about our domestic help, they are migrant as well, do we provide them maternity benefit no we seek an alternative or replace them or else they work till the last day they could. It is just an example to show how we react to a situation when there is a domestic help and if there is a family member in the same situation. Well, we would justify it by saying we pay taxes. But the question is humanity. The government needs to see and understand what all situation a working poor migrant women can go through and then only can assist them. There are few schemes being provided by Government but they just take care of intuitional delivery and pre natal care. National Food Security Act, 2013, talks about providing 6000INR but it is hardly implemented by states.</p> <p>Government should have strict mechanism to keep an eye on providing safe working condition to labourers.</p>
16	Article 43	Secure a living wage,	Directive Principles of	DPSP suggest the Government to secure a decent standard of life with proper wages

		a decent standard of living and social and cultural opportunities for all workers	State Policy (DPSP)	and also provide them cultural and social opportunities. Well, as it is not enforceable, many states ignore it as it holds no accountability.
17	Article 43A	Take steps to secure the participation of workers in the management of industries	Directive Principles of State Policy (DPSP)	This part discusses about focusing the government on putting emphasis of the company to involve participation of workers in management of companies/factories/industries. Well, when we see it in context of migrant labourers, they are not even registered with any of the trade unions, they keep moving in search of jobs from one state to another. Participation is a distant dream. Still there are many steps pending at the end of the government to ensure them a quality life
18	Article 47	Raise the level of nutrition and the standard of living of people and to improve public health	Directive Principles of State Policy (DPSP)	DPSP guides to improve better health facility and ensure nutrition. Migrant labourers are always exposed to high risk job and are constantly vulnerable to getting exposed to any disease or infection. Many migrant labourers who move alone to earn livelihood for family are often found under high risk category of AIDS. In reality the condition of most of the government hospitals are very poor and at many places there have none. Many

				pregnancy women die due lack of hospitals, their children are malnourished, many old or sick are excluded from proper health facility. Government need to strengthen its health facilities, increase human resources, health infrastructure and provide them needful facilities.
19	Article 39	To secure opportunities for the healthy development of children	Directive Principles of State Policy (DPSP)	DPSP guides for proper health facility of children. India has huge number of malnourished children. Many lose their life out of it. This area needs urgent attention by the government so that wherever migrant labourers stay, they can avail facilities.
20	Section 2(1) (e)	“inter-State migrant workman”	Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979	As per the act, it 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, whether with or without the knowledge of the principal employer in relation to such establishment. It was defined once the term “inter-state migrant workman”. The act was hope for the class that was ignored for a long time.
21	Section 1(4)	(a) to every establishment in which five or more Inter-State migrant workmen	Applicability of the Act Inter-State Migrant Workmen (Regulation of Employment	This act is applicable on both establishment as well as contractors. The contractors are the one who lure these migrants, attract them for job and money and show them dream of city life. Now after the act was introduced, they are forced to obtain permission in the form of

		<p>(whether or not in addition to other workmen) are employed or who were employed on any day of the preceding twelve months; (b) to every contractor who employs or who employed five or more Inter-State migrant workmen (whether or not in addition to other workmen) on any day of the preceding twelve months.</p>	<p>and Conditions of Service) Act, 1979</p>	<p>licence from the authority that both of the state to which the workman belongs and also to the state they are going to function. So that if there is record, any exploitation and abuse can be controlled and checked. These establishments who are to employee them have an obligation as well to obtain certificate before providing them employment. The license provided has clarity on all grounds in favour of migrant labourers that they are providing proper work environment along with proper wages as well hours of work.</p> <p>Do we seriously see them being implemented, have we really experienced a labourer being aware of his/her right asking why he has to work for extra hours, why less wages, and trust me it will take not more than a minute for contractor or establishment to throw him on street.</p> <p>Hardly the labourers are aware of their rights so rest is history.</p>
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22	Section 3	Appointment of registering officer.	Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979	<p>This act also ensures to appoint a registering officer as and when required by the appropriate government.</p> <p>Unfortunately when a labourers is unaware of his right as well is having hand to mouth survival, can he question or inform the officer? Answer is evident in the question itself.</p>
23	Section 4	Registration of certain establishments.	Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979	<p>Establishment is required to file an application for registration so that they can employ the inter-state labourers and they need to pay fee for the same. If all parameters are met they are issued a certificate for same.</p> <p>In reality there are many establishment who in order to avoid liability ignore this step and illegally keep labourers at job.</p>
24	Section 5	Revocation or registration in certain cases.	Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979	<p>If at any point the registering officer finds out that the certificate was obtained on wrong grounds will cancel the application by giving a change to speak.</p> <p>The act in itself is very strict on its check and balances but it is sad to know that the labourers are hardly aware of their rights and thus they never demand or get most of the benefits which are actually their rights.</p>
25	Section 6	Prohibition against employment of Inter-State migrant	Inter-State Migrant Workmen (Regulation of Employment and Conditions	<p>The law in itself is very strict in making it clear that it is only after the establishment it registered, they can employ migrant labourers or else will be held liable.</p> <p>Are we convinced that they are practised,</p>

		workmen without registration.	of Service) Act, 1979	if yes, why we see they suffer in silence, why we find them living in filthy conditions, why we find their family displaced, sick or infected living in inhumane conditions. Implementation is still lacking.
26	Section 7	Appointment of licensing officers.	Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979	<p>In order to give license to contractors, the government appoints licensing officer to see and issue them permission.</p> <p>Is they are licensed contractors then why do we hear cases of wage cut, bad working condition, no security of job. The contractors have mostly been caught in bringing and treating the labourers as commodity in illegal manner and abusing them by all possible ways. Women workers are worst exploited at the sites through wage cut as well are physically abused.</p>
27	Section 8	Licensing of Contractors	Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979	<p>This gives right to licensing officer to see all the protocols, rules and regulation if followed by the contractor, only on satisfaction of it will issue the certificate. He shall check if proper wages are provided, there are fixed working hours etc.</p> <p>Do we go on site and see the protocols on field as well? Law on paper and implementation is like north pole and south pole. It is very important to keep a check on the fraud practices of contractor because ultimately a human life is</p>

				affected.
28	Section 9	Grant of licenses	Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979	<p>The licencing officer checks if the contractor has provided all the details of the establishments where he is going to employ the labourers and has fulfilled other parameters, only then is the license issues to him. After a fixed period of time, he needs to renew it.</p> <p>Getting the licence and turning a deaf year to the protocols should not be case. Appropriate authority should keep an eye on their dubious steps.</p>
29	Section 10	Revocation, suspension and amendment of licenses	Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979	<p>The licencing officer, whenever need arises or doubts the prudent intention of contractor can cancel the licence. Contractor will be given say to explain.</p> <p>It is mandatory check to save our fellow human who are inter-state migrant labourers.</p>
30	Section 11	Appeal	Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979	<p>Within the time frame, the contractor is allowed to file an appeal of he feels he needs to be heard.</p>
31	Section 12-	Duties of contractors.	Inter-State Migrant Workmen (Regulation of	<p>It mentions about issuing a passbook which entails all the details about the labourer along with photograph, age and all related specimen. It also clearly</p>

			<p>Employment and Conditions of Service) Act, 1979</p>	<p>mentions employment details, wages rate, displacement allowance, return fare payable when his employment period is over or any other contingency, also the details about deduction made. The passbook needs to be in Hindi, English and the language known by the labourers.</p> <p>Now when we look into the section, it clearly indicates, how contractor along with establishment has to pay proper wages as well deduction if any and displacement allowance as well. Now when we go through a very important Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 point that being articulated beautifully in this section says, in case the employment period is over or there is some contingency, the labourer has right to get paid return tickets. When we ponder in reality the recent past few months, it will not take a fraction second to understand the implementation part of the law. In Covid situation it was totally violated and labourers went through a life which is dreadful even to imagine in dream. Surprisingly, the act has hardly been practised even otherwise in normal time.</p>
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32	Section 13-19	<ul style="list-style-type: none"> - Wage rates and other conditions of service of inter-State migrant workman. (Sec 13) - Displacement allowance. (Sec 14) - Journey allowance etc. (Sec 15) - Other facilities. (Sec 16) - Responsibility for payment of wages. (Sec 17) - Liability of principal employer in certain cases. (Sec 18) - Past 	<p>CHAPTER V</p> <p>Wages, Welfare and other Facilities to be provided to Inter-State Migrant Workman</p> <p>And</p> <p>Minimum Wages Act, Section 11 of 1948</p> <p>Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979</p>	<p>For paying the wages, even in unorganized sector, the Minimum Wages Act, 1948 (11 of 1948) rules has to be kept in mind of establishment as well as contractor. At the time of appointment displacement allowance which is 50% of monthly wages payable to him or seventy-five rupees whichever is higher and it is non-refundable. Journey allowance of both ways is to be paid to him along with wages when he is on the route towards moving from one state to another. In the section of other facilities it covers all important aspects from equal wages, to regular payment, suitable work condition, free of charge medical facility, protective clothing on work, in case of serious fatal injury take al due majors and inform to next kin.</p> <p>How beautifully the law has entailed all-important perspectives towards labourers ensuring the safety, security health, finances and everything but what is in reality. Are the contractors seriously covering these aspects? In the recent instance of Corona where the workers provided return tickets and if they are back are they provided the wages for the time being. If they stayed with the employer, where they provided all safety measures and if by God forbid they got Covid positive what next, who will take accountability. We know the reality which</p>
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		liabilities (sec 19)		is unfair and heart wrenching for the class. Urgent and immediate action is required and government needs to wake up from their slumber sleep.
33	Section 20	- Inspectors	CHAPTER II Inspecting Staff Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 + IPC (Sec 175, 176) + Code of Criminal Procedure, 1973 (2 of 1974) Section 94 (Warrant)	<p>If the appropriate government thinks fit can appoint inspector who would have limit to go for inspection anytime he feels fit and can check on the working conditions, wages, can enquire the labourers, can check the register, roaster and at any point of time if he thinks there is issue and seize the register or any such document.</p> <p>Under Indian Penal Code, section 176 and 176 can ask to produce ant document or thing or to give any information and the person will be bound under IPC to produce the same.</p> <p>Inspector has an authority of warrant issued under section 94 of the Code of Criminal Procedure in order to do search or seizure.</p> <p>Well we see this provision; it is strict in such a way that contractor or establishment will fear penalty as well as liability before violating rules of law. But also on the other hand, there is question in</p>

				mind, a poor migrant labourer who has got nothing actually except small meagre job, even if exploited or abused, will he dare to speak truth about his employer for any discomfort he or she may be facing. Fear brings suffering. Transparency in approach will help to mitigate the problem.
34	Section 21-36	Inter-State migrant workmen to be deemed to be in employment from date of recruitment for the purposes of certain enactments. (Sec-21) Provisions regarding industrial disputes in relation to inter-State migrant workmen. (Sec 22) Registers	Chapter –VII Miscellaneous Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 And Industrial Disputes Act 1947 (14 of 1947), Sec 2, and (17 of 1947) Section33-B	<p>The act specifies that it is the date of recruitment that the inter-state migrant workman will be counted as employed. Whenever there is dispute the inter-state migrant workman can approach under Industrial Disputes Act 1947 (14 of 1947), Sec 2 and application can be made within the time frame of six months six months from the date of his return to the State wherein the recruitment was made after the completion of his employment, unless the Government concerned is satisfied that the applicant was prevented by sufficient cause from making the application within that period. Under (17 of 1947) Section33-B of Industrial Disputes act, further proceedings can be requested and whoever will be delegated authority will take the case from this stage to resolve the migrant workman dispute.</p> <p>It is important for the employer to keep all records maintained of the workman and whenever the inspector approaches, and enquires it is obligation at the end of</p>

		<p>and other records to be maintained (Sec 23)</p> <p>Obstructions (Section 24)</p> <p>Contravention of provisions regarding employment of inter-State migrant workmen. (Sec 25)</p> <p>Other offences (Sec 26)</p> <p>Offences by companies (Sec 27)</p> <p>Cognizance of offence (Sec 28)</p> <p>Limitation of prosecutions (Sec 29)</p>		<p>employer to show the same the records and is he refuses to cooperate or neglects the inspector, his liability of two years of imprisonment as well as 2000INR fine. If the contractor or employer contravenes or does not follow the conditions of license there is punishment of one year including fine of INR. 1000. If he does any other offences, he can be punished for 2 years along with 2000Rs Fine. If a company commits offense and every person including director, manager, secretary or any other officer involved will together be held liable. Metropolitan Magistrate or Judicial Magistrate or the First Class shall try offence under this act and no inferior court can take cognizance. The time limitation as per the limitation act has been three months which may be extended any 6 months if written order is provided by inspector. Central government has been granted power to bring changes to the act as and when required but it has to pass by both the houses.</p> <p>We saw liability as well punishment with accountability on part of Company, contractor as well as establishment but what is real picture is not hidden. Everything was on paper, still there was no implementation. Why was dislocation allowance not given to them when they had to return in Covid times? Why the money is due on them if the law is so strict in terms of wages? If the contract has been</p>
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				<p>issued license to employ them then how can he leave them on roads and here is the accountability, responsibility and the liability? Why they were forced to go despite the act being so clear and specific? Why they became nobody? It is because the law in itself is obsolete and there is no check on its implementation not enforcement. How can the inter-state migrant labourers regain faith again in the system, in their employer and the country, how will they forget their silent suffering? They being poor, they may come back and work again but where is our humanity, do we question ourselves, was their rights ensured, were they protected or thrown vulnerable on road? If we say that treating them equal will be utopian at least we can treat them human.</p>
35	Section 45-62	Applicability of the Act	<p>THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2019</p> <p>CHAPTER XI SPECIAL PROVISIONS FOR CONTRACT</p>	<p>This code has introduced the concept of “work specific license. Which would be issued by government only when his criteria are fulfilled or else it will be project specific contract labour deployment? Whenever the contractor is going deploy the labourers, he would be required to submit detailed report to government with employer details. Also the contractor or the principal employer would give experience certificate to each contract labour on annual basis specifically focusing on what work they did. In case a principal employer appoints</p>

			<p>LABOUR AND INTER-STATE MIGRANT WORKER, ETC. PART I CONTRACT LABOUR AND INTER-STATE MIGRANT WORKER</p>	<p>labourers with an unlicensed contractor then the labourers will be employee of principle employer. Whenever government feels like can notify instruction in context of contract labourers (migrant labourers)</p> <p>The code is very strict in terms of penalty and remedies. If the employer is not complying with the code, there can be monetary penalty of 20 lacs. In case due to noncompliance, there is death caused, there is penalty of 2 years along with monetary fine. In case of serious bodily unjust, court can grant fine (not less than 50%) to the victim or his legal heirs. Similarly when an inspector is not cooperated during inspection, there can penalty of 1 lac and if the register is not produced along with noncompliance there can fine of 1 lac along with 3 months imprisonment and fine up to 2 lacs. Even the company liability can be made individually along with officer uncharged. Only the one who could prove due diligence while performing the task or was ignorant could be exempted. It also mentions about displacement allowance along with journey allowance.</p> <p>But is it implemented, are they labourers easily getting the fine money or else their next kin or the matter is suppressed.</p>
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36	section 2(n)	“Wage worker” Definition	Unorganized Workers Social Security Act, 2008	It clearly covers the migrant worker of unorganized sector.
37	Section 3	social security benefits for the unorganized workers	Unorganized Workers Social Security Act, 2008	<p>The Central Government shall formulate and notify, from time to time, suitable welfare schemes for unorganized workers on matters relating to-</p> <ul style="list-style-type: none"> - Life and disability cover - Health and maternity benefits - Old age protection and - Any other benefit as may be determined by the Central Government <p>The schemes included in the Schedule 1 to this Act shall be deemed to be the welfare schemes under sub-section (1).</p> <p>The Central Government may, by notification, amend the Schedules annexed to this Act.</p> <p>The Central Government through schemes have reached to this class but there are many gaps in implementation, many reforms have been brought and still many are needed.</p>
38	Section 8	The State Government may formulate and notify,	Unorganized Workers Social Security Act, 2008	<ul style="list-style-type: none"> - Provident fund - Employment injury benefit - Housing - Educational schemes for children

		from time to time, suitable welfare schemes for unorganized workers, including schemes relating to-		<ul style="list-style-type: none"> - Skill up gradation of workers - Funeral assistance - Old age homes. <p>Although the scheme tries to show that it has covered most of the unorganized sector workers but to the surprise it has covered approx. 6 crores of unorganized workers out of approx. 46 crores. Also whenever there is any enactment, the state guarantees rights as mentioned in the act, whereas here the story is different. The Government of the state/Current Government will decide on its implementation which definitely makes it weak. This is the reason why it has not been successful in implementation.</p>
39	Schedule 1 of the Act	Indira Gandhi National Old Age Pension Scheme (IGNOAPS): (scheme)	Unorganized Workers Social Security Act, 2008	<p>Those who are above the age of 60 are eligible to pension of INR 300 in total (200 from central government and 100 from State governments) and those who are above 80 ages are to be provided INR. 500 per month. The amount will be directly credited in their commercial bank account or post office. It is applicable nation-wide.</p> <p>When we see the amount provided in the pension, it's meagre 300 INR or says 500INR for a month which in today market is hardly any security. It definitely needs revision and respectable amount should be provided which gives sense of security to the old citizens in true sense.</p>

40	Schedule 1 of the Act	Janani Suraksha Yojana (JSY): (scheme)	Unorganized Workers Social Security Act, 2008	<p>It was launched in 2005; it aims in decreasing neonatal and maternal deaths. It encourages institutional delivery. It assists cash assistance with delivery and post deliver care to women.</p> <p>The mother may be working as wage earner, and the government should think of providing some wages as well when she is unable to work, may be through a new scheme or this one. Till date migrant women workers are not covered in maternity benefit act, it is important to cover migrant women workers in maternity benefit Act.</p>
41	Schedule 1 of the Act	Janashree Bima Yojana (JBY): (scheme)	Unorganized Workers Social Security Act, 2008	<p>It covers persons among age group of 18-59years who are identified under occupational groups. It provided life insurance protection to those who are below poverty line.</p> <p>Benefits:</p> <p>On Natural Death-INR. 30,000/-</p> <p>On Death/Total permanent disability due to accident-INR. 75,000/-</p> <p>On partial permanent disability due to accident-INR. 37,500/-</p> <p>The premium for the scheme is INR. 200/- per member, 50 % premium under the scheme is met out of Social Security Fund set up in the year 1988-89 which is</p>

				<p>maintained by LIC. The balance 50% premium is borne by the member and/ or Nodal Agency.</p> <p>Whenever there is any scheme, many are on papers and the beneficiary is not aware of the same. It is important that migrant workers are aware of it so as to seek benefit. Government can bring awareness by involving other state holders. Let's say, if migrant workers are explained about all government schemes through their employer during their orientation or otherwise on any of the working day, the migrant workers may seek benefit of the same.</p>
42		Aam Admi Bima Yojana (AABY): (scheme)		<p>It covers rural landless households. Head of the family is covered in it and premium of 200 INR is borne by both central and state government.</p> <p>Benefits under the Scheme:</p> <p>On natural death-INR. 30,000/-</p> <p>On death due to accident/ on permanent total disability due to accident (loss of 2 eyes or 2 limbs)-INR. 75,000/-</p> <p>On partial permanent disability due to accident (loss of one eye or one limb)-INR. 37,500/-</p> <p>A separate fund called "Aam Admi Bima Yojana Premium Fund" has been set up by Central Govt. to pay the Govt. contribution. Fund is maintained by LIC. A free add-on benefit in the form of</p>

				<p>scholarship to children is also available under the Scheme.</p> <p>The beneficiary that is migrant labourers/workman must be aware of all security schemes of government. Also there are discouraging government processes/steps in procuring the benefit, they run from one table to another and at times there is also scope of corruption. The system needs to be smooth and transparent so that for their own rights, they need not struggle endlessly.</p>
43		Rashtriya Swasthya Bima Yojana (RSBY): (Scheme)		<p>It provides health insurance coverage to all family members below poverty line. Unorganized sector workers who are below poverty are covered under it, total of 5 family members will be covered under it.</p> <p>Benefits under the Scheme: The State Governments are advised to incorporate the following minimum benefits in the package/scheme:</p> <ul style="list-style-type: none"> - The unorganised sector worker and his family (unit of five) will be covered. - Total sum insured would be INR. 30,000/- per family per annum on a family floater basis. - Hospitalization expenses, taking care of most common illnesses with as few exclusions as possible

				<ul style="list-style-type: none"> - All pre-existing diseases to be covered - Transportation costs (actual with maximum limit of INR. 100 per visit) within an overall limit of INR. 1000. <p>Our government hospitals are already flooded with patients, doctor take their private clinics more seriously. The Health ministry needs to expand health institutions in the country both in quality as well as quantity. It is important that none of the patients go untreated.</p>
44	Launched on June 20, 2020	Garib Kalyan Rojgar Abhiyaan	To resolve Covid Crisis of Migrant workers	<p>It is in operation in 116 identified districts of six states - Uttar Pradesh, Bihar, Rajasthan, Madhya Pradesh, Odisha and Jharkhand. The Railways has identified 160 infrastructure works under the scheme, designed to provide employment to the labourers who returned to their villages.</p> <p>It will help expedite implementation of 25 public infrastructure works and those related to augmentation of livelihood opportunities.</p> <p>These 25 works are related to rural housing for the poor, plantations, provision of drinking water through Jal Jeevan Mission, and construction of Panchayat bhavans, community toilets, rural mandis, rural roads, cattle sheds and anganwadi bhavans, according to the</p>

				<p>Ministry of Rural Development, which is the nodal ministry for the project. The scheme was launched weeks after lakhs of migrant workers returned to their home states following loss of employment in urban centres due to the nationwide lockdown to combat the spread of COVID-19.</p> <p>Why in first instance it happened. Why we could not be provider to these large unorganized labour class in the 1st instance. It is the compensation for the silent, inhumane sufferings they went through. Why we made them 2nd Citizen in their own country and the whole world witnessed and mocked it.</p>
45			<p>Steps towards framing National Employment Policy</p>	<p>Union Minister has recommended the Central Government to take few steps in the direction that labourers go back to city and resume their work again.</p> <p>Government is planning to enrol the migrant labourers automatically to the Pradhan Mantri Jan Arogya Yojana (PM-JAY), popularly known as Ayushman Bharat which is health insurance scheme. It will assist the labourers to have cashless health facilities at their workplace.</p> <p>There is recommendation that if there is any other scheme in that state by state government with some modification, they should get the benefit of that as well.</p>

				<p>Recommendation has been made to formulate “Migrant Workers Welfare Fund” where each migrant worker would be automatically enrolled into the fund and they will work on the concept of equal contributions from worker, employer, home state government, destination state government and the central administration.</p> <p>It will be basically looked after by labour ministry and will focus on the workers’ requirements and needs of accommodation, health insurance and unemployment allowance.</p> <p>This seems of great help to the unorganized migrant labourers in the plight. If there is strict implementation of it and all the stakeholders take responsibility and are accountable, it will definitely bring stability in the life of this class.</p>
			Upcoming – Code on Social Security Bill 2019	<p>This code has following objectives which definitely is an opportunity for millions of our unorganized sector migrant workers to receive social security benefit:</p> <ul style="list-style-type: none"> - universalization of social security, - inclusion of informal sectors including self-employed workers, - management of social security funds, and - dealing with multiplicity of social security organisations

				<p>Code on Social Security is currently with the Standing Committee on Labour and under necessary consultation. The draft Code is in public domain and is a subject of debate among stakeholders, policymakers, academicians, and the larger civil society.</p> <p>Once passed, it will merge with these eight labour laws:</p> <p>Employees’ Compensation Act 1923, Employees ‘State Insurance Act 1948, Employees ‘Provident Funds and Miscellaneous Provisions Act 1952, Maternity Benefit Act 1961, Payment of Gratuity Act 1972, Cine Workers Welfare Fund Act 1981, Building and Other Construction Workers Cess Act 1996, and Unorganised Workers ‘Social Security Act 2008.</p> <p>The most important factor in this code is the initiative of social security for unorganized sector.</p> <p>The draft Code says:</p> <p>“Central Government shall formulate and notify, from time to time, suitable welfare schemes for unorganised workers on matter relating to life and disability cover; health and maternity benefits; old age protection; and any other benefit as may be determined by the central government.”</p> <p>It also gives detailing that state</p>
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				<p>governments can also formulated and introduce schemes relating to provident fund, employment injury benefit, housing, educational scheme for their children, old age and funeral assistance which would be of great help to migrant labourers.</p> <p>93% of India's population belongs to unorganized sector and they are self-employed and they hardly have employer-employee relationship. They merely work on oral contract or agreement mostly on daily basis. Neither their occupation is fixed, nor the location. They move from one place to another. It is extremely difficult even to say who would be appropriate government in their case who will be accountable for them and would take care of their needs. Mostly it is state government. State Government though responsible tries to cut corners due to financial constraints.</p> <p>The code in order to have successful implementation requires the central government to do its homework. Central government needs to study in advance what could be the possible challenges, possible consequences, benefits, pros and cons of bringing it, smooth delivery of the code and bring a common rule or regulation or a structure which a state could follow. Central government can provide freedom of customization which can be done as per the scenario within</p>
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				<p>state. Unorganized sector workers have been neglected and treated inhuman since long and it is need of the hour to bring a code which could address the life of this community. It is important to bring social security schemes for them irrespective of whatever big challenge comes in the way. The code lacks proper inclusion of these factors and before it is enacted, it is important to consider such important lacunas and address it.</p> <p>It also talks about Employees' Provident Fund Organisation (EPFO) and Employees' State Insurance Corporation (ESIC), but the movement of same would outside domain of government and handled by EPSO and ESIC and that too it would huge sum which has to be exclusively being used for unorganized sector workers . It seems to be risky as we see past fraud cases in corporate.</p> <p>All other laws – like the Maternity Benefit Act, Payment of Gratuity Act, Employee's Compensation Act, Building and Construction Workers Cess Act – have their basic provisions intact; but each has been incorporated as Chapters in the Code. But it appears old acts have got new book cover and instead of it being a complete holistic scheme to seriously address their issue, it gives the impression that its' same old thread. It is important to understand that the integration is required in</p>
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				<p>meaningful manner.</p> <p>This code could have been very promising addressing the endless pains of poor but instead it seems its' an old book with a new cover. It seems promising but on papers it is same old talk. Before it is passed, Government must incorporate the lacunas and bring the code in real sense which would be progression and not fake aspirations.</p>
			<p>National Food Security Act (NFSA), 2013</p>	<p>It promises a cash transfer of INR 6,000 to all pregnant women and lactating mothers, excluding those who are already receiving similar benefits from elsewhere," but the real picture is different, it is hardly implemented in most of states except very few. The linkages of Adhar Card and bank account have much clerical errors and it causes trouble in transferring the amount. Till 2017-18, there were only 22% of women below poverty line who could receive the benefits.</p> <p>It is easy to formulate law but more emphasis is required on implementation so that the targeted beneficiary receives the benefit which they are entitled to.</p>

46	Section 370	Offence of trafficking	Indian Penal Code (IPC)	<p>It defines the offence of trafficking to include recruiting, transporting, harbouring, transferring, or receiving a person or persons, by using threats, force, or any other form of coercion, or by abduction, practising fraud, or deception, abuse of power, or by inducement, - including the giving or receiving of payments or benefits, in order to achieve the consent of any person for the purposes of exploitation. The consent of the victim is immaterial in the determination of the offence of trafficking. Exploitation is - explained as any act of physical exploitation or any form of sexual exploitation, slavery or practices similar to slavery, servitude, or the forced removal of organs.</p> <p>This has been very helpful for inter-state migrant women labourers; it protects them and works as a shield. Still corrupt mind always finds way. Many a time's illegal trafficking has happened and when caught, they face strict penalty as per law. Behind blinds, it is practised and many lives are spoiled.</p>
47	370 of the IPC	“Aggravated form of trafficking.”	Indian Penal Code	<p>IPC under the category of “aggravated form of trafficking.” These included (i) for the purpose of forced labour or bonded labour by using violence, intimidation, inducement, promise of payment of money, deception or coercion by subtle means including allegations of</p>

				<p>accumulated debt by the person, retention of any identity paper, threats of denunciation to authorities; (ii) for the purpose of bearing a child, either naturally or through assisted reproductive techniques; (iii) by administering any narcotic drug or psychotropic substance or alcohol on a person for the purpose of trafficking or forcing them to remain in exploitative condition; (iv) by administering hormones for the purpose of early sexual maturity; (v) for the purpose of marriage; (vi) by causing serious injury; (vii) offence resulting in pregnancy, or trafficking of pregnant women; (viii) by causing AIDS; (ix) for the purpose of begging; and (x) trafficking of a mentally ill person.</p> <p>For such offences, a minimum imprisonment of 10 years extendable to life was prescribed. Repeat offenders were to be imprisoned for the rest of their natural life.</p> <p>Sometimes, needy citizens are lured or intimidated for wrong reasons and poor are more vulnerable to it especially the migrant labourers i.e. women, children etc. Law has been strict enough to keep an eye.</p>
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48			<p>Protection of Children from Sexual offences (POCSO) Act, 2012</p>	<p>It is a special law to protect children from sexual abuse and exploitation. It provides precise definitions for different forms of sexual abuse, including penetrative and non-penetrative sexual assault, sexual harassment as well. It covers all children of the country including child of inter-state migrant labourers.</p> <p>POCSO act is very strict and has helped in saving life of many children of country. This is applicable on inter-state migrant labourers as well.</p> <p>“Childhood is a promise that is never kept”, said Ken Hill</p> <p>The act seems to be gender bias as has only covered male to be committing crime against children but it may have a situation where a women is involved in doing it. In case of Rape, it says that only female doctor can examine, but what if there is urgent situation and no female doctor is available. Also the professionals who are involved in it should be properly trained and sensitive; act has not covered on it. Also it has not been clear on keeping the identity confidential and reports the incidence so that the criminal should feel ashamed as well it goes as warning in society. These loopholes need to be amended to protect the child in true sense.</p>
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III. CONCLUSION

As we are well aware that migrant labourers play a major role, both the central and state government must join hands by finding the loopholes in laws as well the barriers in its implementation and should introduce the necessary amendments. The state and centre should stop blaming each other and instead should bring this class into their priority bucket list where we see a nation where the labourers are empowered are enjoying their due rights. Both Central and state governments must join hands to handle the distress suffered by the labourers. A national strategy can be brought on how to make it work in true sense. The experts can be hired who can suggest best practices followed in other countries and can be adopted here. The latest Social Security Bill 2019 which seems to be silent on providing special protection to this class can be restructured by providing the umbrella of special protection. It could include employment injury benefits as well as provident funds for the unorganized sectors. Contractors and employments play major role in exploiting them, strict action/ penalty can be brought to keep a check on these practices. Integration at all levels will provide them quality life that they deserve since long.

IV. LIST OF REFERENCES:**Statues referred:**

1. Indian Constitution of India
2. Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
3. Minimum Wages Act, Section 11 of 1948
4. Code of Criminal Procedure , 1973 (2 of 1974)
5. Industrial Disputes Act 1947 (14 of 1947)
6. THE OCCUPATIONAL SAFETY, HEALTH AND WORKING CONDITIONS CODE, 2019
7. Unorganized Workers Social Security Act, 2008
8. Code on Social Security Bill 2019
9. National Food Security Act (NFSA), 2013
10. Indian Penal Code (IPC), 1860
11. Protection of Children from Sexual offences (POCSO) Act, 2012

Government Schemes:

1. Aam Admi Bima Yojana (AABY): (scheme)
2. Rashtriya Swasthya Bima Yojana (RSBY): (Scheme)
3. Garib Kalyan Rojgar Abhiyaan
4. National Employment Policy
5. Pradhan Mantri Jan Arogya Yojana (PM-JAY)
