

# LEGALFOXES LAW TIMES

**How India's Legal System Needs to be Reconfigured to Help Migrant Workers while analysing [The Inter-State Migrant Workmen (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 1979]**

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**Abstract:**

India is considered as few of the countries with a stringent body of labour laws though the vulnerabilities of workers seem to be increasing rapidly in this phase of global economy.

A migrant worker usually refers to a worker who has left his native place that is the place where he used to live and due to the search of employment has left his native state to some other state or city. Migration or movement of workers in India is in existence from ancient times but in the context of opening up of the world economy it has a special significance for the country and the society.

The fundamental issue that the migrant workers endure is because of the fake contractors with whom they come into contract of employment to work in the urban areas and the lack of legal protection behind this likewise deteriorates this situation. This is on the grounds that the law which is specifically formed to protect the rights of migrant workers is around half a century old which is Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 in this dynamic economy.

Further the researcher in this paper will try to elucidate the problems faced by migrant workers in our country and the rights which are available to them with respect to article 21 of the constitution that is right to life and personal liberty, 19(d) [to move freely throughout the

territory of India], equal pay for equal work for both men and women under directive principle of state policy. Along with the aforementioned provisions this paper will put the light upon the Occupational Safety, Health and Working Conditions Code of 2019 [BILL] which is not yet passed but the importance of it as it combines various 13 labour laws and specifically talks about the rights of migrant workers and their remedies. The paper will critically analyse the 1970 law along with the bill.

### **PROBLEM :**

The research problem pertaining to my research is that the current legislation Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 doesn't protect the rights of migrant workers according to the dynamic nature of their problems in India.

The municipal law regarding my research paper is 'THE INTER-STATE MIGRANT WORKMEN (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 1979'

The research problem is that the current 1970 legislation governing the rights and activities related to migrant workers is vague, regarding the rights of the migrant workers with respect to the health conditions of the workers and wide powers given to the contractors of the migrant workers without any accountability

The aforementioned law remains silent about the standard for the health conditions which is required for the worker to work.

Further in the current situation [ COVID 19-pandemic] under section 12 of THE INTER-STATE MIGRANT WORKMEN (REGULATION OF EMPLOYMENT AND

CONDITIONS OF SERVICE) ACT, 1979' imposes a duty on the contractor to give the displacement allowance to the migrant worker which is not given. The Act was enacted to prevent the exploitation of inter-state migrant workmen by contractors, and to ensure fair and decent conditions of employment.

Further the research problem is that the secondary data is insufficient with respect to the rights of the migrant workers and my research is focused on the rights of migrant workers thus, Analysis of this aforementioned law will help to determine the current situation of the rights of the migrant workers and whether this law is suitable while looking the current situations which is happening in India [covid:19 -pandemic] and further whether or not this legislation/law is subject to further amendments, with the said law and with the help of the international treaties to which India is not part of [International convention on protection of rights of migrant workers, International labour organization standards on Migrant workers]

the paper will elucidate the importance of these conventions and will highlight the important articles or changes which need to be included in the present law which are not there and are essential in order to protect the rights of the migrant workers.

#### **CLAIM STATEMENT:**

The counter-arguments and the claim statement in my research paper would be suggesting the reforms by analysing the current THE INTER-STATE MIGRANT WORKMEN (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 1979 legislation which will help to promote the rights of the migrant workers

It is important that the current legislation pertaining to the rights of the migrant workers needs to be changed as:

- The act has failed to prove its objective which was that the act was enacted to prevent the exploitation of inter-state migrant workmen by contractors and to ensure fair and decent conditions of employment.
- legislation governing the rights and activities related to migrant workers is vague, regarding the rights of the migrant workers with respect to the health conditions of the workers and wide powers given to the contractors of the migrant workers without any accountability
- The aforementioned law remains silent about the standard for the health conditions which is required for the worker to work.

- Further, this act has proved to be ineffective in the current COVID 19 [pandemic situation] as the displacement allowance was not given to the migrant workers which is stated under the act

Analysis of this aforementioned law will help to determine the current situation of the rights of the migrant workers and whether this law is suitable while looking the current situations which are happening in India and with the said law and with the help of the international treaties to which India is not part of [International Convention on the protection of rights of migrant workers, International labour organization standards on Migrant workers] the paper will elucidate the importance of these conventions and will highlight the important articles or changes which need to be included in the present law which is not there and are essential in order to protect the rights of the migrant workers.

## **I. INTRODUCTION:**

There are around 20 million domestic workers mostly migrants from rural India<sup>1</sup>. The rights of the migrant workers have been exploited from quite a while without giving them fair and reasonable protection and rights as the laws governing their rights are not adequate enough to handle their dynamic problems and current situation.

A migrant worker is one 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<sup>2</sup>

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<sup>1</sup>Sangeeta Mandal, Emerging Trends of Inter-State Migrant Workers in India: A Study of Legal Framework, 7 Indian J.L. & Just. 106 (2016).

<sup>2</sup>Sec 2[e]THE INTER-STATE MIGRANT WORKMEN (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 1979

## II. Theoretical Background:

### a. Hohfeld theory of jural relations<sup>3</sup>

According to Hohfeld, one of the greatest difficulty in finding solutions to legal problems is the assumption that all legal concepts can be reduced to rights and duties<sup>4</sup>.

Hohfeld argues that in a closely reasoned legal problem such an issue may lead to lack of clarity in thoughts and expression. He identifies eight fundamental legal concepts, namely- rights, privilege, power, immunity, no-rights, duty, disability and liability. He then proceeds to arrange them as 'jural opposites' and 'jural correlatives' and explains their practical application by giving relevant examples. The arrangement of the concepts as opposites and correlatives is as follows:

**Rights and Duties:** 'rights' is one of the most misunderstood terms since everything is tried to be defined as a right. Words such as privilege, power and immunity are used synonymously with the term 'rights'. Hohfeld proposes that the term rights must be confined to only that which exists corresponding to a duty. Rights and duties are correlated concepts and when a right is infringed there is always a duty that has been violated.



### **Privilege and No-rights**

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Hohfeld defines privilege as the jural opposite of duty. Privilege, according to him, is the negation of a duty. The negation of duty takes place only when the contents of both, the duty and privilege, are opposite to each other. For instance, a duty not to enter can be negated by the privilege of entering. Duty is the correlative of right. Similarly, privilege also has a correlative. However, there exists no particular term to explain the same, which is why, Hohfeld has decided to term it as a "no-right". Thus, if I have the privilege

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<sup>3</sup>J. M. Balkin. The Hohfeldian approach to law and semiotics. *University of Miami Law Review*, 44:1119–1142, 1990.

<sup>4</sup>Wesley Newcomb Hohfeld. Some fundamental legal conceptions as applied in judicial reasoning. *Yale Law Journal*, 23(1):16–59, Nov. 1913.

of entering into land, the correlative is a “no-right” against my entering to the land. Unlike a duty which has to be necessarily fulfilled, one may or not exercise his privilege. There is no right that is infringed in case of non-exercise of a privilege.

### **Powers and Liabilities:**

Legal power is the jural opposite of legal disability and the jural correlative of legal liability. Power is the ability conferred upon an individual by the law to alter or create new legal relations. One can make a will of his property or can alienate his property; one can marry one’s deceased wife’s sister—all these are often termed as rights however a careful legal analysis reveals that they are powers, not rights.

A synonym for legal power is (legal) ability. Legal relations may be altered by facts and circumstances which may or may not be in human control. When such facts are in control of one or more human beings, such human beings are said to possess legal power. Liability is the jural correlative of power. Whenever a person exercises the power to alter existing legal relations or to create new legal relations, the person with whom such legal relations have been created or altered owes a liability to the former. Hohfeld proposes the terms “subjection” and “responsibility” as synonyms of the term “liability”. Many ‘duties’ or ‘obligations’, ignorantly stated to be so, are actually liabilities.

### **Immunities and Disabilities**

Immunity is the jural correlative of disability and the jural opposite of liability. In simple terms, immunity is the negation of liability. According to Hohfeld, the contrast between power and immunity is the same as the contrast between right and privilege. He states that a right is the “affirmative claim” against someone and privilege is a freedom from such an affirmative claim. Similarly, power is the “affirmative control” over a legal relation and immunity is the freedom from such control. The jural correlative of immunity is a disability which refers to no-power. Thus, when a person exercises immunity in a legal relationship

with another, the latter has no power over the legal relation.

### **Application Of Hohfeld Analysis:**

Hohfeld's jural postulates or his 8 fundamental legal concepts aforementioned can be applied in my research as

#### 1. RIGHTS AND DUTIES

To explain the correlation between right and duty as to when a migrant worker possess a right then some other person or the state has the corresponding duty to protect the rights of the right holder

For instance, Chapter V of THE INTER-STATE MIGRANT WORKMEN (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 1979 states that the migrant workers has the rights to get proper wages, displacement allowance , journey allowance etc thus the contractor has the duty to provide with such allowances so that the migrant worker can reach to the place of work

#### 2. PRIVILEGE AND NO RIGHT

Under this if a migrant worker has a privilege to have fixed daily wage then the contractor or the employer has no right against the privilege of the migrant worker

Thus the privilege of migrant worker is corelative to the no right of the contractor

#### 3. POWERS AND LIABILITIES

Legal power is the jural opposite of legal disability and the jural correlative of legal liability.

Under this for instance in cases of safety of migrant workers and their hygiene as they have the power under article 21 of the constitution [right to life and personal liberty] to have safe working

conditions which is not harmful for their health then since this power is conferred by law to the migrant workers then the employer or contractor has the liability to provide such working conditions

#### 4. IMMUNITIES AND DISABILITIES

Under this if the contractor or the employer has committed any offence then either of them is immune to the punishment and the migrant worker is disable to get remedy unless and until a complaint made by, or with the previous sanction in writing of, an inspector or authorised person and no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act as stated under section 28 of THE INTER-STATE MIGRANT WORKMEN (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 1979

### **III. ARTICLE 21 AND MIGRANT WORKERS:**

#### Meaning of article 21

Everyone has the right to life, liberty and the security of person.' The right to life is without a doubt the most fundamental of all rights. All remaining rights add quality to the life being referred to and depend on the pre-existence of life itself for their operation. As human rights can only attach to living beings, one may anticipate the right to life itself to be in some sense primary, since none of the other rights would have any value or utility without it. But the expression 'procedure established by law' in article 21 has been judicially construed as meaning a procedure which is reasonable, fair and just. Read with article 39A. it would further imply legal aid bring made available to the indigent accused. and a prisoner. The concept of 'fairness', so evolved, has been imported into article 22(3).

Maneka Gandhi v. Union of India<sup>5</sup> was an essential case in order to understand the true meaning of article 21. In this case the supreme court established the Rule of Law that no person can be deprived of his life and personal liberty except procedure establish by law under Article 21 of the Constitution. Thus, Article 21 requires the following conditions to be fulfilled before a person is deprived to his life and liberty that there must be a valid law, the law must provide procedure ,the procedure must be just, fair and reasonable, the law must satisfy the requirement of Article 14 and 19.

#### HOW ARTICLE 21 IS CONNECTED TO MIGRANT WORKERS:

Article 21 is given to all the citizens of India as a fundamental right by the Indian constitution which states that Everyone's has Right to Life and Personal Liberty and if so someone is been deprived of this right then this should be done by a proper procedure established by law without any arbitrariness. Thus article 21 is also given to the migrant workers but during the time of lockdown or pandemic[COVID 19] they were deprived of this right and no clear explanation was given regarding to their remedy as right to life includes right to livelihood/shelter

#### RIGHT TO LIVELIHOOD UNDER ARTICLE 21 FOR MIGRANT WORKERS:

The Supreme Court took the view that the right to life in Article 21 would not include the right to livelihood. In Re Sant Ram<sup>6</sup> a case which emerged before the Maneka Gandhi case, where the Supreme Court held that the right to livelihood would not fall within the expression life in Article 21. The court laid down thatthe right to livelihood would be included in the freedoms enumerated in Art.19, or even in Art.16, in a limited sense. Yet the language of Art.21 cannot be squeezed into help of the contention that the word life in Art. 21 includes livelihood also.

But then the view underwent a change. With the definition of the word life in Article 21 in a broad and expansive manner, the court in Board of Trustees of the Port of Bombay v.

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<sup>5</sup>Maneka Gandhi v. Union of India, 1978 AIR 597, 1978 SCR (2) 621

<sup>6</sup>Sant Ram Case AIR 1960 SC 932

DilipkumarRaghavendranathNandkarni<sup>7</sup>, came to hold that “the right to life” guaranteed by Article 21 includes “the right to livelihood”

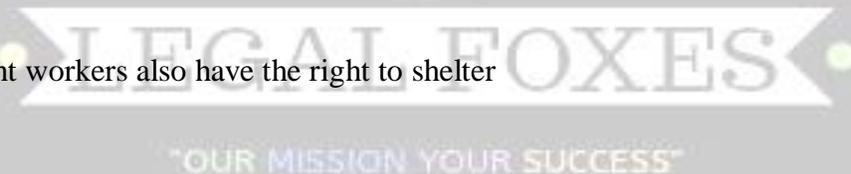
### Migrant worker right to shelter under article 21

The first question that came to our mind while talking about migrant workers right in the pandemic[COVID 19] is that whether they have any right to shelter or does any law provide such protection to them.

In U.P. Avas Vikas Parishad v. Friends Coop. Housing Society Limited<sup>8</sup>, the Court has upheld the right to shelter to be a fundamental right which springs from the right to residence secured in article 19(1)(e) and the right to life guaranteed under article 21. To make the right meaningful to the poor, the state has to provide facilities and opportunities to build houses.

In Chameli Singh v. State of U.P<sup>9</sup>, a Bench of three Judges of Supreme Court had considered and held that the right to shelter is a fundamental right available to every citizen and it was read into Article 21 of the Constitution of India as encompassing within its ambit, the right to shelter to make the right to life more meaningful.

Thus, the migrant workers also have the right to shelter



### Right To Social Security And Protection Of Family:

From time to time the meaning of article 21 has been evolved by the judiciary through its interpretation and judicial decision. Judiciary by its powers has included the protection of family

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<sup>7</sup>Board of Trustees of the Port of Bombay v. DilipkumarRaghavendranathNandkarni AIR 1983 SC 109: (1983) 1 SCC 124

<sup>8</sup>Avas Vikas Parishad v. Friends Coop. Housing Society LimitedAIR 1996 SC 114

<sup>9</sup>Chameli Singh v. State of U.P1996 AIR 1051, 1995( 6 )Suppl. SCR 827, 1996( 2 )SCC 549

under the article 21 of the Indian constitution. Thus the article 21 is not just limited towards a separate individual person but also towards a larger group if it serves a greater benefit to the society. Similarly the right is not only available towards the migrant worker but is available to his family also

Right to life covers within its ambit the right to social security and protection of family. In the case of Calcutta Electricity Supply Corporation (India) Ltd. v. Subhash Chandra Bose<sup>10</sup>, the Court laid down that right to social and economic justice is a fundamental right under Art. 21. It was held that that the right to life and dignity of a person and status without means were cosmetic rights. Socio-economic rights were, therefore, basic aspirations for meaning the right to life and that Right to Social Security and Protection of Family were an integral part of the right to life.

In the case of N.H.R.C. v. State of Arunachal Pradesh<sup>11</sup>, (Chakmas Case), the supreme court said that the State is bound to protect the life and liberty of every human-being, be he a citizen or otherwise, and it cannot permit anybody or group of persons to threaten other person or group of persons. No State Government worth the name can tolerate such threats by one group of persons to another group of persons; it is duty bound to protect the threatened group from such assaults and if it fails to do so, it will fail to perform its Constitutional as well as statutory obligations.



#### **IV. ANALYSIS OF THE INTER-STATE MIGRANT WORKMEN (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 1979:**

The municipal law/ rights of migrant workers are principally governed by this aforementioned legislation. The issue relating to the current enactment Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 doesn't protect the rights of migrant workers according to the dynamic nature of their problems in India.

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<sup>10</sup>Calcutta Electricity Supply Corporation (India) Ltd. v. Subhash Chandra Bose AIR (1992)573 : (1991) SCR Supl. (2) 267

<sup>11</sup>N.H.R.C. v. State of Arunachal Pradesh AIR (1996) 1234 : (1996) SCC (1) 742

Brief overview of the act<sup>12</sup>

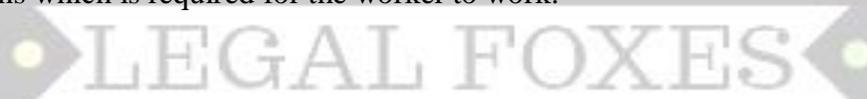
- The previously mentioned enactment shall be applied to every establishment and contractors whereat least five inter- State migrant workmen are employed or were employed on any day of the preceding twelve months.
- Every establishment that is employing interstate migrant workmen is needed to be registered with the registering officers appointed under Central Government or State Government.  
Similarly, every contractor who recruits or employs interstate migrant workmen need to obtain a licence from the specified authority and also license from both of the State which are home state [from where the contractor belongs] and the other state [where the migrant worker is to be employed]
- The contractor is required to provide certain requirements regarding the workmen in the form to be prescribed by rules to the specified authority of both the state as well as to issue to every workman employed by him, a pass book containing the details of the employment.
- The interstate migrant workman will be entitled to a journey allowance in addition to his wages along with displacement allowance.
- Several guidelines has been laid down regarding the wages payable to inter-state migrant workmen which need to paid from the date of his recruitment.
- The provision for appointing an inspector by the appropriate government to keep check on implementation of legislation is provided by the act .

<sup>12</sup>[http://ncwapps.nic.in/acts/TheInter-StateMigrantWorkmen\(RegulationofEmploymentandConditionsofService\)Act1979.pdf](http://ncwapps.nic.in/acts/TheInter-StateMigrantWorkmen(RegulationofEmploymentandConditionsofService)Act1979.pdf)

- The interstate migrant workmen can raise an industrial dispute arising out of his employment either in the State to which he is employed or in the state to which he belongs after the completion of the contract of employment as per his convenience
- Deterrent punishments have been laid down under this legislation if the rules and regulations under it are not followed properly

### ANALYSIS OF THE ACT:

The problem with the current 1970 legislation governing the rights and activities related to migrant workers is vague, regarding the rights of the migrant workers with respect to the health conditions of the workers and wide powers given to the contractors of the migrant workers without any accountability. The aforementioned law remains silent about the standard for the health conditions which is required for the worker to work.



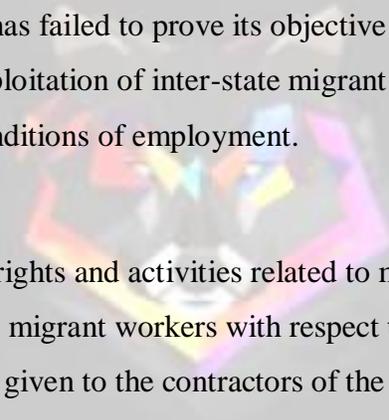
The significant reason why this specific enactment is not so effective is a result of difficult pre-requisites set out in the law that would make their employment essentially more costly than intra-state workmen. Accordingly this act is yet another law that provides rent seeking opportunities to enterprising government inspector while failing to meet its main objective.

Another outcome of weak implementation of the previously mentioned legislation is the shortfall of government preparedness for implementing such well-meaning though impractical law, to execute this law alone, government inspector need not only have to maintain records of interstate workmen but also verify whether all other requirements regarding wages, allowances, accommodation and health care are complied with, which is certainly not done.

Consequently , this enactment should be adequately rationalised and made realistic enough so that employers and contractors have incentives to come forward and register labourers without being worried about punitive action or impractical social safety requirements.

It is important that the current legislation pertaining to the rights of the migrant workers needs to be changed as:

- The aforementioned law has failed to prove its objective which was that the act was enacted to prevent the exploitation of inter-state migrant workmen by contractors and to ensure fair and decent conditions of employment.
- legislation governing the rights and activities related to migrant workers is vague, regarding the rights of the migrant workers with respect to the health conditions of the workers and wide powers given to the contractors of the migrant workers without any accountability
- The aforementioned law remains silent about the standard for the health conditions which is required for the worker to work.



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Further in the current situation [ COVID 19-pandemic] under section 12 of the THE INTER-STATE MIGRANT WORKMEN (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 1979' imposes a duty on the contractor to give the displacement allowance to the migrant worker which is not given.

The Act was enacted to prevent the exploitation of inter-state migrant workmen by contractors, and to ensure fair and decent conditions of employment which the act failed to do so

### **V. Occupational Safety, Health and Working Conditions Code of 2019 [BILL]:**

This bill should be implemented as it covers various aspects of rights which THE INTER-STATE MIGRANT WORKMEN (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 1979 fails to do so.

The Code consolidates 13 Acts regulating health safety and working conditions. These laws cover factories, mines, dock workers, building and construction workers, plantation labour, contract labour, inter-state migrant workers, working journalists, motor transport workers, sales promotion employees, and cine workers.

Some of the features of this bill<sup>13</sup> can be seen as under:

#### Coverage, license and registration

- Coverage: The Code applies to establishments employing at least 10 workers, and to all mines and docks. It does not apply to apprentices. Further, certain provisions of the Code such as health and working conditions, apply to all employees. Employees include workers and all other persons employed in a managerial, administrative, or supervisory role (with monthly wage of at least Rs 15,000).
- License and registration: Establishments covered by the Code are required to register within 60 days (of the commencement of the Code) with registering officers, appointed

<sup>13</sup>[http://164.100.47.4/billstexts/lstexts/asintroduced/186\\_2019\\_LS\\_Eng.pdf](http://164.100.47.4/billstexts/lstexts/asintroduced/186_2019_LS_Eng.pdf)

by the central or state government. Further, some establishments such as factories and mines, and those hiring workers such as beedi and cigar workers, may be required to obtain additional licenses to operate.

#### Rights and duties of employees and employers

- Duties of employers: (i) providing a workplace that is free from hazards that may cause injury or diseases, (ii) providing free annual health examinations to employees in notified establishments, (iii) issuing appointment letters to employees, and (iv) informing relevant authorities in case an accident at the workplace leads to death or serious bodily injury of an employee. Additional duties are prescribed for employers in factories, mines, docks, plantations, and building and construction work, including provision of a risk-free work environment, and instructing employees on safety protocols.
- Duties of consultants: Manufacturers, importers, designers and suppliers must ensure that any article created or provided by them for use in an establishment is safe, and provide information on its proper handling. Further, architects, engineers and designers must ensure any structure designed by them can be safely executed and maintained.
- Rights and duties of employees: Duties include taking care of their own health and safety, complying with safety and health standards, and reporting unsafe work incidents to the Inspector. Employees also have certain rights including the right to obtain information on safety and health standards from the employer.

#### Work hours and leave:

- Work hours: Work hours for different classes of establishment and employees will be notified by the central or state government. For overtime work, the worker must be paid twice the rate of daily wages. Prior consent of workers is required for overtime work.

Female workers may work past 7 pm and before 6 am with their consent, and if approved by the government. Journalists cannot work more than 144 hours in four weeks.

- Leave: Workers cannot be required to work for more than six days a week. Further, they must receive one day of leave for every 20 days of work per year.

#### Working conditions and welfare facilities:

- Working conditions: Working conditions will be notified by the central government. Conditions may include hygienic work environment, clean drinking water, and toilets.
- Welfare facilities: Welfare facilities such as canteens, first aid boxes, and crèches, may be provided as per standards notified by the central government. Additional facilities may be specified for factories, mines, docks, and building and construction work such as welfare officers, and temporary housing.
- The Code includes three schedules containing lists of: (i) 29 diseases that the employer is required to notify the authorities of, in case a worker contracts them, (ii) 78 safety matters that the government may regulate, and (iii) 29 industries involving hazardous processes. The lists may be amended by the central government.

#### Relevant Authorities :

- Inspector-cum-facilitators: The duties of Inspector-cum-Facilitators include inquiring into accidents, and conducting inspections. They have additional powers in the case of factories, mines, docks and building and construction workers which include; (i) reducing the number of employees working in sections of the establishment, and (ii) prohibiting

work in dangerous situations.

- **Advisory Bodies:** The central and state governments will set up Occupational Safety and Health Advisory Boards at the national and state level, respectively. These Boards will advise the central and state governments on the standards, rules, and regulations to be framed under the Code.
- **Safety Committees:** The appropriate government may require constitution of safety committees in certain establishments, and for a certain class of workers. The committees will be composed of representatives of the employer and the workers. The number of employer representatives cannot exceed the employee representatives. These committees will function as a liaison between employers and employees.

#### Offences and Penalties:

The Code specifies various offences. An offence that leads to the death of an employee will be punishable with imprisonment of up to two years, or fine up to five lakh rupees, or both. Further, courts may direct that at least 50% of such fine be given as compensation to the heirs of the victim. For any other violation where the penalty is not specified, the employer will be punished with a fine between two and three lakh rupees. If an employee violates provisions of the Code, he will be subject to a fine of up to Rs 10,000. First-time offences which are not punishable with imprisonment, can be settled for up to 50% of the maximum fine.

#### Changes in definitions:

This Bill changes the definition which include expanding the definition of employees to include workers employed through contractors and expanding the definition of inter-state migrant workers to include self-employed workers from another state.

The important thing that this bill changes as compared to The Inter-State Migrant Workmen (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 1979 is that according to the former[bill] it includes the migrant workers who are self-employed by themselves that is who mostly came to the urban area from rural areas in search of work and are employed by the principal employer directly without any middleman/contractors

Whereas, in the latter [The Inter-State Migrant Workmen (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT] the act only recognises those migrant workers who are employed by any contractors and self-employed migrant workers are not covered under the aforementioned act.

**Benefits for inter-state migrant workers:** The Bill accommodates certain advantages for inter-state migrant workers which includes option to avail the benefits of the public distribution system either in the native state or the state of employment, availability of benefits available under the building and other construction cess fund in the state of employment and insurance and provident fund benefits available to other workers in the same establishment.

**Displacement allowance:** The 2019 Bill requires the contractors to pay a displacement allowance to inter-state migrant workers at the time of their recruitment, which was equivalent to 50% of the monthly wages. The 2020 Bill removes this provision.

**Database for inter-state migrant workers:** The Bill requires the central and state governments to maintain or record the details of inter-state migrant workers in a portal. An inter-state migrant worker can register himself on the portal on the basis of self-declaration and Aadhaar.

**Social Security Fund:** The Bill provides for the establishment of a Social Security Fund for the welfare of unorganised workers. The amount collected from certain penalties under the Code (including the amount collected through compounding) will be credited to the Fund. The government may prescribe other sources as well for transferring money to the Fund.

## **VI. CONCLUSION:**

Interstate migration forms a key source of income for the low-income household in India and despite its growing trend of nearly 4.5% annually between states migrants still face barriers in their survival in destination States. If one look at the recent incidents of these migrants due to lockdown, certainly proves that this act had proved to be inadequate to address the migrant labourers social and economic marginalisation.

Article 21 covers most of the aspect of the rights of the migrant workers but it failed to be effective during the lockdown [pandemic: COVID 19] and is also ineffective in the disputes with respect to the wages of the migrant workers as article 21 is a general right/law and not a specific one whereas THE INTER-STATE MIGRANT WORKMEN (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 1979 proved to be ineffective in certain situations as the law was created in the year 1979 and the problems faced by the migrant workers has been changed drastically by then as the aforementioned law doesn't talk about the health conditions of the migrant workers which are essential for them in order to carry out a task effectively and efficiently and usually the displacement allowance is not given to the workers in order to return to their home. Thus the current legislation has proved to be ineffective in these dynamic situations.

It is the informal labour force/migrant workers who assisted in building the infrastructure that supports the Indian economy. Without the migrant labour workforce, the Indian economy would come to a standstill. It is time that the migrant worker be treated with the respect and dignity they deserve and laws passed for their welfare levels be implemented letter and spirit.

### **Recommendations:**

Occupational Safety, Health and Working Conditions Code of 2019 [BILL] should be implemented as The Code seeks to regulate health and safety conditions of workers in establishments with 10 or more workers, and in all mines and docks.

It subsumes and replaces 13 labour laws relating to safety, health and working conditions. These laws include: Factories Act, 1948; Mines Act, 1952; Dock Workers Act, 1986; Contract Labour Act, 1970; and Inter-State Migrant Workers Act, 1979. The Code sets up occupational safety boards at the national and state level to advise the central and state governments on the standards, rules, and regulations to be framed under the Code as mentioned earlier in the paper



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