ISSN: 2582 - 2942

LEX FORTI

LEGAL JOURNAL

VOL- I ISSUE- VI

AUGUST 2020

ISSN: 2582 - 2942

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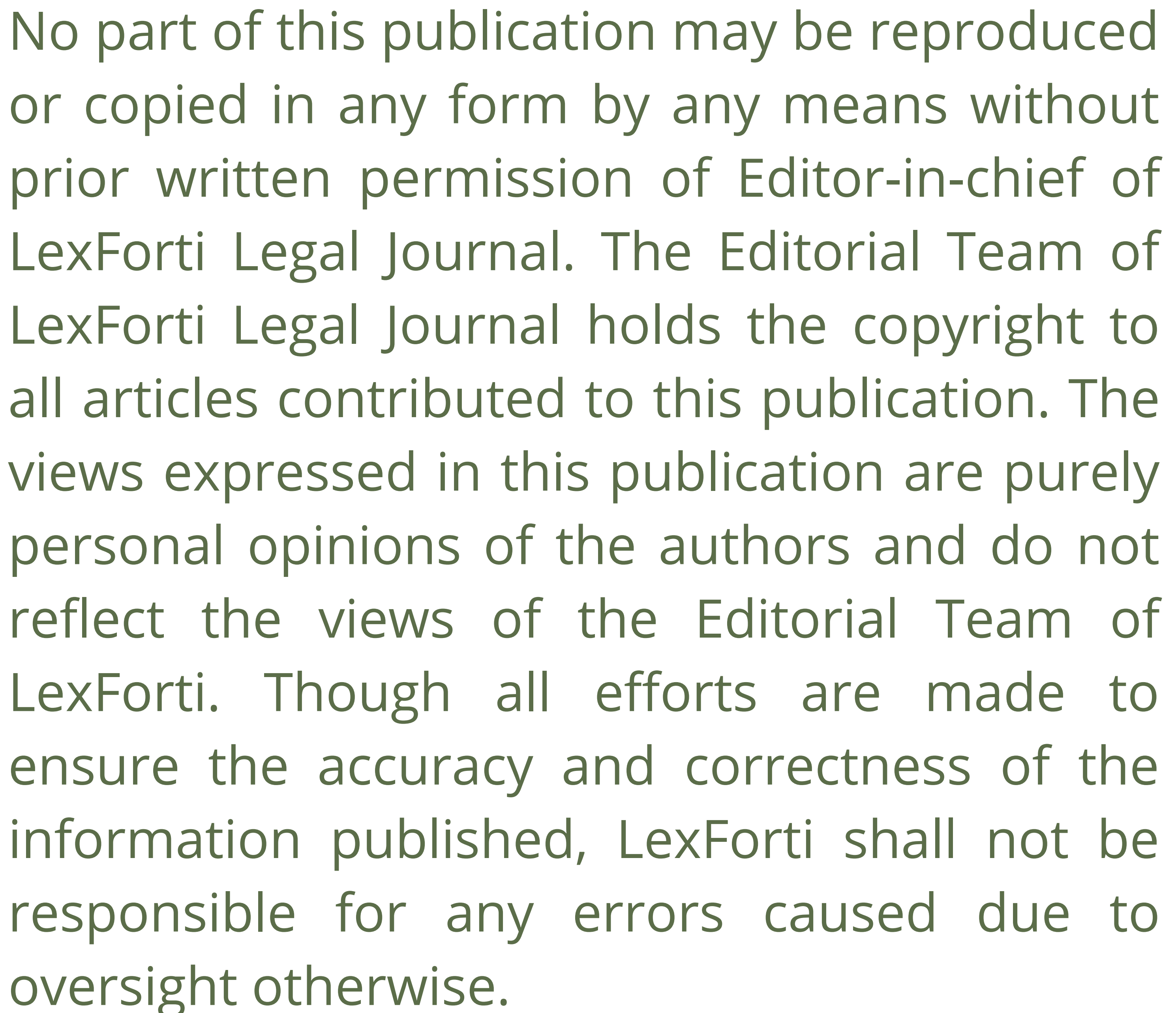

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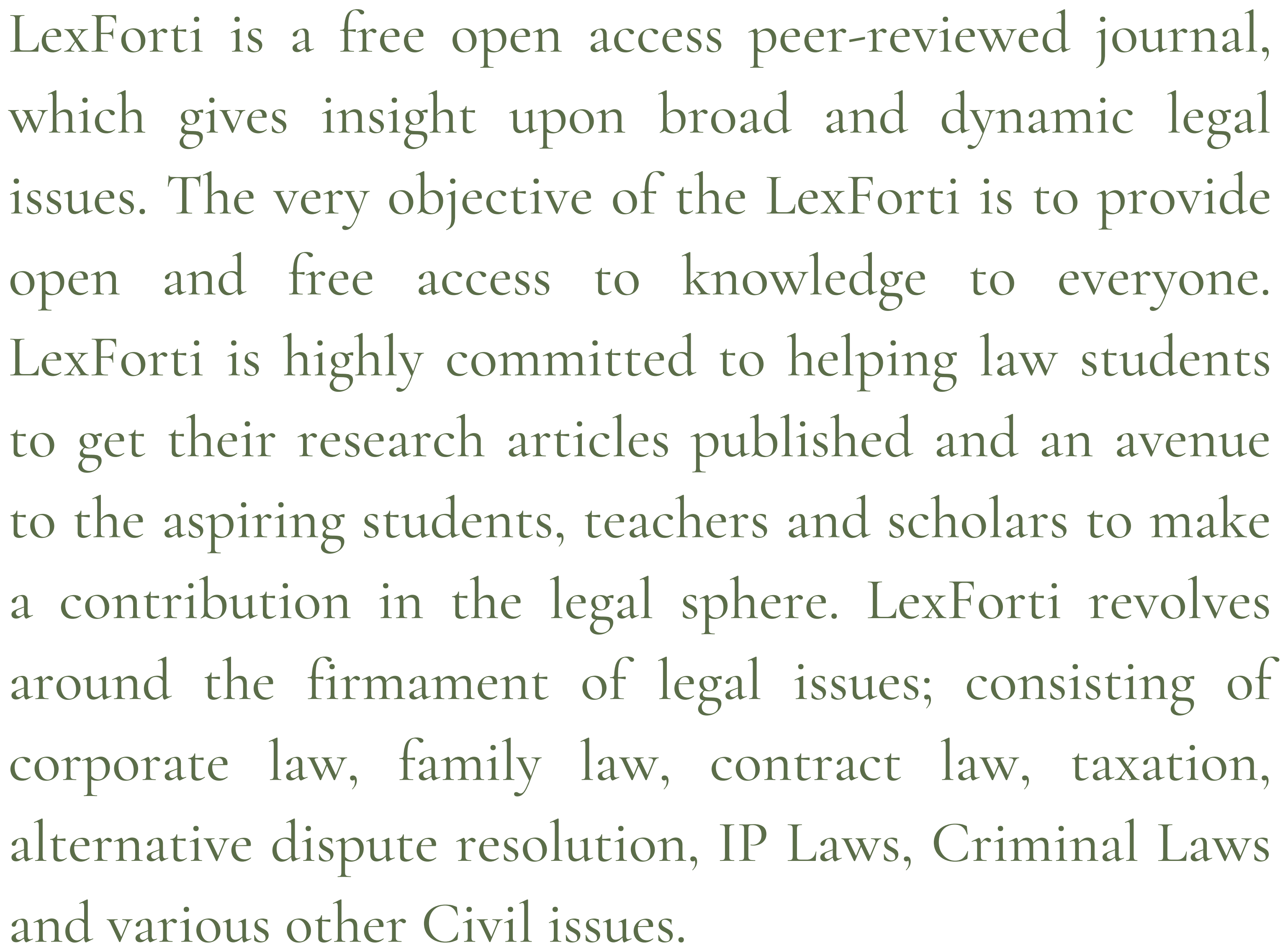

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Labour Law Reform in the Age of Covid-19 Pandemic

Samikshya Mohanty & Poulomi Barik

INTRODUCTION

Labour law in India is rigorous and limits mobility. It often has vague provisions, gives a maximum deal of discretionary power to the executive, and, therefore, is extremely debilitating. It falls under the concurrent list in the Constitution of India, 1950. Hence, both the Central and State governments can make laws relating to migrant workers. This has given the outcome in a plethora of Central and State laws without a well-thought-out and uniform policy with a minimum basic level of protection for migrant workers that are rigidly and uniformly enforced in India.

A "migrant worker" is defined in the International Labour Organization (ILO)[1] instruments as *"a person who migrates from one country to another (or who has migrated from one country to another) purporting to be employed other than on his account, and includes any person regularly admitted as a migrant for employment purpose."*

Coronavirus pandemic has triggered public health and global economic crises. As the economy stumbles with the lockdown and thousands of firms and employees stare at an unpredictable future, some of the state governments last week decided to make significant changes in the application of labor laws. With factories and workplaces shut down because of the lockdown imposed in the country, millions of migrant workers had to deal with the loss of income, shortages in food, and uncertainty about their future.

A balanced interplay between labor and capital pushes economic growth upward without the specter of social unrest that can potentially erase gains in productivity and purchasing power. Certainly, this has taken conceptual forms in democratic settings. One has been the industrial democratic approach in which the law enables and recognizes the role of worker collectives in managerial decision-making.

LEGAL FRAMEWORK: (LAWS RELATED TO LABORERS)

The following are some of the major central legislations that form the core of labor laws in India:

Industrial Disputes Act, 1947:

[1] International Labour Organization (ILO), specialized agency of the United Nations (UN) dedicated for the improvement of conditions and living standards of migrant labours throughout the world. It was established in the year 1919 by the Treaty of Versailles as an affiliated agency of the League of Nations, the ILO became the first affiliated specialized agency of the United Nations in 1946.

The aim of this Act is to make provision for the investigation and settlement purposes relating to industrial disputes, and certain other matters. Whereas it is expedient to make provision regarding the inquisition and settlement of industrial disputes, and certain other purposes hereinafter appearing. The first enactment of the abovementioned act deals with the settlement of industrial disputes were the Employers and Workmen's Disputes Act, 1860. It is relatable in the terms of services like, layoff, retrenchment, and closure of industrial enterprises and strikes and lockouts.

Factories Act, 1948:

The primary objectives of this act are to ensure safety measures on factory premises and promote the health and welfare of workers.

The Minimum Wages Act, 1948:

It sets the minimum wages that are essential and needed to be paid to skilled and unskilled laborers.

The Shops and Commercial Establishments Act, 1961:

Its primary objective is to regulate hours of work, payment, overtime, a weekly day off with pay, other holidays with pay, annual leave, employment of children and youngsters, and employment of women.

The Inter-State migrant workmen (regulation of employment and conditions of service) Act, 1979[2]:

It aims to protect security and safety to migrant workers at the time of crisis and regulate the employment of inter-State migrant workmen and to provide better conditions of service.

In India, the pronouncements of the 7-judge bench, of the Hon'ble Supreme Court bench in Krishna Kumar Singh v. The state of Bihar[3] holds important takeaways. Recognizing that the power to make ordinances has been abused for far too long by legislatures, the Court held that ordinances were subject to judicial challenge. At the minimal stage, the suspension of the Equal

[2] http://legislative.gov.in/actsofparliamentfromtheyear/inter-state-migrant-workmen-regulation-employment-and-conditions-service.
[3] AIR 1998 SC 2288, JT 1998 (4) SC 58, (1998) IIIMLJ 100 SC, 1998 (3) SCALE 482, (1998) 5 SCC 643, 1998 3 SCR 206.

Remuneration Act, the Minimum Wages Act, the Contract Labour Act, and the Minimum Wages Act raise fundamental rights challenges as was held in PUDR v. Union of India and in Bandhua Mukti Morcha v. Union of India.[4] These state ordinances should be made subject to judicial scrutiny and shall be liable to strike down based on constitutional grounds.

The Supreme Court vide order dated 31-3-2020[5] directed the Centre to ensure accessibility of necessities and medical facilities for the migrant workers because of nationwide lockdown. The order was based on a status report filed by the Solicitor General Tushar Mehta on behalf of the Central Government apprising the Court of actions taken till now. However, even after the Supreme Court's decision, still, few contractors were not paying wages to their workers who were ultimately left destitute with no option left to them but to leave for their hometown on foot.

CRITICISM FOR LABOR LEGISLATIONS

There are certain potential pitfalls in the move concerning the labor law amendment. Few come to mind as being more prominent than others, such as change regarding the Industrial Disputes Act, 1947[6], and the Industrial Relation Acts, 1960.[7] Cessation of the entire dispute-settlement mechanism will mean labor courts, tribunals, and works committee and conciliation officers to be rendered *ab initio*. This might lead to potential unrest and aggressive campaigning for even minor disagreements. Besides, the suspension of the Industrial Relations Act, 1960, is further damaging to the workers. The provisions made of this law ensured that unions were recognized and workers were protected from unfair dismissal and reduction in pay.

The Hon'ble Supreme Court has strained to expand the definition to give relief to a wider section of workers however the purpose has remained unchanged since Bangalore Water Supply case.[8] There have been two conflicting notions of Court in Chief Conservator of Forest v. Jagannath Maruti Kondhare[9] and State of Gujarat v. Pratamsingh Narshinh Parma.[10] A reference is made to the higher bench to finally settle the matter which is still pending. The welfare measures announced for

[4] (1997) 10 SCC 549
[5] Alakh Alok Srivastava v. Union of India, 2020 SCC OnLine SC 345
[6] The Industrial Disputes Act serves as an umbrella legislation which provides overlapping definitions and also provides the adjudicatory forums for dispute settlement between employer and employee. The IDA is limited in its scope, first for it is only applicable to organized sector and second, restricted interpretation of "industry" [(Section 2(j)].
[7] This Act provides mechanism to regulate industrial relations.
[8] Bangalore Water Supply and Sewerage Board v. A Rajappa, (1978) 2 SCC 21.
[9] (1996) 2 SCC 293.
[10] (2001) 9 SCC 713.

workers as part of COVID-19, therefore, are inadequate. The piecemeal approach to the labor welfare falls flat to address the protection needs and requirement for vast sections of the labor force adversely affected by the COVID-19 lockdown. In the present scenario, a migrant worker is facing troubles that deal with their sustainability issues as the migrant workers returned to their respective homes and in the end, they are left with unemployment. As they need to maintain their family and themselves, their misery increases with the period. For that government, concern has also increased. In the light of COVID-19, the right to livelihood and social security has been recognized as a fundamental right in Indian constitutional law,[11] more substantive and universalized social security measures, amalgamated through a participatory process, are the need of the hour.

Suspension of provisions further makes laborers vulnerable to exploitation. The scrapping of most labor laws renders the workers victims to lower wages and no rights. Moreover, extending working hours will only ensure that companies employ lesser numbers of workers and take responsibility only for them. Fewer workers will work for a longer period of hours and employment will take a hit. With firms doling out pay cuts and job cuts, the question remains as to who will hire more employees now. A recent statement made by the Finance Minister says that the Government is now working on a national floor wage to do away with different minimum wage rates across states in the country. On the other hand, this may pose problems for the employers as well. If we look at the Industrial Disputes Act, Employment Standing Orders Act, and the Indian Trade Union Act concerning employers' rights, few points emerge.

For instance, strikes cannot be declared illegal anymore as the law dealing with them – where conciliation is called by the labor department and the strike becomes illegal— has been done away with. As an outcome, 'no work, no pay' cannot be enforced anymore. The code of conduct as per the approved standing orders will not exist. Hence, no employee can be held accountable for any misconduct and no disciplinary action is possible. Punishments will only be arbitrary and not backed by any legal protection or authority. Trade unions will not have any legal sanctity and any agreements signed on behalf of the employees will no longer be binding. Labour departments will become defunct and labor officers will not have any authority anymore.

[11] Calcutta Electricity Supply Corporation (India) Ltd. v. Subhash Chandra Bose AIR 1992 SC 573; Regional Director, ESIC v Francis D'Costa AIR 1995 SC 1811.

RELIEF UNDER GOVERNMENT SCHEME

The Central Government has also announced that it would pay the provident fund contribution (twenty-four percent of their wages) under the Employees' Provident Funds & Misc. Provisions Act, 1952 for three months for establishments having one hundred or fewer employees and in which at least ninety percent the employees draw monthly wages less than Rs.15000[12]. The Employees' Provident Fund Organization (EPFO), the body administering the Employees' Provident Fund (EPF) Scheme, has further clarified that this benefit would be available only for employees for whom contributions have been received for any period during the last six months.[13] The Central Government has also allowed non-refundable withdrawal of an amount up to a maximum of three months' wages or three-fourth of the standing amount in an employee's Provident Fund Account, whichever is less.[14] The EPFO has declared that it has already processed about 1.37 lakh claims disbursing an amount of Rs. 279.65 crores under this facility.[15] The other major category of relief announced is individual insurance and compensation announced for health workers and frontline workers engaged in essential services. The Central Government has announced an 'accident insurance cover of Rs 50 lakh per health worker.'[16]

The role of the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), 2005 acts as a lifeline for the working poor in rural India. It has been proved once again with the experience of the lockdown. The Central government has released ₹38,000 crores for MGNREGA work, of which 70% have already been utilized. With the return of migrant workers to their home States and with substantial numbers having completed the quarantine period, the demand for work is going to increase. The remaining ₹8,000 crore fund is available to the States i.e, insufficient. It is therefore essential for the Central government to release the second tranche without delay. The potential for MGNREGA to provide relief to the suffering of rural India should be utilized to its fullest capacity. This will also require the removal of the restriction of only one person per household to make every individual eligible.

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[12] Ministry of Labour and Employment, 'EPFO puts in place Online Mechanism to credit EPF and EPS Accounts of Subscribers as per PM Gareeb Kalyan Yojna' 11 April 2020.

[13] 0 EPFO, 'A Scheme to implement the PMGKY package for credit of employee's & employer's share of EPF & EPS contributions (24% of wages) for three months by Govt. of India'.

[14] 21 Notification GSR 225(E), 27 March, 2020.

[15] EPFO, 'EPFO settles 1.37 lakh COVID-19 claims in less than 10 days' 9 April 2020.

[16] Ministry of Finance, 'Finance Minister announces Rs 1.70 Lakh Crore relief package under Pradhan Mantri Garib Kalyan Yojana for the poor prople to help them to fight the battle against CoronaVirus.

RECOMMENDATIONS

The current labor laws are tangled and outdated as they, as they neither serve interest for the employers nor the workers. At the initial time of this century, the Second National Commission of Labour made a whole set of sensible recommendations for such an overhaul, but they rest largely unimplemented. Abolishing the firm size limit on labor retrenchment altogether, provided there is a provision for adequate unemployment benefits, both for regular and contract workers, and there is something like a state-provided universal basic income supplement as a fall-back option for everybody. For far too long businesses in India, with some notable exceptions, it has been considered that laborers are a necessary part for production purpose as they deal with the troublesome cog in the production machine, and the focus is to squeeze the maximum out of it with minimum pay and benefits while brandishing the threat of job insecurity.

Organized labor, often under politicized partisan leadership from outside, has played that adversarial game. It is in the long-term interests of both sides to see at the ground level that labor-friendly practices can enhance long-term productivity and profitability. If co-operation can replace mutual suspicion and labor representatives can be trusted to participate in corporate governance—as is the practice, say, in Germany and a few other European countries—labor organizations can play a responsible role in achieving mutually beneficial goals. Taking the cover of the pandemic situation to unilaterally whittle down labor protections i.e., is going oppositely, to distrust, and labor unrest. Also, the Government should take certain majors so like in this kind of situation can be tackled with ease. Even the central, as well as the state government, should work together for utilizing and implementing the number of schemes so that the migrant workers did not face any difficulty in the future.

THE WAY FORWARD

The utter disregard for the worth of human life could not be starker than in using the COVID-19 crisis as the foreground for the whittling down of labor rights. The proposed moves are the most short-sighted manifestation of the hasty assumptions that continued to undergird the case for the neoliberal reform of India's labor law framework. That is not to say that reforms need not be undertaken; despite the complex web of laws that comprise the regulation of labor in India, nearly 90 percent of its workforce has not been able to secure any of the rights that should accrue to it.

However, what is needed is a scalpel, not a sledgehammer. The period of introspection that labor law has gone through needs to be tapped into, to create a framework that is inclusive and more cognizant of the divides amongst labor that labor law can exacerbate.

The socio-legal study of Inter-State Migrant Workmen Legislation reveals that though the industrialization has contributed towards the progressive movement of the society, yet it has its inbuilt problems. This law has been enacted as a war against poverty-ridden migrant workmen when they leave their home-state and go to the migrant state in search of some job which may bring lucrative wages. Besides wages, the law also provides certain safeguards to the migrant workmen, namely, the security of a job, non-exploitation at the hand of the employers/contractors, conducive working conditions, etc, at the hands of the employers/contractors, conducive working conditions.