New Labour Codes of India Professor K D Raju Rajiv Gandhi School of Intellectual Property Law Indian Institute of Technology Kharagpur Lecture 55 Inter-State Migrant Workers

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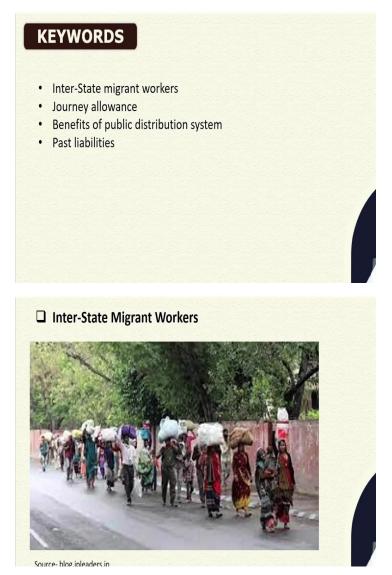


Dear students, in the last class this week we are going to discuss about migrant workers. So, who is a migrant worker? So, we have an old Act, as well as new provisions in the code as well.

So, the plight of migrant workers, which we have not discussed by society at large, the plight of migrant workers came to the limelight in 2020 during the COVID-19 pandemic time. The migrant workers were forced to walk from many states to their living places. So, we saw the cases of these migrant workers walking from Delhi to their native places in Bihar and in UP and other states, and southern states, some of them made arrangements for trains to go back to their respective native places.

And some of the states have failed to arrange transport arrangements to go back to their native places during the lockdown. So, seeing this pathetic situation, children, women and aged people are walking through the particular roads, the Supreme Court has suo moto taken a particular case and considered. The plight of interstate migrant workers is very serious.

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So, today, in this class we are going to discuss about who is migrant workers and what the different benefits allowed under the provision's old provisions and new provisions and whether these migrant workers the poor workers are getting any one of them and what are the different ways and means to help them under the new provisions of the code? So, these are some of the common visuals during the pandemic time. So, the people walking through the road, and the migrant workers are walking to their native places.

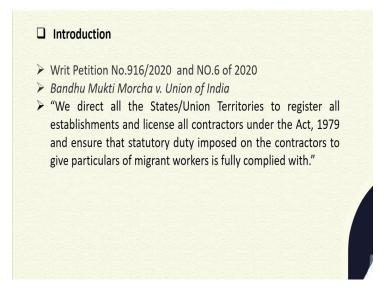
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□ Introduction

- The migrant workers are known as those workers who move from one state to another in need of employment and they are not permanent residents at the place they work.
- There are various laws or regulations rules which regulate the functioning of migrant workers.
- The provisions of various Labour Legislations are not observed in their cases and they are subjected to various malpractices

So, this migrant worker, we know that migrant workers are now considered known as some workers who are moving from one state to another state, who is seeking employment in another state other than their permanent residents. So, there are various laws with regard to the regulation of these migrant workers. The exploitation of migrant workers is happening due to various reasons.

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So, I was talking about the Supreme Court, the Supreme Court saw the pathetic situation of the migrant workers and express the shock of these particular people, those who are walking from Delhi to other states. So, a writ petition is suo moto writ petition number 6 of 2020 initiated by the Supreme Court.

And another case writ petition number 916 of 2020, Bandhu Mukti Morcha versus Union of India. The Supreme Court has considered these two cases and issued directions to the state and central governments. And one of the directions was to the High court which direct all the state union territories to register all establishments and licence all contractors under the Act of 1979 which we talked about in the last class and ensure that statutory duty imposed on the contractors to give particulars of migrant workers is fully complied with.

The main problem Supreme Court found, in this case, was that there is no central data available about the information of migrant workers where they belong, their identities and also their actual place of work. And they are working under which contractor or they are directly employed by the principal employees. No data is available.

So, Supreme Court directed the registration of all migrant workers in the country. So, in case of emergency, so, the states can arrange immediate arrangements for travel and other benefits. For example, the arrangement of ration Supreme Court noticed that there is no provision for providing food to these particular kinds of people, migrant workers because their ration cards are in some other place.

So, if somebody is a migrant worker from Orissa or a migrant worker from Bihar is going to Kerala and they are not going to get a ration in Kerala. So, with the new provisions, the central government come out with one state one ration card, but still, it met with so many roadblocks. So, there is close cooperation between the Centre and different states are required to implement these provisions.

Even the Supreme Court invoked the Food Security Act, the relevant provision of the Food Security Act and asked the state governments and the central government to open community kitchens to feed these particular migrant workers category of people in various parts of India.

So, in these particular cases, the Supreme court order is an eye-opener to the whole world and also to the Central Government. So, necessary provisions were included in the new code complying with the order of the Supreme Court. So, we will see what are those provisions. (Refer Slide Time: 6:58)

□ Migration

- Migration is a social, economic, and universal phenomenon in modern times, through which human beings move from one place to another place in pursuit of certain cherished objectives like avenues of better employment, better wages, better working and living conditions, the better quality of life and better livelihood.
- Such movement is a normal and natural process.

So, migration happened from time immemorial period whether it is east to west or west to east or from within the country or outside the country due to many reasons. The main reasons which can be pointed out are employment, better wages, better working conditions, better living conditions, a better quality of life, and better livelihood.

So, people migrate from one country to another country and Indians migrate all over the world. So, Bangladeshi may migrate to India. So, all there is migration from Nepal to India because they find better living conditions in India. So, this movement you cannot stop is a normal and natural process.

So, migration cannot be considered as a social problem. So, migration is universal in nature. So, people migrate from one country to another countries for many reasons. So, you cannot stop migration from one country to another country or within a country.

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Interstate Migrant Workmen (Regulation of Employment And Conditions of Service) Act, 1979

- This law is applicable to all the establishments employing five or more migrant workmen from other states.
- In addition to this, this law is also applicable to contractors who have employed five or more inter-State workmen.
- The establishment must be registered with the local authority while employing migrant workers.
- This means that an establishment is prohibited from employing migrant workers from other states if they do not have a certificate from the

But, the Interstate Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 is only applicable to interstate migrants, it is not applicable to intrastate migrants. So, from one part of the state to another part of the state they are not eligible for any of the provisions under this Act. There are intrastate migrants, but they are not going to get any benefits. So, you can see that in the old Act 5 or more migrant workers working from other states, this particular central Act is applicable.

So, the law is applicable to contractors who have employed 5 or more interstate workmen, this number has been increased in the new Act. So, it says that the establishment must be registered with the local authority by employing migrant workers. We have serious doubts that how many employees are registered with authorities for those who are using migrant workers. For example, the state of Kerala is employing more than 20 lakh migrant workers. So, you can find each and every place they work. There are migrant workers. So, the migrant workers he is supposed to be get registered with the consent of state governments.

But the provisions in most of the states are missing for registering with the authorities of these particular migrant workers and some of the states like Kerala provide more benefits to the migrant workers and equality or equal pay for equal work. The Minimum Wages Act is applicable to migrant workers aspect, but some states they are failed to implement it.

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Interstate Migrant Workmen (Regulation of Employment And Conditions of Service) Act, 1979	
Registration of establishments.	
Licensing of contractors.	
Duties of Contractor:	
Issue of passbooks	
Displacement allowances	
Journey allowances	
The Orissa Dadan Labour (Control and Regulation) Act, 1975 (Orissa Act 42 of 1975)	

So, we are going to see here under this old Act also the registration of establishments for using migrant workers is mandatory. And a form is given and the details of the firms are given, enterprises are given and everybody to get a registration certificate. And the contract, the contractors using manpower, there must be licensing there is a provision for licensing of contractors.

So, the Supreme Court said in the case that all the provisions of this particular prohibition of contracting the contract labours must be complied with. The duty of the contractor is to provide travelling allowances from one state to the other state once a year free of cost. And much before this particular Act, we can see that Orissa has come out with an Act in 1975.

The Orissa Dadan labour control and Regulation Act of 1975. Only the Central Act came in 1979. So, some of the state governments enacted legislation to control and regulate this industry of migrant workers. So, it is the duty of every state to see that the interstate migrant workers also get some kind of benefits and they should not be discriminated against.

So, especially, you can see that under the 1979 Act, every registered migrant worker should be issued a passbook with a photograph and they should be given displacement allowances and should be provided with journey allowances every year. It must be provided by the registered establishments.

But the question is we saw that the situation of the migrant workers is very tragic and none of these provisions is implemented properly. So, that is why the migrant workers had to walk

even thousands of kilometres from one side of India to the other side of India. So, these are the main provisions of the old Act.

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Interstate Migrant Workmen (Regulation of Employment And Conditions of Service) Act, 1979

- > (a) to ensure regular payment of wages to such workmen;
- > (b) to ensure equal pay for equal work irrespective of sex;
- (c) to ensure suitable conditions of work to such workmen having regard to the fact that they are required to work in a State different from their own State;
- (d) to provide and maintain suitable residential accommodation to such workmen during the period of their employment;
- (e) to provide the prescribed medical facilities to the workmen, free of charge;
- (f) to provide such protective clothing to the workmen as may be prescribed; and

We can see that regular payment is the duty of the employer to see ensure regular payment of wages to such workmen and most importantly, ensure equal pay for equal work irrespective of sex, gender, and equality. Equal pay for equal work with the host states' employees and interstate workmen and suitable conditions of work to such workmen that they are walked to they are forced to work in another state. They are forced to live their work play their state and they are forced to live in another state.

So, it is the duty of suitable working conditions to be provided to these workmen and to provide proper residential accommodation should be provided. And we can see that wherever we travel in India, they can see that the tin sheeted sheds are provided to the migrant workers. But the provision says that suitable residential accommodation during the period of their employment and providing medical facilities to the workmen free of charge prescribed medical facilities free of charge to be provided to migrant workers.

Protective clothing for the workmen should be provided by the employer at the time of work protective clothing. So, the Interstate Migrant Workman (Regulation of Employment and Conditions of Service Act) 1979 provides cast a duty upon the employer to provide these benefits. It is the duty of every employer to follow these directions.

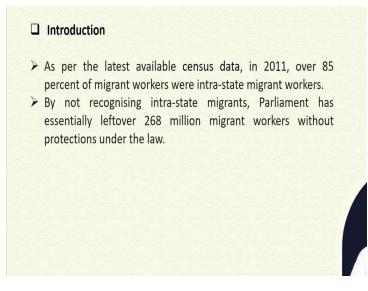
□ Introduction

- Migrant workers are among the most vulnerable populations in India, whose horrific plight during the first lockdown became public knowledge and a source of grave concern.
- applicable to every establishment with five (5) or more interstate migrants, this threshold has now been doubled to ten (10) workers.
- The Sixth Economic Census for the year 2013 2014 suggests that 70% of establishments in India employ less than 6 workers. This provision essentially bars millions of migrant workers who work in smaller establishments from the benefits of the code. These two provisions almost seem to negate each other in terms of benefits to the migrant workers.

So, when we look into this new amendment also, we can find that these are a group of people that this population is a vulnerable population in India. So, we already said that during the lockdown time there it came to the limelight of even the Supreme Court of India. So, now, every establishment using 5 has been interstate migrant workers has been doubled to 10 workers. So, 5 workers to 10 workers. So, most critic says that this is going to severely affect the migrant workers because the 2013-14 survey economic survey suggests that 70 percent of the establishments are using less than 6 workers in India.

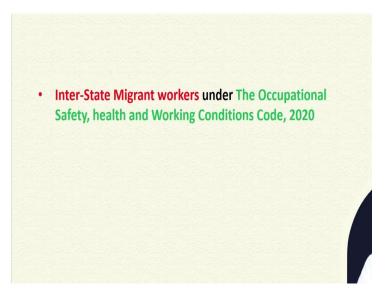
So, it means millions of migrant workers will be out of the purview of the new code. So, they have made it 10. So, again it is applicable to like contract labour, it is applicable to only more than 10 migrant workers who are using establishments or enterprises and most of 70 percent of the establishments are using less than 6. So, the people who are working below this particular number are going to be out of these Indian provisions of this particular new code as well.

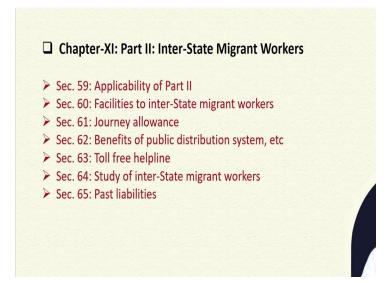
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So, 85 percent of the migrant workers are intra-state workers. So, intra-state workers are absolutely outside the purview of the new code as well. So, that means, if intra-state migrant workers are to the tune of around 268 million migrant workers. They are outside the purview of the new code as well. Because that is applicable to interstate migrant workers.

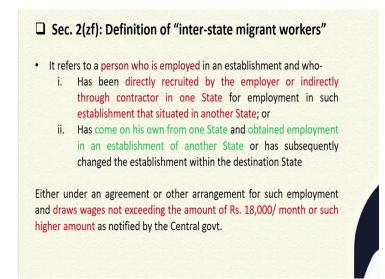
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We will see the provisions with regard to interstate migrant workers under the Occupational Safety Health and Working Conditions Code 2020. What are the provisions? The provisions applicable to chapter XI Part II of the code are applicable to interstate migrant workers. So, what are the facilities to be given to migrant workers? Allowances like Journey allowance, public distribution system, and toll-free helpline number then conducts study on Interstate migrant workers and what will happen to the past liabilities. Sections 59 to 65, we will go through these particular provisions.

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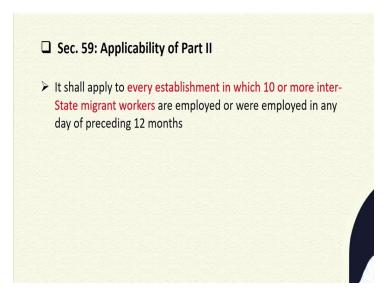
So, the new code has defined inter-state migrant workers, an elaborate definition has been given, it refers to a person who is employed in an establishment and who has been directly recruited by the employer or indirectly through the contractor. So, it does not matter whether

he is directly employed or is hired through a contractor in one state for employment in a such establishment situated in another state. So, the worker belongs to another state.

So, he may come on his own from one state and get obtained employment in another establishment of another state or he is changed from one establishment of that state to another establishment in the destination state.

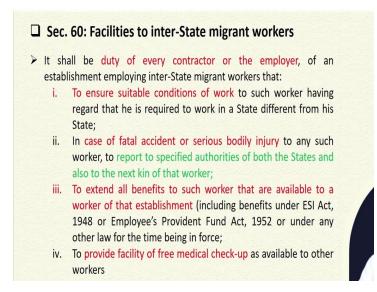
So, he came under an agreement or arrangement and draws wages not exceeding an amount of 18,000 rupees per month or higher amounts as notified by the Central Government. So, the Central Government is going to notify very soon the uniform wages for all over India. So, this 18,000 is the present ceiling of applicability of inter-state migrant workers provisions. So, once the floor wage is going to be declared by the Central government, this amount may be increased.

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As we already said that it is applicable to more than 10 employees working in enterprises, more than 10 migrant workers interstate migrant workers are employed in a period of one year. So, earlier it was 5 and the number has been increased to 10. So, the critic says that a chunk of the inter-state migrant workers will be out of the purview of the benefits of this particular Act.

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The facilities, what are the facilities to be given? So, it is the duty of every contractor or even the employer in an establishment to provide ensure suitable conditions of work in the case of fatal accidents or serious bodily injury, and report the matter to the authorities of both states and also the next kin of the worker.

And to extend all benefits to such workers that are available to a workman of that establishment, regular workers of that particular establishment belong to that state including ESI Act of 1948, and the Employees Provident Fund Act of 1952. That means, these two sections are now merged into or repealed through the Social Security Code.

So, the Social Security Code is also applicable to migrant workers and facilities for free medical checkup available to other workers should be provided to the migrant workers as well.

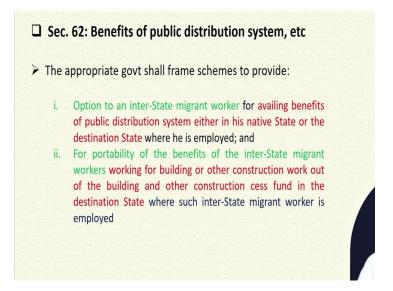
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□ Sec. 61: Journey Allowance

The employer shall pay to every inter-State migrant worker employed in his employment in a year a lump sum amount of fare for to and for journey to his native place from the place of his employment, in the manner taking into account the minimum service for entitlement, periodicity and class of travel and such other matters as prescribed by the appropriate govt

And most importantly, the employer shall pay every interstate migrant worker a lump sum amount of fare for the journey to his native place from the place of his employment. So, this class of journey is not mentioned, but the appropriate government can mention about the class. So, interstate migrant workers' journey allowance is mandatory under Section 61 of the new code. So, every employer to provide a journey allowance every year.

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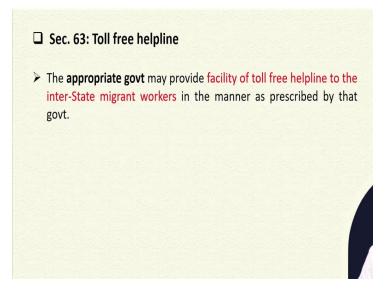
And most importantly, the public distribution system the facilities of ration and the central government to come out with schemes for the interstate migrant workers for availing benefits of the public distribution system, whether in their native place or in the state of destination, where he is employed.

So, the portability of one state to another state's public distribution system - the ration card. So, it is saying that interstate migrant workers work for buildings or other construction work out of the building and other construction cess funds in the destination state. So, one is the ration card and the other is other benefits like building cess fund. So, building construction workers, construction workers have they have their cess fund which is collected and the benefit will go to only the workers of that particular state.

So, there is no provision for migration of their benefits to another state. So, now, the provision for migration of public distribution system ration card one nation one ration card and also migration of this particular benefits also should be taken. So, that is why I said this requires very close cooperation between the central government and the different state governments. Close cooperation is required otherwise, these provisions will be very difficult to implement.

And these provisions came out in response to the Supreme Court judgments. Supreme Court very clearly pointed out that these are required for the migrant workers for their survival it is very important.

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And the central government we want also the state governments to provide the facility of tollfree helpline numbers to interstate migrant workers. Because it is the Act, the new code provides for mandatory registration. So, we have in earlier classes in beginning classes, we talked about E-shram portal for the registration of migrant workers. So, the registration of migrant workers is very important. So, in order to register so, the central government says that anybody who has a document like Aadhaar can register as an interstate migrant worker from another state. And the question is whether every migrant interstate migrant workers have Aadhaar card. And also, they must have a smartphone then only they can end up with this particular data, or the question is whether the state governments are going to facilitate the registration.

So, the Central government says that this toll-free number is going to provide sufficient information to the uneducated migrant workers. So, you cannot expect every migrant worker have a smartphone and Aadhaar card then what else the documents the government is going to accept is also a question of fact. It is also a question of fact and law.

But the Supreme Court also has mentioned in the case about the urgency of registration of migrant workers, and some of the states have already, registered more than 5 lakh workers like the state of Orissa and some of the states are on the verge of completing and some have not have started. So, even though the technologies are available, and information technology is on developing some of the states are not able to register the migrant workers in time.

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Sec. 64: Study of inter-State migrant workers
The appropriate govt may provide for study of inter-State migrant workers in a manner as prescribed by that govt.

And the most important aspect is the appropriate study of interstate of migrant workers and their children. The study of children is going to be a big problem. So, the study of inter-state migrant workers is provided in the code, but the modalities are not known. How the state government or a state in the south is going to provide facilities for studying Oria or any other local language how they are going to do it, nobody knows. So, the appropriate study of

interstate migrant workers and their children. So, government to prescribe how they are going to do it.

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Sec. 65: Past Liabilities

- No suit regarding recovery of debt or any part thereof relating to an inter-State migrant worker, shall lie in any Court or before any authority, after the completion of his employment where it remains unsettled obligation to the contractor or the principal employer.
- Such debt shall, on the completion of the period of employment of such worker, be deemed to have been extinguished

Then the most important provision is with regard to past liabilities. And also, we can see that child labour is connected with migrant labour. Bonded labour system is connected with migrant labour. And section 65 of the code says that no suit regarding recovery of debt or any part thereof relating to an interstate migrant worker shall lie in any court or before any authority after the completion of his employment, where it remains an unsettled obligation to the contractor or principal employer. So, probably this provision can be seen from the Supreme Court order and also with an objective to end the bonded labour system.

So, if any migrant worker is leaving the contractor or the principal employer, no suit can be filed against him in case of any debt recovery of any debt. So, his period of employment is over the worker shall have been or the worker's debts have been extinguished. So, no debt shall be recovered from a migrant worker.

So, this has a positive effect as well as a negative effect but more of a positive effect. So, he will be out of the bonds of a bonded labour system. So, at the same time, the employees cannot claim any money or they cannot recover any debt from the magazine workers so, the employees will be refused to advance any money to the migrant labours at any point of time.

So, that is why I said there is a positive aspect as well as a negative effect. But this objective is very clear that the migrant worker should be deemed to have extinguished all his debt as

far as the employer is concerned. So, past liabilities are no liability as far as an interstate migrant worker is concerned.

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So, the ILO has come out with some conventions with regard to interstate migrant workers. So, ILO is working for a long period of time for the welfare of workers all over the world. And they come out with conventions specifically relating to migration. Convention number 97 Migration for Employment Convention 1949, Convention number 86 Migration for Employment Recommendation of 1949.

So, this is also revised and Migration Workers (Supplementary Provisions) Convention 1975, convention number 151 Migrant Workers Recommendation 1975. So, you can see that these four conventions are related to the interstate migrant workers

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So, we can see that so, 1949 it is adopted, but only 53 countries ratified and India is one country is not ratified I do not think for next 50 years India is going to ratify this convention because in India migration is rampant in India from one state to another state.

So, the union government does not want to unnecessary burden on the states and the state also does not want to take the burden of these migrant workers. So, this Convention Migration for Employment 1949 provides basic facilities for migrant workers or prescribes basic facilities. (Refer Slide Time: 32:17)

> Article 1:

- Each Member of the ILO undertakes to make available on request to the International Labour Office and to each Member:
 - a) Provides information on national policies, law and regulations relating to emigration and immigration.
 - Ensure information on special provisions concerning migration for employment and the conditions of work and livelihood of migrants for employment.
 - c) information concerning general agreement and special arrangements on these questions concluded by the Member.

And also, the ILO very clearly says that each member of the ILO undertakes to make available on request to the International Labour Organization each member information on national policies, laws and regulations relating to emigration and immigration.

Information on special provisions concerning migration for employment and the conditions of work and livelihood of migrants for employment. Information concerning the general agreement on special arrangements on the questions controlled by the members. So, if India is going to ratify this convention India has to give ILO all national policies laws and regulations relating to emigration and immigration both to the ILO.

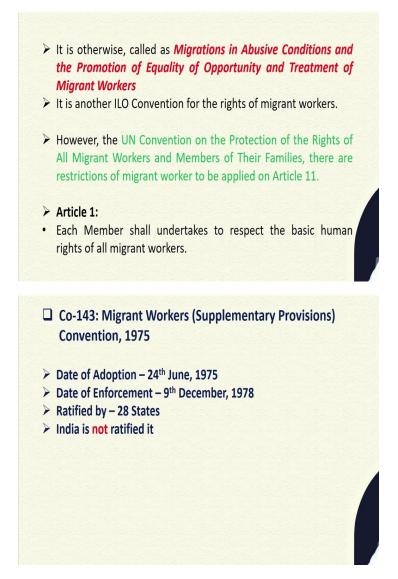
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□ Co-143: Migrant Workers (Supplementary Provisions) Convention, 1975

- Date of Adoption 24th June, 1975
- Date of Enforcement 9th December, 1978
- Ratified by 28 States
- India is not ratified it

So, the second convention is only ratified by 28 countries. Again, the Migrant Workers (Supplementary Provisions) Convention 1975 India is not ratified. So, this is only 28 states have ratified it. So, we know that none of the countries want to take more burden with regard to migrant workers.

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So, we can say that in some of the other conventions, migration is an abusive condition and the promotion of equality of opportunity and treatment of migrant workers are considered to be very important by ILO. So, the rights of migrant workers have to be protected.

So, we can see that the UN Convention on the Protection of Rights of All Migrant Workers and Members of Their Families there are restrictions can be put on it. It says that each member shall undertake to respect the basic human rights of all migrant workers. So, basic human rights should be applicable irrespective of whether you are a migrant worker or nonmigrant worker.

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> Article 11:

- For this Convention the term "migrant worker" refers to a person who migrates or who has migrated from one country to another, to being employed otherwise than on his own account and includes any person regularly admitted as a migrant worker.
- It does not apply to:
 - i. frontier workers;
 - ii. artistes and members of liberal profession;
 - iii. Seamen;
 - iv. persons coming specially for purpose of education

And also, we can see the other provisions which say migrant worker refers to a person who migrates or who has migrated from one country to another country to be employed otherwise than on his own account and includes any person regularly admitted as a migrant worker.

But the frontier worker is not included, artists and members of the liberal profession are not included, seamen are not included. And persons coming in specifically for purposes of education are not considered to be a migrant workers. So, students are excluded from the definition of the migrant worker and artists and members of labour professionals are also not migrant workers. So, they are excluded as migrant workers.

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So, we can see that interstate migrant worker. Now India, one of the very important populations in other states staying in other states, they are contributing to the economy of many states. So, whether it is Kerala or it is Tamil Nadu or Andhra, these migrant workers are huge in number. At the same time, they are contributing to the economy of those states.

So, all over the migrant workers in the country, the government is trying to get the data through the centralized data system in accordance with the Supreme Court order. So, the plight of migrant workers is again not going to be repeated like in the last COVID-19 pandemic time and I the consequences of the lockdown. And more importantly, the interstate migrant workers have to be provided with the basic amenities and facilities.

So, one is working conditions and then equal pay for equal work irrespective of gender inequalities. So, both genders should be paid equally and most importantly in accordance with the receiving State's minimum wages policies.

And thirdly, travelling allowances to the family should be made applicable to the entire family not only to the workmen once a year. Travelling allowances for the workmen and their families were made mandatory. One India one ration I think it will take more time for implementation and there must be sufficient rules should be made for this public distribution system available to the migrant workers as soon as possible.

So, the non-debt recovery provision will help to end to some extent child labour and also to end the bonded labour system in the country. So, New Labour Code on Occupational Safety Health and Working Conditions Code 2020 is comprehensively covering interstate, it only deals with interstate migrant workers, not interstate migrant workers or intra-state migrant workers.

So, the intra-state migrant workers are also to be included in the purview of this particular code. So, that is going to cover millions of workers. So, these provisions are going to help and also very much beneficial provisions to the class of migrant workers. Thank you.