

CONCLUSION AND SUGGESTIONS

Tourism has been a major social phenomenon of the societies all along. It is motivated by the natural urge of every human being for new experience, adventure, education and entertainment. The motivations for tourism also include social, religious and business interests. The spread of education has fostered a desire to know more about different parts of the globe. The basic human thirst for new experience and knowledge has become stronger, as communication barriers are getting overcome by technological advances. Progress in transport systems and development of tourist facilities has encouraged people to venture out to the foreign lands.¹

World over tourism is recognized as an important instrument for economic development and employment generation, particularly in remote and backward areas. It is known as the largest service industry globally in terms of gross revenue as well as foreign exchange earnings. Tourism can play an important and effective role in achieving the growth with equity objectives which we have set for ourselves in our Country.

In India tourism is the economic sector that has the potential to grow at a high rate and is capable of ensuring consequential development of the infrastructure of the destinations. It has the capacity to capitalize on the

¹ Chapter I, Report of the working group on tourism, 11th Five Years Plan (2007-2012), Ministry of Tourism, Government of India

country's success in the services sector and provide sustainable models of growth.

Tourism, when it develops has a potential to encourage other economic sectors to develop through its backward and forward linkages and cross-sectoral synergies with sectors like agriculture, horticulture, poultry, handicrafts, transport, construction, etc. Expenditure on tourism induces a chain of transactions requiring supply of goods and services from these related sectors. The consumption demand, emanating from tourist expenditure, also induces more employment and generates a multiplier effect on the economy. As a result, additional income and employment opportunities are generated through such linkages. Thus, the expansion of the tourism sector can lead to large scale employment generation and poverty alleviation. The economic benefits that flow into the economy through growth of tourism in shape of increased national and State revenues, business receipts, employment, wages and salary income, buoyancy in Central, State and local tax receipts can contribute towards overall socio-economic improvement and accelerated growth in the economy.²

Although the public sector has a significant role to play in infrastructure areas, tourism is overwhelmingly an industry of Private sector service Providers. It is a multi-sectoral activity characterized by multiple inputs given through a range of suppliers. The concept of tourism is quite similar to manufacturing industry, where the supply chain is as important as the end

² Ibid

product. The tourism related sectors include airlines, Surface transport, hotels, basic infrastructure and facilitation systems, etc. Thus, the growth of tourism cannot be ensured unless paving the ways of growth of these related sectors.

Another important feature of the tourism industry, which is of particular significance to India, is its contribution to national integration and preservation of natural as well as cultural environments and enrichment of the social and cultural lives of people. Over 382 million domestic tourists visiting different parts of the country every year return with a better understanding of the people living in different regions of the country. They have a better appreciation of the cultural diversity of India. Tourism also encourages preservation of monuments and heritage properties and helps the survival of arts forms, crafts and culture.³

Tourism has also become an instrument for sustainable human development. Being an employment generating and income insuring sector it has become an instrument of poverty elimination. The newer concepts in tourism like eco-tourism etc. have helped in environmental regeneration. Tourism has also become a potent instrument of job creation and advancement of women and other disadvantaged groups.

It is noteworthy that most of the activities in tourism fall in Unorganized Sector. This is more so in a developing country's like ours. Modern governments follow the policy non intervention in the economic activities in

³ Ibid

the private sector. In the current phase of globalization, governments are trying to confine itself to the basic functions like education, infrastructure, welfare etc. Therefore not only that Unorganized Sector is growing but it promises to grow uninterrupted in the times to come.

In the process of finding the solution for the protection of rights and interests of the unorganized workers engaged in tourism, it is found that at the international level, the protection of labour assumes great importance and there are various organizations working continuously for the protection and welfare of working people. Though the International Labour Organization (ILO) is known to be an organ of the United Nations, it is the specialized agency that works independently and works exclusively on labour. The International Labour Organization through its various instruments has responded to the problems on areas like basic human rights; employment; social policy, labour administration, industrial relation, conditions of work, social security, employment of women, employment of children and young persons, migrant workers, indigenous and tribal people, special categories of workers.

The United Nations' instruments are not immune from the labour matters. The United Nations' Charter aims at promoting the higher standard of living and full employment. It aims at promoting universal respect and observance of human rights and fundamental freedoms without distinction of any kind. The International Covenant on Economic, Social & Cultural Rights requires the states Parties to recognize the right to work, the right of everyone

to the opportunity to gain his living by work which he freely chooses, to just conditions of work, fair wages and equal remuneration for work of equal value without distinction of any kind, a decent living, and safe and healthy working conditions. The instrument comprehensively covers other basic rights of workers including right to organize and collective bargaining and allied rights. International Covenant on Civil and Political Rights also provide important provisions relating to labour. Under Article 8 the Covenant prohibits forced or compulsory labour. It also ensures right to freedom of association, including the right to form and join trade unions. Among the UN instruments the most comprehensive pronouncement of the rights of workers can be found in Universal Declaration of Human Rights, 1948 covers comprehensively, the various areas of concern. Guarantee of all human rights through its recognition in the national instruments is sure to solve all problems relating to work and workers.

No matter how good the provisions are the international labour laws can be implemented only when they are recognized in the domestic constitutions and other statutes. There is no effective implementation machinery at the international level. Ironically, various international labour laws have not been recognized in the national instruments in various countries.

At the national level the Constitution can be recognized as the best guardian of the rights of citizens including these workers. The constitution has

through directive principles of state policy and fundamental rights have provided safeguards to protect the interest of the weaker and disadvantaged class of labour. In the Preamble itself, the Constitution lays down the objectives of social, economic and political justice, liberty of thought and expression, equality of status of opportunity, dignity to be secured to all citizens of India. The Constitution has clearly kept in view equality generally and equality between men and women in all respects. Article 14 guarantees equality before law and equal protection of laws. Discrimination on the grounds of religion, race, caste, sex or place of birth has been prohibited. Equality of opportunity in matters of public employment has also been ensured. Recognizing the concept of distributive justice, the Constitution empowers the state to make special provisions in respect of women. Unfortunately this equality has not found fulfillment in many respects. The Constitution protects the rights of the workers regarding freedom of speech, of association and of peaceful assembly. It also guarantees free choice of employment, profession or business. It protects life and personal liberty, human dignity and a number of rights emanating from the broadest interpretation of right to life and personal liberty enshrined in Article 21. Begar and other similar forms of forced labour have been prohibited. Employment of children in the hazardous employments has also been prohibited.

Remedies for the enforcement of rights conferred by Part I of the Constitution have been provided in Articles 32 and 226. Courts have been given wide powers to ensure effective realization of the Fundamental Rights.

In its directives to the State under Part IV, the Constitution speaks of equality of men and women, adequate means of livelihood, equitable distribution of material resources for common good, operation of the economic system for the common advantage and non concentration of wealth, equal pay for equal work, protection of health and strength of workers and tender age of children.

The constitution also speaks of Equal justice and free legal aid, provision for just and humane conditions of work and maternity relief, living wage, decent standard of life and full enjoyment of leisure. To ensure participation of workers in the management of industries is a directive to the State. Under article 45 a directive of free and compulsory education for children has been given to the State. The State is also required to raise the level of nutrition and the standard of living and also the public health.

Certain duties have also been posed on the individual citizen of India. These duties ensure the better realization of the objectives contained in the Constitution.

Article 253 deals with the legislation giving effect to the international agreements and entry 14 in the Union List in the Seventh Schedule for implementing the agreements, treaties, conventions and declarations with the foreign states. These two when read together conclude that in case of absence of domestic law occupying a particular field, even these international agreements, treaties, conventions and declarations can be adopted to evolve some mechanism or law to cover the gap. The guidelines declared by the Supreme Court for the enforcement of fundamental rights under Article 32 should be treated as law unless there is an enactment in this regard.

The response of the legislature for fulfilling the Constitutional mandates has been appreciable so far. However, there is much left to be done. We have witnessed judicial activism producing new and myriad dimensions in the existing rights of the working people. A huge legislative activism is desired to shape these outcomes to fit the prevailing situation. In addition to this administrative activism ensuring effective implementation of the laws would definitely ensure effective realization of the rights of workers.

The workmen's Compensation Act, 1923 imposes legal obligation on the employers to pay compensation to workers for the accidents arising out of and in the course of employment. The Payment of Wages Act, 1936, provides for the payment of wages to the employees in time, in proper manner and without any unauthorized deductions. The Payment of Gratuity Act, 1972

provides for the payment of gratuity to the workers completing five years of continuous service on retirement or termination of service. The Payment of Bonus Act, 1965 requires the payment of Bonus to the employees and stipulates the mode and manner of the calculation and payment of such bonus. Minimum Wages Act, 1948 requires the fixation of certain minimum rate of wages for different employments by the government and requires the employer to pay at least the minimum wages so fixed to the employees. Maternity Benefits Act, 1961 sets out strict provisions to facilitate the working women in times of maternity and requires the employer to ensure different benefits to the working women before, during and after the delivery of the child. Contract Labour (Regulation and Abolition) Act, 1970 to wipe away variety of malpractices indulged in by the contractors, *sardars*, *khatadars* and other intermediaries. It provides for abolition of contract labour wherever feasible and provides for regulation of the employment in other cases. Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 comprehensively deals with the employment and conditions of service of construction workers. It incorporates various protective and welfare measures for these workers.

There are few other initiatives newer initiatives by the Indian legislature. The important ones deserving mention here are the Protection of Woman against Sexual Harassment at Workplace Bill, 2007 and the Unorganized Sector Workers' Social Security Bill, 2007. The initiatives further strengthened

when a budget provision of rupees two lakhs eighty thousand crores was announced for the Unorganised Sector workers in Annual Budget 2008-09.

The courts, particularly the Supreme Court and the High Courts have in the process of judicial interpretation played a creative role not only by protecting the interest of workers but also by invoking new concept of public interest litigation. Indeed the court assumed the role of protector of weaker, poor and struggling masses of the country. Furthermore the Courts through judicial process have tried to uphold the human dignity. It has brought social justice and just and humane conditions of work. The Supreme Court has stretched its protective arms to all aspects of work. Committed judicial pronouncements with wide interpretation given to the constitutional and legal provisions have succeeded in preventing exploitation of labour to a large extent.

Amongst others, the main problem in the Unorganized Sector is that most of the laws do not apply to this Sector. Most of the laws in India are applicable to establishments employing 10 or more persons. This excludes major portion of the unorganized workforce in the country. In the establishments employing more than 10 persons, the casual and contract labourers cannot be benefited under the existing laws. In many cases the employer-employee relationship cannot be established as a principal employer is not identified. In other cases employments themselves are not identified.

Numbers of new employments arise daily in the unorganized sector making it difficult for the laws to tune with the emerging needs. Further there is a bigger difficulty in the implementation of laws in the Unorganized Sector.

In India though the State has come up with various economic and labour reforms including the enactment of laws, very little could reach to the Unorganized Sector. There has not been any significant increase in the productivity of this Sector. The sector which employs around 93 to 94 percent of the total working population in the country contributes merely around 59 percent of the country's GDP. There has not been any significant growth in the efficiency of the workforce in the Unorganized Sector. There is very little technological, financial and expertise support in this Sector. An initiative to direct training, financial and technological help can multiply the country's GDP many times.

It is clear that to protect the rights and interest of the workers engaged in the Unorganized Sector generally and unorganized workers engaged in tourism in particular and to step towards effective performance of its duties under the mandate of the Constitution the State has constantly move with its initiatives in this direction. The task is not easy and the State has to utilize all its resources and wisdom for taking effective steps in this direction. In this regard a few suggestions may be forwarded thus:

Taking Newer Initiatives

Skill Development:

Productivity depends almost equally on the energy and skill of labour force as on the level of technology applied. An industrious and skilled worker who produces a more valuable output than workers of lesser capabilities is also worth more to an employer and is usually paid more. Further employers must pay the price for special training. Since tourism is more a labour intensive concept than being technology intensive one, the skill of the labour is a matter of utmost importance. A skilled workforce in tourism can not only ensure huge profits to the concerned employers and thus ensure better wages and incentives for itself but also contributes in large revenue earnings to the nation. Therefore, the employers and the Government both should take steps through mutual co-operation and contribution to develop the skill level of the workers. The Non Governmental Organizations should also be encouraged to work in this direction.

Encouraging Unionizations:

A union may lift the wages of its members above the scales paid to the un-unionized workers of same skill. Further a union acts as the guardian of the rights and interests of the workers. Thus unionization should be encouraged.

Conducive environment for this should be created through proper steps including implementation of relevant laws. It should be ensured that workers are free in the undertaking to take steps towards unionization. The laws governing unionizations¹ should be effectively implemented. The workers should be adequately informed about the provisions in the law and specific steps should be taken by the governmental Departments to help the unionization of workers in all possible areas.

Mobilizing Labour:

Mobility of labour should be encouraged. Where the working population is immovable the wage differentials are wide. On the other hand where the workers are ready to change jobs to move to other places for better paying positions the wage differentials tends to narrow down among firms, occupations etc.

Change in the Mindset:

Human beings like to be treated as human beings, and not like cogs in a machine or pawns in the pursuit of profits. Human beings expect to be treated with respect, as persons with individuality. It is imperative then, that old perceptions and mindsets about the workers should change, and new methods

¹ Like Trade Unions Act, 1926

have to be identified and pursued to elicit co-operation and respect. Old forms of organization may also need scrutiny and reform. Reform is also desirable in old forms of interaction and means of dispute resolution.

Promoting Work Culture:

High level of work culture leads to the well being of workers and employers and contributes to the development of the country. A high level of work culture is essential to increase our competitiveness in the current phase of globalization. The systematic arrangements that should be made to achieve this include fair wages, equitable profit sharing, effective organs of participatory management and opportunities to interact freely. The level of work culture in any undertaking depends on the level of awareness or realization of identity, or commonality of interest, or at the least, the sense of belonging, and the sense of interdependence.⁵

Legal Aid and Awareness:

One of the main reasons for the exploitation of unorganized workers engaged *inter alia* in tourism is their sheer ignorance of law. In many cases, in the unorganised sector, the employers too are not aware of their duties and liabilities. Therefore, legal aid and awareness programmes should be

⁵ Para 15 & 16, Chapter V, Report of the Second Labour Commission

extensively conducted to educate the workers and the employers, their rights, duties and liabilities. Such an initiative should be executed through proper fronts otherwise this may lead to disputes and further deterioration of work culture. Thus for such initiative the help of law students studying labour and industrial law should be taken, who should conduct such programmes under the supervision of law teachers. The help of Non Governmental Organizations would be essential in meeting the expenses thereto.

The Universities can be requested to include such programmes in their syllabus for which some fund may be made available to them directly by the Government or through NGOs working in the area of labour. Such initiatives would not only be helpful in achieving the aim of educating workers but also would give law students exposure and opportunity to interact with people which would help in making them better law professionals.

Revitalizing the Enforcement Machinery:

It is necessary to revitalize the enforcement machinery under various labour laws. The arm of protective legislations should reach the Unorganized Sector in every possible area including those in tourism. The social security legislations, similarly, should reach every worker who qualifies in the conditions provided therein. Laws are there, and the laws do not discriminate between Organized and Unorganized Sectors. If implemented properly, the

existing laws can benefit considerable number of the unorganized workforce in the country.

The very fact the 93 to 94 percent of the total workforce in the country is engaged in Unorganized Sector and that this lot of the workforce is not adequately protected through legislations causes one to conclude that this is one of the biggest causes of poverty in the country. If properly conceived and effectively implemented a law for the unorganized workers can make a definite contribution towards removing poverty. Based on similar recommendation of the Labour Commission a Bill for the unorganized workers has been introduced in the parliament.

Formulating Credit policies for the Unorganized Sector enterprises engaged in tourism:

One of the main constraints for enterprises in the Unorganized Sector is that they lack financial support. Adequate financial support to the small unorganized sector enterprises is essential to enable them to compete in the current phase of globalization. Tourism sector is immensely contributed through small enterprises. However, these enterprises have not been able to grow because of the lack of financial resources. The effect undoubtedly is also being faced by the workers engaged in these enterprises. Formulation of credit

policies to these enterprises would go a long way in eliminating poverty in our country.

Targeting subsidies and other programmes:

A major concern in India about formulating any policies or subsidies etc. is that it does not reach to the people whom it is designed for. Subsidies and other programmes should be targeted towards the right people. Proper policies are not enough unless that reach to the right people. Change in delivering mechanism is the challenge of the present day. A system of popular monitoring and social audit are not easy to create, but if created it would be a major step in this direction.

Policies for the children of the workers in Unorganized Sector:

Children form major section of working population in Unorganized Sector. It is only the compulsory enrolment of children in schools that can prevent the exploitation of children in sweatshops. It is necessary to eradicate child labour completely from all vocations. Policies for their health, nutrition, sanitary facilities etc. need also be formulated.

Creation of political will:

Much has to be done in the field of labour in India. Laws on basic rights of the workers like trade union laws are not being implemented all over the Country. Other labour laws also need uniform implementation all over the Country. There is a need for a comprehensive law to cover workers the unorganized sector. There is a need to design protection for the self employed. There are other areas of concern and measures including political and legal need to be taken. There is a need to create a strong political will not only for the protection and welfare of the Unorganized Sector workers but also for improving the productivity in this sector.

Understanding Basic Areas of Concern:

Minimum Wages:

A high rate of pay does not ensure large annual earnings. There are other factors which limit the wages of the workers. In the Unorganized Sector, the annual income is low because the employment is irregular. Tourism in most places is a seasonal activity, thus the workers often remain unemployed. Further, sometimes the real value of wages fall because of the rise in the cost of living.

The main concern with the minimum wage legislation is that it tends to hurt those it is designed for, by reducing the number of low skilled jobs.

However, the evidences are mixed on the impact of such legislation. In India the unemployment can be attributed much to the population of workers rather than the employer's quest for better employees as a result of his liability to pay minimum wages.

In India we have a law on minimum wages which applies to workers in the scheduled employments falling both in the Organized as well as Unorganized Sectors. The system of supervision and complaint mechanism stand adequate for effective realization of the object of such a legislation. It is essential to rely on the local authorities like *Panchayats*. Complaints if forwarded by these authorities would make the procedure simple and within the reach of these deprived workers.

Equal Remuneration:

The law on equal remuneration in India contains stringent provisions to ensure that no discrimination takes place against women as regards to wages or during recruitment. However such discrimination is ever prevalent in the formal as well as informal sectors. The fact that women worker cannot work as hard as the men can, and that they avail more leave than the men, they are not preferred by the employer in the first place. Even after recruitment they are paid lesser wages. From the employer's perspective it is logically justifiable. No employer would take such steps as would reduce profit. As such the only

way in which it would be possible for the employer to follow policies that are potentially profit reducing would be if he received certain benefits from government in the form of subsidy or protection. To ensure equal remuneration to women employees, the policy of the government should be in this direction.

The workers in Unorganized Sector get lesser wages as compared to their counterparts in the Organized Sector. The disparity of wages is also prevalent between the workers within the Unorganized Sector. Further women and children are generally paid lesser wages. There is need to regularly monitor the working of the Act and taking of periodic information. The inspection machinery should be adequately strengthened. Further the inspection machinery should be made answerable to the findings of such period periodic information as aforesaid. To evade the possibility of bias such periodic information can be collected through an independent sources. For this the resources of millions of educated unemployed in the country can be utilized.

Sexual Harassment:

The acts of sexual harassments at work places create hostile working environment for women. Despite clear guidelines of the Supreme Court, the State has not been able to bring a law to deal with the menace of sexual harassment. Further, though the Court has used its power under Article 141 in the judgment and the mechanism created therein for dealing with the cases of

sexual harassment by virtue of this Article becomes “law declared”, in reality a great majority of the work organizations in the country do not have such mechanism.

Configuring the offence of sexual harassment is not an easy task. A conclusive list of behaviors, gestures, words or literatures etc. to the offence of sexual harassment cannot be prepared. Further what may be acceptable to one person may not be acceptable to another. Everyone has different threshold of these things. Though the right to label a particular behavior as “unwanted” lies with the victims, they often fail to conclude whether the offence has been committed. Even if they did, the most of them are so ashamed to the public that they prefer to remain silent. Further, the influence of superiors who are often involved in such acts deters the victims from filing complaints.

If we honestly intend to wipe the menace of sexual harassment at workplace the first and foremost requirement is that the guidelines of the Supreme Court in *Vishaka v. State of Rajasthan* should be seriously implemented. A law for the prevention of the Sexual harassment at workplace has become very necessary. Therefore the legislature should as soon as possible come up with a law in this regard.

Further women workers in general and the unorganized women workers engaged in tourism in particular should also be provided with education and

training including that of self-defense. Women workers who claim that they have been sexually harassed should be supported and helps should be offered as regards how to handle the perpetrator and how to lodge complaints. The courts should pronounce exemplary punishments. The presence of legal provisions and the attitude of judiciary towards such crimes should be widely publicized through media. Awareness programmes should be conducted at workplaces and educational institutions.

Understanding Unorganized Sector

The first hurdle in planning any protective or welfare measure for the workers in the unorganized sector including those engaged in tourism comes right in the beginning i.e. in the definition and identification phase. This is the only biggest reason why any study work on the Unorganized Sector becomes so difficult. The definition cannot be based on the number of workers, it cannot be based on the enterprises or employment because such a definition would not take into account a large number of workers who contribute to the work-world but are not identified. Further a large number of occupations come into existence everyday in the unorganized work-world. Therefore Unorganized Sector must be conceived through the parameters of its main features. In the Bill the Unorganized Sector has been defined as *an enterprise owned by individuals or self-employed workers and engaged in the production or sale of*

*goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such worker is less than ten.*⁶

The Bill does not take into account all unorganized works within the ambit of Unorganized Sector. It does not recognize casual and contract workers in the Organized Sector as unorganized workers. Further, there are various enterprises in the country where, though ten or more workers are engaged but are never given benefits under the labour laws. They are unorganized in the real sense of the term but are not recognized under the Bill as unorganized workers. Proper understanding of the Unorganized Sector is required before directing any policies.

Modifying Legislations:

The analyses of the legislative provisions reveal that there are various provisions safeguarding the unorganized workers engaged in tourism. Though these laws do not cover all unorganized workers engaged in tourism or that they are not free from lacunas they ensure various rights and welfare measures a great many of the workers. However the laws, and systems created thereby are so numerous and so complicated that they are not properly understood by these illiterate masses. Thus the workers remain unaware of the legal protection in the first place; the result obviously being the denial of the rights to them. The

⁶ Section 2 (k)

mass depravity of the rights and welfare facilities of these workers necessitates awareness to these workers of their rights under the existing legal set up.

The above arguments holds true mostly in the case of workmen's compensation Act, 1923. The Act contains adequate provisions and imposes legal obligation on the employers to pay compensation to workers for death or injuries from the accidents arising out of and in the course of employment. However, the workers generally and workers engaged in various unorganized employments in tourism in particular are often deprived of their right to compensation. Many of these workers do not even know that they have a right to compensation. The workers remain ignorant of the concept of accidents arising out of and in the course of employment and often relinquish their right to compensation.

In most of the labour laws covered in the present work the fines stipulated are too meager in the present times. Though the penalty prescribing imprisonment stand adequate, the amount of fines which in many cases discriminatory with the penalty of imprisonment have over the time, due to the decreased valuation of money, become inadequate. Though attempts have been made by the legislature to review the penalties from time to time to fit the existing situation they are not really done.⁷

⁷ In payment of wages Act 1936, Section 20 stipulates fines for contravening the provisions of the Act. The outdated provision stipulating the amount of fine does not fit the present situation. Mere sums of a few hundred rupees do not adequately give the feeling of punishment to the wrongdoer. Thus the amounts of fines need adequate increments. Similarly in Payment of Bonus Act, 1965 Section 28

In labour matters in most cases involving default on the part of employer fines would be sufficient to give him a sense of punishment. For a profit maker nothing will hurt more than losing a considerable portion of his profit. Though provisions for imprisonment is necessary and in most cases they are adequate, the logic behind the fines have failed in so far as it does not take into account the paying capacity of the wrongdoer. For example the amount of fine in the Payment of Bonus Act amounting to rupees one thousand would adequately give a sense of punishment to an employer of a small undertaking. However, such a meager sum would be insufficient for the employer in a undertaking making crores in profit. Thus understanding the nature of profit system in different economic activities the range of punishments should be very high and amount should be fixed considering the economic capacity of the wrongdoer.

Apart from the provisions prescribing punishments there are other loopholes in the abovementioned Acts. In Minimum Wages Act, 1948, the fixation of different minimum wages for different minimum wages for different employments has not been made compulsory. Different works need different

prescribes a discretionary penalty of imprisonment for a term of six months or fine upto rupees one thousand for contravention of any provision of the Act or in case of failure to comply with the direction or requisition under the Act. The penalty of fine being discretionary with the penalty of imprisonment is too small. Thus an adequate increment in the fine is desirable. In the Minimum Wages Act also the prescribed punishment of imprisonment upto six months or fine upto five thousand rupees. In minimum wages Act Section 21 imposes penalty of three months' imprisonment or fine upto rupees five hundred or both for the contravention of the provisions of the Act. In Contract Labour (Regulation and Abolition) Act, under Section 23 the prescribed punishment is imprisonment which may extend to three months or fine where the upper limit is fixed at one thousand rupees. In all of these Acts where the penalties of imprisonment are adequate but fines are too low.

level of knowledge, skill and labour. Same minimum wages for different employments may not be justifiable at all times.

In Maternity Benefits Act, every women covered under the act fulfilling the criteria are entitled to maternity benefits at the rate of average daily wage for the period of her actual absence immediately proceeding and including the day of her delivery and for six weeks immediately following that day. Average daily wage means the average of the women's wages payable to her for the days on which she has worked during the period of three months immediately proceeding the date from which she absents herself on account of maternity, or one rupee whichever is higher. It may be mentioned here that the women workers not only those engaged in tourism but also in other sub-sectors of Unorganized Sector usually receive lower wages. As such the minimum amount of maternity benefit if increased would benefit the women workers without causing losses to the employers. Such minimum amount of maternity benefit should be so fixed as to evade the possibility of women workers circumventing their duty to work and thereby causing the employer to suffer losses. Further, a loophole in the Act is also seen in Section 11. Under this Section the employer is required to give two nursing breaks everyday to a women worker who as delivered a child until the child attains the age of 15 months. It is worth mentioning here that adequate breast feeding a child is vital for the child's health as well as for psychological attachment of both for the development of mother child relationship. Two nursing breaks would not

suffice the proper feeding of the child. The medical experts suggest only breastfeeding till the child attains the age of six months. As such the child may require at least three times feeding during the day's work of the mother. Thus at least three breaks should be allowed till the child attains the age of six months and after six months till the child attains the age of fifteen months, two nursing breaks may be allowed.

In Equal Remuneration Act, 1976, good provisions have been made to ensure that no discrimination as regards to the wages or recruitment etc. to the women workers takes place. The advantages in the Act are considerably reduced by the provision contained in Section 7 (6). The decision of the authority appointed by the appropriate Government can be appealed against only once to yet another authority appointed by the appropriate Government. No further appeal has been allowed. Thus the cause of justice has been limited.

Building And Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, though a comprehensive legislation for the construction workers which makes bold provisions for the welfare of these workers, is not free from limitations. The first and the biggest lacunae in the Act is that it applies only to the workers drawing wages not exceeding Rs. 1600 per month. Here if we deem all weekly holidays as paid holiday, the daily wages is targeted at a little over Rs. 53. If we see the ground reality Construction workers are in many places are paid good wages. In many states

the statutory minimum wage itself exceeds the abovestated sum.⁸ Thus the Act excludes a large number of construction workers from its operation. Further the Act does not apply to any establishment employing less than 10 persons. The act for this reason becomes applicable to a few construction workers in many states.

The Act requires the constitution of a Safety Committee. But such safety committee is required to be constituted only in the establishments employing 100 or more workmen. A safety committee to ensure measures for safety of the workers is a reasonable provision in the establishments employing 10 persons. A safety committee of three members, one from the employer and two from the employee can reasonably be provided in an establishment employing 10 construction workers. The number of members in the safety committee may vary according to the number of the workers employed. In every establishment employing fifty or more workers and where the construction work is expected to continue for a period exceeding one year such Safety Committee should involve members from any NGO or other interest.

The main provision in the Act is undisputedly the constitution of Workers' Welfare Fund. However in reality in most of the States such fund could not be created for lack of financial resources. No matter how good the provisions are, they are tangled and have lagged behind due to the lack of

⁸ The Statutory Minimum Wage for unskilled worker in the state of Sikkim was Rs. 85/- which is recently increased to Rs. 100/-

political will. The welfare of workers engaged in the building and other construction works desire the State to review the flow of resources in such schemes and spend more on it by creating and encouraging newer pools.

In the Prevention of Sexual Harassment of Women at Workplace Bill, 2007, Section 3 (2) (a) requires the Chairperson of the Complaints Committee to be a "senior level woman". The words "senior level woman" has not been explained in the Bill. If it is deemed that this means a woman holding high post, it is highly impracticable in many work organizations. Further, in the Committee under Section 3 (2) the outside participation is restricted to one. The fact that three members are to be from amongst the employees, in a committee of four members, where the participation of third interest is limited to one the Committee will not be able to pronounce strong decisions.

The Bill also provides for the conciliation of the cases of sexual harassment and where any settlement is arrived at, the Bill says "no further enquiry shall be conducted". Sexual harassment is a heinous offence. The perpetrator of such acts deserves stringent punishments. Further, such a provision also encourages the offenders to pressurize the victims through threats and other means for settlement. Such a provision would encourage the offence rather than to prevent it. The Proviso to Section 11 of the Bill says that were the employer or the District Officer is not in agreement with any conclusion arrived at or recommendation made by the Committee or the Local

Committee “he may alter the conclusion or recommendation.” This provision contravenes the very purpose of the Bill. Conferring of such powers on the employer defies the very logic of the constitution of the Committees. Such a provision in the Bill not only marginalizes the authority of the Committee or the Local Committee to reach an impartial decision and to take stringent action against the wrongdoer but also causes the stringency of the Act to be loosened.

The Bill has reduced the act of sexual harassment to a mere compoundable offence. Though the coverage of the Bill is wide enough as it covers all the places visited by the employee for works arising out of and in the course of employment, it does not contain a single provision with regard to third party harassment. The responsibility of the employer to initiate legal proceeding as rested in the decision of the Apex Court in *Vishaka v. State of Rajasthan* and earlier Bills have been done away with. On a comprehensive study of the Bill, it cannot be said that the Bill will be able to achieve its objective of providing safe working environment to women.

The Unorganized Sector Workers Social Security Bill, 2007 entirely does away with the ‘Single Comprehensive Universal Scheme’ covering entire Unorganized Sector as proposed by National Commission for Enterprises in the Unorganized Sector (NCEUS) and the Second Labour Commission. The Bill is too wide in scope and is too abstract. Tripartite participation as proposed in the Bill is not practical in many cases as it is difficult to identify an employer in

many cases. Where many employments are sure to be never represented, it is not feasible to protect their interests. The Financial Memorandum presented with the Bill states that the financial implications for funding of the schemes would be determined "as and when such schemes are formulated." Financial implications cannot be so easily formulated in our country. In the absence of clear provisions for funding, the schemes cannot be implemented. Our experiences with the construction workers prove it. Though the central legislations on construction workers was passed in the year 1996, even upto the present day most of the States do not have any welfare schemes under that Act. The welfare provisions in the present Bill are also sure to be limited by the want of adequate funds.

Creating Forum to Empower the Workers in Unorganized Sector:

There is a felt need to have a forum to empower the workers in the Unorganized Sector. Such forum should work towards unionization of the workers including women workers in all possible areas of Unorganized Sector. In the areas where unionization is not possible such forum should help workers to bargain effectively though counseling and educating them of their rights. Women workers need special attention. Such forum should have a women wing to work for the areas of concern for the women workers.

Strengthening the Unorganized Workers through policies:

The State should take steps towards educating this lot including such steps as providing them vocational trainings, increasing their literacy through adult education schemes and career planning etc. Such steps would not only enable these workers to perform better and thus ensure better life for themselves but would also result in manifold expansion of the country's economy.

Involving women while formulating and implementing policies:

In policy making adequate women representation must be made compulsive so that the problems of women workers can be effectively conceived and taken into consideration. Likewise during the implementation too adequate women representation must be made

Creating a brand new fund exclusively for the workers in Unorganized Sector:

The Commission on Enterprises in Unorganized Sector has suggested a brand new fund exclusively for the workers in Unorganized Sector. In the report a social security net to the entire Unorganized Sector on a contributory basis is proposed which has convincingly estimated a mere 0.5% of the GDP to be enough to formulate it. Having conceived the area of unorganized work

world, the strength of workforce, the economic conditions of workers and above all the potential of this Sector to contribute in the Country's economy, the Government should be more than happy to spend this meager amount towards long felt need of providing social security to the workers in this Sector.

Enlarging the operation of the regular labour laws:

The applicability of the existing labour laws is limited by size of the enterprises and geographical limits. Most of the labour laws apply to the enterprises employing 10 or more persons. The numerical strength is stipulated in these laws to ensure monitoring and it also supposes the enterprises covered therein as economically capable of providing protection and welfare measures therein. However today due to good infrastructure, expansion of business in all activities, manifold increment in the profit, and other developments in the Post Liberalization Economy many enterprises employing even less than 10 persons are capable of providing basic protection and welfare to the workers. Considering the present profit systems, economic capacity of the employer, consciousness of the general public etc. it is not necessary for the State to rely on the ideas that fitted in our society at the time when most of these laws were enacted. There has been a tremendous change in the economic and social conditions of the people of our country. No law can be as effective as the laws that are already in implementation. Therefore the State should now think towards extending the regular labour legislations to enterprises employing less

than 10 persons. For the practical purposes the lower limit may be fixed at 5 or 7. The enterprises facing financial burden may be provided with some subsidies or protection.

Spending on Labour

The area of labour requires adequate spending. India has a huge working population. Various policies and plans including laws relating to workers in the Country face financial constraints. The Building Act could not be implemented for want of adequate fund. The social security plan for 93 to 94 percent of the working population is languishing for want of fund worth a mere 0.5 percent of the GDP.⁹ Adequate budget is not allotted to the Labour Departments in the States. The programmes of the Departments postpone for want of adequate budget. The Labour Departments in the States work with inadequate staffing. The area of labour needs adequate spending. The State should be generous towards the people who work for strengthening its economy.

State of Sikkim

⁹ Refer to the Report of National Commission for Enterprises in the Unorganized Sector.

There have been a lot of reforms in the different legal and administrative matters having a bearing with the labourers in the past few years. These include extension of thirteen national labour legislations, introduction of Labour Clearance Certificate, Minimum Wage of a handsome Rs. 85/- for the unskilled workers¹⁰ (which is further increased to Rs 100/-)¹¹ and Committees on Sexual Harassment at workplaces. The Government is also working towards spending 2% of the total fund allocation to the concerned department on capacity building.¹² However on a closer look at the implementation of the laws one would find that though as many as thirteen labour legislations are in force in the State only four are being actually implemented. The condition of working people engaged in Unorganized Sector in the State is not far better as compared to the national scene. Though the above suggestions are also relevant a few suggestions peculiar to the State of Sikkim may be forwarded as under:

Implementing Laws:

As stated above, though many national labour laws have been extended in the State of Sikkim, only a few are being implemented. The better condition of unorganised workers in Sikkim needs actual implementation of these laws.

Allotting adequate budget:

¹⁰ Notification No. 3/DL dated 26.08.2005 Extraordinary Gazette No. 330 dated 07.09.2005

¹¹ Vide Notification No. 01/DL dated 15.04.2008 Extraordinary Gazette No. 128 dated 15.04.2008

¹² Speech by the Chief Minister of Sikkim on International Labour Day, May 1, 2008

The reason why the labour departments in India fail to come up with policies and implement laws many times is that the labour departments are always short of budget. The case with the Department of Labour in the State of Sikkim is no different. The Annual Report (2005-2006) of the Department specifically mentions about the financial constraints which have caused the Department to be unable to pursue its proposal to conduct seminars at major industrial units and construction sites to educate the workers on workers education, workers awareness, welfare, safety, hygiene, awareness towards the provisions of labour laws and the duties of workers towards the management and their establishments.

Workers are the builders of societies. They are the builders of civilizations and earners of the national income. Adequate budget should be allotted for the welfare of these people.

Setting up Research Cell in the Department of Labour:

The area of labour is witnessing rapid changes all over the world. Since the work area is expanding day by day, constant vigil over the work, productivity, new developments, rights and interest of the workers, their protection is essential. There are various organizations at the international and the national level which are constantly studying these things. These organizations are constantly finding newer areas of concern and addressing

them. It is a long felt requirement for the state machinery in the country to track these developments. Further, labour scenario differs from place to place and so differ the challenges before workers and modes of addressing them. Therefore at the local level too constant vigil is required in the work areas. It is advisable in the State's Labour Department to have a research cell which will not identify newer areas of concern and find ways to address them. There is no proper research support for the legislators in Sikkim. Proper framing of policies and laws need the legislators to be well informed. Therefore there is a serious need of setting up research cells in all departments under the State including the Department of Labour.

Adequate staffing at the implementation level:

It is felt that the department of Labour in Sikkim working with inadequate workforce. Adequate staffing at the implementation level would ensure better implementation of laws. Effective implementation of laws is most important to ensure sound labour relations. Working on labour involves dealing with various laws which are sometimes too complicated for the officers without a legal background. This necessitates appointment of law literates at the implementation level.

Establishing District Offices of the Department of Labour in all districts of the State:

Workers cannot afford to move places for the vindication of their rights. Making them to travel places in search of justice would be to guarantee them injustice. In a State where no trade union law is in force and where there is no other institutional machinery to represent the workers in their dealings with the Government, it is of utmost importance that the Governmental Department should work in close proximity with these workers. Thus it is suggested that the Department of Labour should immediately establish at least one office at every District. All disputes arising in a district should be resolved in the District Office itself.

Enacting social security law for the tourism workers:

Tourism in the State of Sikkim is a major and hugely profitable economic activity. A closer look at the profit system in various activities under tourism would enable one to safely conclude that the employers in most of the undertakings are economically in a position provide basic social security to the workers. Further since the State Government has accorded topmost priority to this sector, the welfare of the true contributors to it cannot be ignored. Therefore it is advisable that the State should come up with a law targeting basic social security on a contributory basis involving workers, employers and the Government.

Introducing insurance schemes:

Though insurance scheme to cover life, health and accidents is desirable for all unorganized workers engaged in tourism, workers in some employments desperately need such initiatives from the Government. The tourism workers such as rock climbers, rafters, cable car operators, drivers etc. work under the inherent risk of accident resulting in permanent disablement or even death. The victims of such accidents and their dependants do not have adequate social security. Therefore it is urgently required that the state should come up with compulsory insurance scheme with low premium policy for these workers.

Pronouncing concrete provisions for the protection of labour:

The Sikkim Labour Protection Act, 2005 does not pronounce any concrete provision for the protection of the workers. It simply restates parts of the provisions in the national legislations which though are extended in the State but are never implemented. In the wake of the fact that most of the national labour legislations are not being implemented in the State it is essential to pronounce concrete provisions for the protection of the workers. Such provisions can be added in the State in the Sikkim Labour Protection Act, 2005 or a new legislation can be enacted to achieve this purpose.

Training tourism workers:

Though tourism in Sikkim is not a new economic activity, it was not as big an activity as it is today. Tourism in the state of Sikkim is capable of ensuring not only huge revenue collection to the State but also immense employment opportunities. This is why the State Government has accorded top priority to tourism. However, the benefits of tourism cannot be fully reaped unless the workers engaged in it are properly trained. People engaged in hospitality, food production, guiding etc. need special training. The newer concepts of eco tourism and adventure tourism need specialized workers. It is essential therefore to direct policies and funds in this direction.

Developing infrastructures:

Good infrastructures for tourism like roads, airports etc. would attract more tourists in the state and thus ensure more profits to the employer and thus ensure better wages and incentives to the workers.

Introducing newer tourism concepts:

Tourism in Sikkim is seasonal. Tourists do not visit the state all through the year. This causes the unorganized workers engaged in tourism to remain unemployed during off season. There is a need to introduce newer tourism concepts like off season packages. Ensuring considerably cheaper tourism

during off seasons would ensure the arrival of tourists all through the year and ensure employment to the workers all through the year. The newer initiatives of the Government to develop infrastructure for pilgrimage tourism, village tourism adventure tourism, entertainment tourism etc. are right steps towards this direction. More such steps are desirable.

Involving independent agencies to track labour practices:

The area of labour generally and the area of labour under tourism in particular is so wide that it is impossible to track the labour practices solely through governmental agencies. The involvement of the independent agencies like NGOs can be helpful in tracking unlawful labour practices and bringing the persons responsible thereof to justice. Thus the NGOs should be encouraged to work in this field through adequate funding wherever necessary.

Helping the poor:

The government should formulate policies to help the self employed and enterprises in the Unorganized Sector in tourism who is not credit worthy or who does not have collateral for a loan.

Directing banks to formulate loans for the enterprises in the Unorganized Sector including the enterprises engaged in various sub-sectors under tourism:

The banks operating in the State of Sikkim should be made to formulate low interest loan policies for the enterprises in Unorganised Sector in general and those Unorganised Sector enterprises engaged in tourism in particular. This would allow the tourism in the State to boost and thus would ensure better wages and incentives to the workers.

Collecting Data:

It is found that the Department of Labour does not have any data whatsoever regarding workers in the State. A centralized department working thorough its office in the capital is not expected to have clear picture of the ground realities in all four districts. Further the area of labour in the State being mostly unorganized the collection of data is not an easy task. Though through the implementation of the Sikkim Labour Protection Act, 2005 an earnest attempt is being made to collect data, it is not expected to be anything more than numerical. The collection of complete data is essential to evade blind investments and to frame correct policies for the welfare of workers. In this help of thousands of educated unemployed in the state can be taken who will collect data under the supervision of the officers of the Department.

Reconsidering hours of work:

Hours of work should be reconsidered in employments like waiters, cooks, shop assistants, etc. The hotel workers work generally from 4 or 5 A.M. and 11 P.M. or midnight. This amounts to 18 to 20 hours of work. Though some hotels employ workers in shifts, majority of hotels engage the same workers for the entire business hours. Even the law allows¹³ nine hours of working day which may extend to twelve hours if the worker consents to work. The normal working day in a shop or commercial establishment is allowed to be eleven hours. The hours of work in these areas need immediate reconsideration.

Accelerating enforcement machinery:

Despite legal provisions the workers in Sikkim are exploited on various counts. One of the main reasons it seems is the ineffectiveness of the governmental machinery in implementing laws. Various laws which though are in force in the state of Sikkim are not being implemented. Routine visits of the sites are not made as a result of which the labour laws are generally disregarded. As such it is desirable to accelerate the enforcement machinery through proper fund allocation and trainings etc. to achieve the result.

¹³ Refer to Sikkim Shops and Commercial Establishments Rules , 1984

Ensuring health of workers:

Health of the workers should be prime concern. A person with sound health can work better. The occupational diseases must be prevented through proper precautions. Workers engaged in hotels and taxi driving are prone to sexually transmitted diseases. Special programmes should be initiated to protect these workers from such diseases. The workers should be made aware through special awareness programmes about the occupational diseases, symptoms and their prevention.

Extending trade union laws:

Laws will not be flagrantly violated if workers are united. Trade unions provide base to the workers for collective bargaining and systematic fighting for their rights. In some cases collective agreements specify wages, hours, working conditions, and benefits in great detail. In other cases unions have used their political power to win enactment of laws that provide benefits and protection—increased pensions and unemployment compensation, safety regulations, extended holidays, educational and maternity leave, housing, health insurance, and, perhaps most important, employment tribunals and other grievance procedures to protect workers against any unfair action. Trade unions in China have acted as arms of the government, helping to achieve production

programmes in the planned economy; many of these unions are also charged with administering social-welfare programmes.

Trade unions play important role in creating better working conditions for the workers. It acts as machinery for systematic dealing between employers and workers and between workers and the Government. Thus, it is very important not only to bring forth trade union laws but it is also essential to encourage the workers to unionize.

It is heartening that our country is witnessing huge economic growth for the last few years. The economic growth cannot be appreciated unless it is coupled with social justice. All people have an equitable share in the growth of the national economy. It is necessary for the Country's development to ensure that the benefits of this tremendous growth reach the poor and the downtrodden. The Unorganized workforce in our Country has its contribution in this growth. This Sector needs special attention in terms of protection and social security. The need of the time is to direct the economy to this Sector to which a huge majority of the Country's poor belong.