

LEGISLATIVE PROTECTION OF WORKERS

Various legislative measures have been designed to ensure the protection and welfare of workers envisaging the accomplishment of socio-economic justice inevitable in a developing country with huge working population like India. As stressed earlier in this work, labour legislations in our country are so innumerable that any attempt to analyze and give an exhaustive treatment to all of them in a work like this would be futile. The legislations mention here have no direct bearing with the workers in Unorganized Sector in general and those unorganized workers engaged in tourism in particular. It must be mentioned here that in this work the definition of unorganized worker is not confined to the customary residual approach of the concept of Unorganized or Informal Sector that has been followed in the Unorganized Sector Workers' Social Security Bill, 2007. Keeping with the argument in Chapter I, it is stressed that the residual approach of the definition of Unorganized Sector is no longer dependable. The term Informal itself denotes the informal nature of activity irrespective of the actual number of workers employed. A liberal approach to the definition of the term "Unorganized Sector" will enable a large number of workers to get protection through these legislations and will enable the regulation of a huge work area through existing machinery. In Sikkim there is very little industry. Apart from the government employees, most of the people, if not all are engaged directly or indirectly with

the tourism industry. Thus Sikkim becomes a state which employs the largest number of persons in tourism industry i.e. are unorganized worker. The residual approach of the definition of worker in the Unorganized Sector as seen in Unorganized Sector Workers' Social Security Bill, 2007 does not cover this large populace in Sikkim. Relaxing the number requirement through the reduction of the number so required can enable another large chunk of workforce under the umbrella of these legislations. To enable the employers to meet up the financial burden they can be benefited through proper policies such as through giving them certain subsidies or protection. Then the areas out of the reach of these legislations can be taken care of in a better manner through newer initiatives.

A. Workmen's Compensation Act, 1923:

Workmen's Compensation Act, 1923 receives full credit as the first piece of important social security legislation. It attempts to effectuate the principle of social justice as declared by the International Labour Organization. The Universal Declaration of Human Rights, 1948, also proclaims the importance of social security and assistance. The Act ensured social security to workers.

The main object of the Act is to impose legal obligation on the employers to pay compensation to workmen for accident arising out of and in

the course of their employment. The comparative poverty of the worker and social ideas of modern times necessitate protection of workers and his dependants from hardship arising from accidents. Compensation provided by the Act is in the nature of insurance of the workmen by certain reasons of accidents. Therefore, after the enactment of Employee's State Insurance Act, 1948, the workmen's Compensation Act, 1923 does not apply to those areas which are covered by the Employee's State Insurance Act, 1948.

The Royal Commission on Labour explained the object of the Act in the following words:

"The Workmen's Compensation Act was framed with a view to provide for compensation to a workmen incapacitate by injury from accident. But compensation is not the only benefit flowing from the Act; it has important effect in furthering work on prevention of accident; in giving workmen greater freedom from anxiety and in rendering industry more attractive."¹

The Act spells out limited liability of the employer to pay compensation to a workman which is subject to the provisions of the Act. Section 3 of the Act states that the employer is liable to pay compensation only when the following conditions are fulfilled:

¹ Report, The Royal Commission on Labour in India, 298, cited in K. Madhavan Pillai, *Labour and Industrial Laws* (7th ed.), Allahabad Law Agency (1998) at 328

1. personal injury is caused to a workmen;
2. such injury is the result of an accident; accident has arisen out of and in the course of employment; and
3. the injury has resulted either in death of the workmen or in his total or partial disablement for a period exceeding three days.

The liability of the employer to pay compensation arises only when there is personal injury to the workman. Personal injury referred is not merely physical or bodily injury but also includes psychological injuries like nervous shock, strain etc. Contracting of any of the occupational diseases specified in Schedule 3 of the Act will be deemed to be personal injury.

The word 'accident' is of wide import. It generally means some unexpected event happening without design even though there may be negligence.² Therefore for the purpose of law relating to compensation, the term 'accident' includes any injury, which is not designed by the workman himself and it is of no consequence that the injury was designed and intended by the person inflicting the same.³

Compensation is payable only in case of personal injury by accident which arises out of and in the course of employment. The expression 'arising

² *Padma Devi v. Ragunath Roy*, AIR 1950 Orissa 207

³ *Verkeyercham v. Thomas* (1979) 1 LLJ 373 (Kar)

out of' conveys the idea that there must be some sort of connection between the employment and the injury caused to the workman as a result of the accident. The expression covers cases where there may not be direct connection between the injury caused and the employment of the workman.⁴

The test of the question that whether the injury by accident arose out of employment is whether it was a part of the injured workman's duty to risk, to suffer and to do that which caused the accident. If the answer to this question is yes, the accident will arise out of the employment.⁵ In the Case of *Simpson v. Sinclair*,⁶ where a woman was injured by the fall of a wall which had no connection with her employment but the immediate cause of the injury was the collapse of the shed in which he was working and the collapse of shed was due to the fall of wall, the House of Lords held that the accident arose out of employment.

To be able to successfully claim compensation under Workmen's Compensation Act, the accident must arise both out of and in the course of employment. The expression "in the course of employment" means in the currency of the employment. The test, therefore, is in the course of discharge of duties incidental to the contract of service. The employee has to show that he was at the time of the accident engaged in employer's business or in furthering with business and was not doing something his own benefit or accommodation,

⁴ K. Madhavan Pillai, *Labour and Industrial Laws* (7th ed.), Allahabad Law Agency (1998) at

⁵ *Lankashire and Yorkshire Railway v. Hightley*, 1917 AC 352

⁶ 1917 AC 127

that he was doing something in discharge of his duty to his employer directly or indirectly imposed upon him by his contract of service.

Notional extension of time and space in relation to employment was evolved by the Court in *General Manager, BEST v. Mrs. Agnes*.⁷ In this case, the workman, driver of BEST after his day's work left the bus in the depot and boarded another bus to go to his residence. The bus collided with a lorry and he was injured and died after five days. It was held that the accident occurred in the course of employment. Thus it is a settled law that the employment does not necessarily end when the down tool signal is given or when the workman leaves the actual workshop where he is working. There is notional extension both at entry and exit by time and space.⁸

The notional extension of time and space cannot have pervading application. Its application is limited according to the facts and circumstances of each case. In the case of *Alderman v. Great Western Railway Company*⁹ a Traveling Ticket Collector of the Railway Company had in the course of his duty to travel from Oxford where his home was, to Swam Sea where he had to stay overnight to return to Oxford the following day. While proceeding from his lodging to Swam Sea station to perform his usual duties he fell on the street and sustained injury for which he claimed compensation. It was held by the

⁷ AIR 1964 SC 193

⁸ See, *National Iron and Steel Company v. Manorama*, AIR 1953 Cal 143; *Sri Jayaram Motor Service v. Pitchamma* (1982) II LLJ 849 (Mad); *Superintending Engineer, Parambikulam Allur Project; Pollachi v. Andammal* (1983) II LLJ 326

⁹ 1937 AC 454

House of Lords that while in the street proceeding from his lodging to the station he was not performing any duty under the control of service and therefore the accident did not arise in the course of employment, and that he was not entitled to compensation. Similarly, in *General Manager, Eastern Railway v. R.R. Verma*¹⁰ where the claimant was posted as Asst. Station Master at Bhanpur Railway Station and one day while boarding a train at Rura Railway Station for coming back to Bhanpur for rejoining his duties, he slipped and came under the wheels of a train, causing serious injuries. The Compensation Commissioner held that the accident arose out of and in the course of employment. The High court while hearing an appeal held:

“.....since the claimant had come to Rura in connection to his private work and it was open to him to reach Bhanpur by any mode or in any manner that suited him. So it was held that when the claimant went to Rura Railway Station with a view to proceed to Bhanpur, it cannot be said that he was performing any duty for which he had been employed. The accident in question therefore did not arise in the course of employment.”

The proviso to Section 3 (1) specifically mentions the situations when the employer will not be liable to pay compensation. The employer is not liable:

¹⁰ 1979 Lab IC 1099 cited in K. Madhavan Pillai, *Labour and Industrial Laws*, (7th ed.) Allahabad Law Agency, 1996

1. if the injury did not result in total or partial disablement for a period exceeding three days; and
2. in respect of any injury not resulting in death or permanent disablement caused by an accident which is directly attributable to:
 - i. the workmen having been at the time of accident under the influence of drink or drug; or
 - ii. the willful disobedience on the part of the workman to an order expressly given, or to a rule expressly framed for the purpose of securing the safety of the workmen; or
 - iii. the willful removal or disregard by the workmen of any safety guards or other devices which he knew to have been provided for the purpose of securing safety of workmen.

Mere negligence cannot be regarded as willful disobedience. Therefore mere negligence of workman is not a defense to the employer. Further willful disobedience needs to be specifically and undoubtedly proved. In *Aryamuni v. Union of India*¹¹ where the company notice written in English required use of goggles for works in which workman sustained injury to his eye due to spark, and where the company did not provide any such goggles and the injured workman did not know English either, it was held that the workman was not willfully disobedient.

¹¹ (1963) 1 LLJ 24

The claim of compensation under the Workmen's Compensation Act is optional with the claim under the Law of Torts or under the Employer's Liability Act. There is bar for recovering the compensation by a workman twice for the same injury thereby putting the employer in double jeopardy.¹²

The amount of compensation that a workman is entitled to is provided in Section 4 of the Act. Amount of compensation depends upon the gravity of injury and the nature of disablement. The injuries have been divided under four categories:

- i. Death
- ii. Permanent Total Disablement
- iii. Permanent Partial Disablement, and
- iv. Temporary Disablement (Total or Partial)

Compensation on Death:¹³

Where death results from the injury, the amount of compensation payable by the employer to the dependants of the workmen is calculated by multiplying the relevant factor with an amount equal to fifty percent of the monthly wages. The relevant factor means the factor specified in the Second

¹² Refer to Sec 3 (5)

¹³ Section 4 (1) (a)

Column of Schedule IV of the Act against the entry in first column specifying the age of the workmen. The minimum amount of compensation payable in cases of death is eighty thousand rupees. Therefore, the calculated amount is paid if it exceeds eighty thousand rupees. If on the other hand the calculated amount happens to be less than eighty thousand rupees, an amount of eighty thousand rupees is paid as compensation.

Compensation on Permanent Total Disablement:¹⁴

In cases of Permanent Total Disablement the amount of compensation is calculated by multiplying the relevant factor with an amount equal to sixty percent of the monthly wages of the workman. In Permanent Total Disablement, minimum compensation payable is ninety thousand rupees.

The maximum amount of wage to be taken into consideration for the purpose of calculation of compensation under Clause (a) and (b) of Sub Section 1 of Section 4¹⁵ is rupees four thousand. Therefore if the monthly wages of a worker exceed four thousand rupees, only four thousand rupees is taken into consideration as monthly wages of the worker for the purpose of calculation.

Thus the death compensation of a worker who has not exceeded the age of sixteen years and whose factor as specified in Schedule IV is 228.54 and who receives monthly wages exceeding four thousand rupees can be calculated as:

¹⁴ Section 4 (1) (b)

¹⁵ for calculating death compensation and compensation for permanent total disablement

$$1/2 \times 4000 \times 228.54$$

$$= 2000 \times 228.54$$

$$= 457080$$

Therefore the amount payable would be 457080/- (Rupees Four Lakhs Fifty Seven Thousand Eighty only). This would be the highest amount payable as death compensation because the factor of the age group is highest in schedule IV and highest permissible wage structure is taken into consideration.

Compensation for permanent total disablement can be similarly calculated, the only difference being that 60% of the monthly wages of the injured is taken into consideration.

Compensation on Permanent Partial Disablement:

Where Permanent Partial Disablement results from an injury, in case the injury happens to be one specified in Part II of Schedule I, the amount of compensation is determined taking into account the percentage of loss of earning capacity as specified in the corresponding column in the same schedule. The amount of compensation is determined by determining the amount payable in case of Permanent Total Disablement and reducing it to make the compensation proportionate to the loss of earning capacity

permanently caused by that injury. In cases of injuries not specified in the Schedule the loss has to be determined according to the assessment of a qualified medical practitioner.

The expression "loss of earning capacity" has been explained by Calcutta High Court in *Calcutta Licensed Measures v. Mohammed Hussain*¹⁶ where the Court laid down the following propositions:

- a. earning is not the same as earning capacity;
- b. the rise in earning may be because of various factors and rise in wages is not decisive of no loss of earning capacity
- c. loss of physical capacity is not co-extensive with loss of earning capacity;
- d. loss of physical capacity or physical incapacity may be relevant not as to which extent there is loss of earning capacity, for every employment which the workman was capable of undertaking at that time or the employment in which he was engaged at the time of the accident as the case falls for consideration.

Compensation on Temporary Disablement (whether Total or Partial):

¹⁶ AIR 1967 Cal 378

For Temporary Disablement whether Total or Partial, compensation is payable in the form of recurring half monthly payments. The amount of each payment is equal to 25% of the monthly wages of the workman. Such half monthly payment is payable on the sixteenth day from the date of disablement where the disablement lasts for a period less than twenty eight days. The first payment becomes due on the 16th day after a waiting period of three days. Thereafter payments are made in half monthly installments during the period of disablement lasts or during the period of five years whichever is shorter.¹⁷

Compensation under Section 4 is to be paid as soon as it falls due.¹⁷ In cases where the employer does not accept the liability for compensation to the extent claimed, he is bound to make provisional payment based on the extent of liability which he accepts. Where the employer is in default, the Commissioner has power to direct the concerned employer to pay the amount of arrears and also and also simple interest thereon at the rate of 12% per annum or such higher rate not exceeding¹⁸ the maximum lending rates of any Scheduled Bank. The Commissioner also has power to direct in addition to the aforesaid amount, a further sum not exceeding 50% of such amount by way of penalty.¹⁹

For the purpose of the calculation of compensation payable to a workman it is important to calculate his wage because the amount of compensation for Permanent Total or Permanent Partial Disablement or half

¹⁷ Section 4 A (1)

¹⁸ Section 4 A (3) (a)

¹⁹ Section 4 A (3) (b)

monthly payments for Temporary Disablement depends upon the wage group to which the concerned worker belongs.

Under Section the expression monthly wages denotes the amount of wages payable for a month's service and may be based on wages payable for a month or other period of even at piece rates. The monthly wages are calculated as follows:

- i. where the workman who was in the service of the employer during continuous period of not less than 12 months immediately preceding the accident, his monthly wages shall be $1/12^{\text{th}}$ of the total wages which have fallen due for payment for him by the employer in such 12 months period;
- ii. if the workman was in continuous service of one employer for less than one month then his monthly wages will be the average monthly amount during the 12 months immediately preceding the accident earned by a workman employed on same work with the same employer. In case there was no such workman with the same employer, than the monthly wages earned by a workman employed in similar work in the same locality will be the monthly wages of the concerned workman;
- iii. in other cases including those where it is not possible to calculate monthly wages due to want of information, the monthly wages shall

be 30 times the total wages earned in respect of the last continuous period of service immediately preceding the accident divided by the number of days comprising such period.

A period of service is continuous unless interrupted by a period of absence from work exceeding fourteen days.

The Act also makes provision for the review of the amount of compensation.²⁰ When the nature of disablement is temporary it is very likely that the condition of the workman may either improve or deteriorate. Therefore, in cases of half monthly payments being made under an agreement between the parties or under the order of the Commissioner, either party can make an application to the Commissioner for review. Such application is required to be accompanied by a certificate from a qualified medical practitioner.

On such an application made for the review of compensation as stated above, the Commissioner may increase, decrease, end or continue the half monthly payments. If it is found that the accident has resulted in permanent disablement, the Commissioner can convert the half monthly payments into lump sum compensation.

²⁰ Section 6

The Act also makes provision for commutation of half monthly payment.²¹ After the half monthly payments have been made for six months, either the employer or the workman can get the recurring payments commuted at any time to a single payment.

Compensation granted to a workman under the Workman's Compensation Act, 1923 cannot be assigned, attached or charged by any process of law and is also not liable to set off against any claim.²² This provision provides protection to the amount of compensation received by a workman or his dependents thus making them able to realize the social security provided under the Act.

Under the Workmen's Compensation Act, to avail the benefit of compensation, the first thing that a workman must do is to give a notice in writing.²³ As soon as may be practicable after the occurrence of accident, a notice must be served by the workman injured as a result of accident. Such notice must contain:

1. the name and address of the workman injured;
2. the date of accident; and
3. the cause of injury

²¹ Section 7.

²² Section 9.

²³ Section 10.

The notice is to be served on the employer or any one of the several employers or any person responsible for the management of the branch where the workman is employed.²⁴ The claim of compensation must be made within 2 years of the occurrence of the accident or from the date of death.²⁵

The scheme of the Workmen's Compensation Act, 1923 is to make employer liable to compensate a worker for injuries suffered by him as a result of an accident arising out of and in the course of employment. But it is provided under Section 12 (1) where a contractor is engaged to do wholly or partly work which ordinarily forms part of the trade or business of the principal, than, the principal would be liable to pay compensation as if he was the direct employer. The principal on the other hand is entitled to be indemnified by the contractor to the extent of the liability thrown upon him. Likewise the contractor is entitled to be indemnified by sub-contractors for compensation paid by him or for indemnity to the principal employer. All questions of indemnity are to be settled by the Commissioner for Workmen's Compensation.

Where some third party is responsible for the accident injuring the workman, the employer has a right to recover from that third party any compensation he has paid to the workman, in addition to any damages.

²⁴ Section 10 (2)

²⁵ Section 12 (2)

There is a bar on the jurisdiction of Civil Courts to settle, decide or deal with any question which is by or under this Act required to be so settled, decided or dealt with by the Commissioner. The Civil Court also has no jurisdiction to enforce any liability incurred under the Act.

The Commissioner while deciding any claim deemed to be a Civil Court and authorized to exercise the powers under the Civil Procedure Code, 1908 or taking evidence on oath, for enforcing the attendance of witnesses, and for compelling the production of documents and material objects. The Commissioner is to follow the procedure prescribed by the rules framed under the Act but he may vary the procedure provided he is satisfied that the interest of the parties will not be prejudicially affected.²⁶

An appeal against the orders of the Commissioner would lie in the High Court. Such appeal is allowed on limited orders such as:²⁷

1. orders allowing as compensation a lump sum, or disallowing a claim in full or part of a lump sum;
2. orders refusing to allow redemption, of half-monthly payments;
3. orders awarding interest or penalty under Section 4 A;

²⁶ Section 23

²⁷ Section 30

4. orders providing for the distribution of compensation among the dependants of a deceased workman or disallowing any claim of a person alleging himself to be a dependant;
5. orders allowing or disallowing any claim for the amount of indemnity under the provisions of Section 12; and
6. orders refusing to register a memorandum of agreement or registering the same providing for registration of the same subject to conditions.

Further no appeal would lie against any such order as stated above unless the following conditions are fulfilled:²⁸

1. a substantial question of law is involved in the appeal;
2. excepting an order refusing to allow redemption of half monthly payments the amount in dispute in appeal is not less than 300 rupees;
3. the parties have not agreed to abide by the orders of the Commissioner;
4. Order of the Commissioner does not give effect to an agreement arrived at between the parties;
5. in case of appeal awarding compensation in lump sum, the memorandum of appeal is accompanied by a certificate by the Commissioner to the effect that the appellant has deposited with him

²⁸ ibid

the amount payable under the order appealed against. This provision is mandatory and not merely declaratory;²⁹

6. appeals filed within the limitation period, that is within sixty days from the date of the order limitation would begin from the date the party is informed of the order.³⁰ The delay can be excused by the high Court if it is satisfied that there is sufficient cause for not filing the appeal in time.

The State Government is vested under the Act with powers to make rules on various matters.³¹ The rules as soon as they are made are required to be laid before the State Legislature. The rules made by the Central Government are to be laid before the Parliament. The rules are also to be published in the Official Gazette and after such publication they will be deemed to have been enacted under the Act.

The provisions contained in the Workmen's Compensation Act, 1923 are applicable irrespective of the number of workers employed in an establishment. Therefore it applies to unorganized workers also. However the benefits flowing from the Act are best reached to the workers in unorganized sector if the complaints and claims are received locally through the local self government or through some other institutional machinery created or designated for this purpose.

²⁹ *Bihar Journals v. Natya Nand*, AIR 1959 Pat 112

³⁰ *C.E. Corporation v. Doadi Raj* 1960 Orissa 39

³¹ Refer to Section 32

B. The Payment of Wages Act, 1936:

The Payment of Wages Act, 1936 is an enactment to protect the wages earned by workers while working in factories and other establishments. The Act applies in the first instance to the persons employed in any factory or railway or a person fulfilling contract with a railway administration;³² but the State Government has power to extend the provisions of the Act to any class of persons employed in any industrial establishment or in any class or group of industrial establishments. Section 2 (ii) defines industrial establishments to mean *inter alia*, any tramway service or motor transport service engaged in carrying passengers, goods or both; any workshop or other establishment where articles are produced for use, transport or sale; establishments in which any work relating to construction, development, maintenance of building, roads, bridges, canals etc. are carried on; or any other establishment or class of establishments which the Central Government or the State Government as the case may be may specify by notification, in the Official Gazette.³³ Such establishments need not be permanent.³⁴

“Wages” in economics means price paid for labour. Wages consist of all payments that compensate individuals for time and effort spent in the

³² Section 1 (2)

³³ Section 1 (5)

³⁴ *Matber Singh v. Bhola Dutt* 1980 Lab IC 393 (All) cited in K. Madhavan Pillai, *Labour and Industrial Laws* (7th ed.), Allahabad Law Agency (1998)

production of economic goods and services. The payment include not only wages in ordinary, narrow sense like the earnings computed generally on hourly, daily, weekly, or output basis but also covers bonuses added to regular earnings, premiums for night or holiday work or for work exceeding stated norms or quality and quantity; fees and retainers for professional services; and that part of the income of business owners that compensates them for time devoted to business. The Payment of Wages Act, 1936 also give a comprehensive definition of wages to cover all remunerations by salaries or allowances including any remuneration under any award, over-time payment, bonuses, compensation on termination of employment or on retirement etc. or any sum to which a person is entitled under any law for time being in force.

The wages according to the Act does not include:

- i. The value of any house accommodation or of the supply of light, water, medical attendance or other amenity or of any service excluded from the computation of wages
- ii. Any contribution paid by the employer to any pension or provident fund, and the interest which may have accrued thereon;
- iii. Any bonus which does not form part of the remuneration payable under the terms of the employment or which is not payable under any wage or settlement between the parties or order of a court;

- iv. Any T.A. or the value of any travel concession;
- v. Any sum paid to the employed person to defray special expenses incurred by him by the nature of his employment; or
- vi. Any gratuity payable on termination of employment.

Any amount claimed by employees for the periods of lay-off falls within the definition of wages.³⁵

The primary responsibility for the payment of wages under the Act lies with the employer but in the case of industrial establishments the person responsible to the employer for supervision and control of the establishments will be liable for the payment of wages.³⁶

The Act requires the person responsible for the payment of wages under Section 3 of the Act to fix wage periods in respect of which such wages shall be payable. The wage period so fixed should not exceed one month.³⁷

Under Section 6 of the Act, wages are required to be paid in current coins or current notes. However, if the employee gives the authority in writing to this effect, the employer can pay wages by cheque or crediting the wages in his bank account.

³⁵ *Junior Labour Inspector v. Appellate Authority* (1976) 1 LLJ 512.

³⁶ Section 3

³⁷ Section 4

Regarding the time of payment, the Act says that if the number of persons employed in an industrial establishment etc. is less than one thousand, wages must be paid before the expiry of seventh day and in other industrial establishments etc the wages should be paid before the expiry of tenth day from the last day of the wage period: Where the employment of a person is terminated then the wage due to him must be paid before the expiry of the second working day from the day of termination of work. All payments of wages are required to be made on a working day.

Every payment made by the employed person to the employer or his agent will be deemed under the Payment of Wages Act, 1936 to be deduction from wages.³⁸ The Act has prohibited the employer from making any deduction from the wages of the employees except those permitted under the Act.³⁹ The loss of wages resulting from withholding of increment or promotion (including stoppage of increment or efficiency bar); reduction to a lower post or time scale or to a lower stage in a time scale; and suspensions will not be held as deductions under the Act.⁴⁰ The Act also allows following deductions:

Fines: fines for the acts and omissions which are approved by the Government and notified at the establishments can be imposed by the employer upon the employee. As per Section 8 no such fine can be imposed except for such acts.

³⁸ Explanation (i) to Section 7

³⁹ Section 7 (1)

⁴⁰ Explanation (ii) to Section 7

or omissions as approved by the Government. Notice specifying such acts and omissions is also required to be exhibited in the premises. The employee must, before the imposition of fine, be heard as to why such should not be imposed on him. In one wage period the total permitted amount of fine is one *anna* in a rupee of the wages. For the employees below the age of 15 no imposition is allowed under the Act. No fine can be recovered in installments or after the expiry of 60 days from the day of its imposition. All such fines and realizations thereof are required under the Act to be recorded in a register and such realized amount should be spent for the purposes beneficial to the employees.

- ii. **Deduction for Absence from duty:** The payment of Wages Act, 1936 authorizes the employer to make deductions for the absence of the employee.⁴¹ If the employee abstains from carrying out his work in pursuance of stay in strike without any just cause or a tool down strike without a reasonable cause, he is deemed to have absented his duty. Such deduction should be proportionate to the absence. However, where ten or more

⁴¹ Section 7 (2) (b), also refer to Section 9

workers acting in concert absent themselves without any just cause and without any notice the deduction may include such amount not exceeding his wage for 8 days.⁴²

iii. **Deduction for house accommodation, amenities and services:** deductions may be made from the wages of the employee for house accommodation provided by the employer or by the Government or by any housing board set up under any law as notified by the State Government. Such deduction should not exceed the value of the accommodation.⁴³ Further deduction in the same manner may be made for amenities and services.

iv. **Deduction for recovery and adjustments:** advances or any other overpayment can be recovered or adjusted through deductions. Deductions under this head is subject to the following conditions:

a. Recovery of advance made before the employment can be deducted from the first payment of wages in respect of a complete wage period. But no deduction

⁴² Prviso to Section 9 (2)

⁴³ Section 11

can be made to recover advance given for traveling expenses.

- b. Advance of money given after employment can be recovered in accordance with the conditions laid down by State Government.
- c. Advance of wages not already earned can be recovered subject to the rule made by the State Government.

The employer has authority to recover loans with interest made from any fund constituted for the welfare of labour in accordance with the rules approved by the State Government.⁴⁴ Likewise, loans granted for house building or other purposes can be recovered with interest subject to the rules made by State Governments.

v. **Deduction of Income Tax**

vi. **Deduction by order of court or other competent authority**

⁴⁴ Section 7 (2) (ff)

- vii. **Deduction for payment to co-operative societies etc:** deductions are authorized for payments to co-operative societies of advance from any provident fund recognized by Provident Fund Act, 1925 or approved by the State Government.⁴⁵ Deductions are also allowed for payment to co-operative societies or insurance scheme or E.I.C.⁴⁶ All such deductions are subject to the conditions imposed by State Government.⁴⁷
- viii.- **Deduction for Contribution to Prime Minister's National Relief Fund or other funds:** deduction can be made for contribution to Prime Minister's National Relief Fund or such other fund notified by the Central Government in the Official Gazette. Such deduction can be effected only after obtaining a written authorization of the employee concerned.⁴⁸

Permissible Total Deduction:

The total amount of deduction which can be made under Section 7 (2) in any wage period should not exceed:

⁴⁵ Section 7 (2) (i)

⁴⁶ Section 7 (2) (i) (k)

⁴⁷ Section 13

⁴⁸ Section 7 (2) (p)

- i. in case where such deduction are wholly or partly made for payment to co-operative societies, 75% of such wages; and
- ii. in all other cases 50% of such wages.

The excess in the above cases may be recovered in the manner prescribed.

The employer is required under Section 13-A of the Act to maintain registers and records of the details of persons employed, nature of work, wages, deductions, receipts and other prescribed particulars. However so long as the rules do not make it obligatory to maintain such registers, non maintenance of such registers will not attract the offence under Section 20.

The payment of Wages Act empowers the State Government to appoint inspectors for enforcing the provisions of the Act. Such inspectors are empowered to examination and enquiries, search any premises at reasonable times, supervise the payment of wages to persons, require by written order the production of any register or record maintained pursuant to the Act, to seize or take copies of such records and to exercise such other powers as may be prescribed. The Act also requires the Constitution of a Payment of Wages Authority. The Authority has all powers of a civil court under Civil Procedure Code, 1908 for:

1. taking evidence;
2. enforcing the attendance of witness; and
3. Compelling the production of documents.

If the payment of wages is delayed beyond the due date or deductions are made from wages contrary to the provisions of the Act an application for recovery can be filed by the employee or legal practitioner or official of a registered trade union authorized by the employee or by inspector or by any other person with the permission of the Authority appointed by the State Government for hearing the claim under this Act. Such application has to be presented within one year from the date on which the payment of wages was due or from the date on which deductions were made. The Authority, however, has power to condone the delay on its being satisfied on applying proper legal principles that there was sufficient cause for such delay.

The Authority under the Act has power of appointing whom lies with the State Government should be:

1. presiding officer of a Labour Court or Industrial Tribunal; or
2. any Commissioner for Workmen's Compensation; or
3. other officer with experience as judge of a civil court or as a stipendiary magistrate.

The State Government has power to appoint more than one authority for the same specified area.

Section 20 of the Act stipulates fines for contravening the provisions of the Act. The years old provisions stipulating the amount of fines do not fit in the present situations. Mere sums of a few hundred rupees do not adequately give the wrongdoer feeling of punishment. Thus the amounts of fines need adequate increments.

The Payment of Wages Act also is not designed to help the unorganized workers. The benefits flowing from the Act do not adequately help the unorganized workers because of the casual nature of the employment. The unorganized workers do not have institutional machinery like trade unions to fight for their rights. As such they cannot agitate to fight for their rights without losing their job.

C. The Payment of Gratuity Act, 1972:

In the simple meaning gratuity may be understood to mean money given in appreciation. It is a small gift, usually of money, given to somebody as

thanks for service given. The Oxford Dictionary the word gratuity has been interpreted to mean "money given in recognition of services rendered or a tip.

The scheme of payment of Gratuity to employees engaged in factories, mines, shops and establishments etc. in India started with the State Government legislation in Kerala and Governor's Promulgation of Ordinance in West Bengal in 1971. After these enactments some other State Governments also voiced their intention to bring similar legislations. Therefore for the uniformity of the pattern of payment of gratuity to the employees throughout the Country, need for a central legislation was felt. The proposal of central legislation on gratuity was formally discussed in the Labour Ministers' Conference held in New Delhi on 24th and 25th August 1971 and also in the Indian Labour Conference at its session held on the 22nd and 23rd October, 1971. There was general agreement at the Labour Minister's Conference and the Indian Labour Conference on an urgent need of a central legislation on the subject. The Legislation was passed by both the house of the Parliament in 1972 which came into force on 16.09.1972.

The benefits under the Act is available to any person (other than an apprentice) employed in wages in any establishment, shops, factories etc to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or electrical work whether the terms of such employment are express or implied and whether or not such person is employed in managerial or administrative

capacity, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity.

The Act is applicable to shops and establishments within the meaning of any law for time being in force in relation to shops and establishments in a state, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months.⁴⁹

The term 'establishment' has a wide meaning. According to Oxford Dictionary it means organized body of men maintained for a purpose. Section 1 (3) (b) of the Act empowers the Central Government to extend the coverage of this Act to any establishment. 'Establishment' under the Clause means an organization employing persons between whom relationship of employer and employee exists. Thus the Act if extended can be applicable to all cases where an employer employee relationship can be identified. A shop or establishment to which the Act becomes applicable will be governed by this Act even when the number of persons falls below 10.⁵⁰

⁴⁹ Section 1 (3)

⁵⁰ Section 1 (3)

Gratuity is payable to an employee on the termination of his employment⁵¹ after he has rendered continuous service for not less than five years-

1. on his superannuation; or
2. on his retirement or resignation; or
3. on his death or disablement due to accident or disease.

Completion of continuous service of five years is not required where the termination of service is due to disablement or death.⁵² In case of death of the employee, gratuity payable to him will be payable to his nominee or where no nominee is appointed, to his heir, or such nominee or heir is minor, has to be deposited with the Controlling Authority who has to invest the same for the benefit of minor in such bank or other financial institution as may be prescribed, until such minor attains majority.

For every completed year of service, or part of it, in excess of six months, the employer is required to pay gratuity to an employee at the rate of fifteen days' wages as per the rate of wages last drawn by the employee concerned.⁵³ In the case of a piece-rated employee, daily wages shall be computed on the average of the total wages for a period of three months immediately preceding the termination of his employment and for this purpose

⁵¹ Section 4

⁵² Proviso (first) to Section 4 (1)

⁵³ Section 4 (2)

the wages paid for any overtime work is not to be taken into account. In the case of an employee who is employed in a seasonal establishment and who is not so employed throughout the year, the employer has to pay the gratuity at the rate of seven days' wages for each season.

For deriving the fifteen days wages in cases of monthly rated employee, wages last drawn by him has to be divided by twenty-six and the quotient derived has to be multiplied by fifteen. The calculation in this case would be thus-

$$\text{Monthly Wages}/26 \times 15$$

The amount of gratuity payable to an employee should not exceed three lakhs fifty thousand rupees.⁵⁴

The provisions under the Act do not debar the right of an employee to receive better gratuity under any award or agreement or contract with the employer.

Where services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction, of property belonging to the employer, the gratuity of an employee has to be forfeited only to the

⁵⁴ The amount of rupees fifty thousand was increased to rupees one lakh in 1994 and it was further increased to rupees three lakhs fifty thousand in 1998.

extent of the damage or loss so caused. Further, the gratuity may be wholly or partly forfeited:

- i. if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part;
- ii. for any act constituting an offence involving moral turpitude provided that such offence was committed in the course of employment.⁵⁵

The right to gratuity has been held by the Supreme Court as a statutory right.⁵⁶ In *Pattehurila v. K. Damodaran*⁵⁷ it was held that by the change of ownership, the relationship of employer and employees subsists and the new employer cannot escape from the liability of payment of gratuity to the employee. Therefore, it is the uninterrupted tenure of service that is determining factor of the right to gratuity under the Payment of Gratuity Act and that changes of managements are irrelevant on the point.

In the year 1987 a provision for compulsory insurance was added in the Act to come into effect from such date as is notified by the appropriate Government.⁵⁸ The insurance is for the employer's liability of payment towards

⁵⁵ Section 4 (5) (b)

⁵⁶ *D.K. Kapoor v. Union of India*, AIR 1990 SC 1923

⁵⁷ (1993) 1 LLJ 1211

⁵⁸ Section 4 A

gratuity. Where the employer fails to pay any premium he will be liable to pay the amount of gratuity due under the Act including interest, if any, for delayed payments, to the Controlling Authority appointed by the appropriate Government.⁵⁹ Any contravention to this provision attracts the punishment of fine which may extend to ten thousand rupees and in the case of continuing offence a further fine extending to one thousand rupees for each day of continuation of the offence.

The appropriate Government may by notification (which may have prospective or retrospective effect) exempt any establishment, shop etc or any employer or class of employees employed in any establishment, shop etc from the application of this Act if it has the opinion that the employees in such establishment, shop etc are in receipt of gratuity or pensionary benefits not less favourable than the benefits conferred under this Act.

A person who has become eligible for payment of gratuity or any authorized person acting on his behalf has to send a written application to the employer.⁶⁰ As soon as the gratuity becomes payable when the application as stated above has been made or not, the employer has to determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the Controlling Authority specifying the amount of gratuity

⁵⁹ Section 4 A (5)

⁶⁰ Section 7 (1)

so determined.⁶¹ The case of any dispute with regard to the amount of gratuity, or any claims, or with regard to the person entitled to receive such amount, etc., the employer has to deposit with the Controlling Authority such amount as he admits to be payable by him as gratuity. The Controlling authority has to decide the dispute duly observing principles of fair hearing.

The proceedings of enquiry will be deemed to be judicial proceedings and the Controlling has been entrusted with the power of a civil court in the matters of enforcing attendance of any person and his examination on oath, requiring the discovery or production of documents, receiving evidence on affidavits and for issuing commissions for the examination of witnesses.

The appeal lies with the appropriate Government or such appellate authority as specified by the appropriate Government.⁶² The limitation period for such appeal is 60 days which can be extended by a further period of 60 days on being satisfied of the sufficient cause of such delay.⁶³

The employer has to arrange to pay the amount of gratuity within 30 days from the date it becomes payable.⁶⁴ For the delayed payment, except in the cases where the delay was due to employee's own fault, simple interest at the rate of the percentage as notified by the Central Government from time to

⁶¹ Section 7 (2)

⁶² Section 7 (7)

⁶³ Proviso (first) to Section 7 (7)

⁶⁴ Section 7 (3)

time or as the appropriate Government may notify, is also required to be paid to the employee.

The Controlling Authority should pay the amount deposited including the excess amount, as soon as it may be after the deposit⁶⁵

1. to the applicant where he is the employee; or
2. where the applicant is not the employee, to the nominee or the guardian or heir of such nominee, if the Controlling is satisfied that there is no dispute as to the right to receive the gratuity.

Nomination has to be made by each employee for the payment of gratuity.⁶⁶ Such nomination has to be made in the in favour of one or more member of the family. Any nomination outside the family, if the employer has a family is void. If at the time of making a nomination the employee did not have a family and where he subsequently acquires a family, such nomination would become invalid and the employee has to make a fresh nomination in favour of one or more member of the family.⁶⁷ Nomination can be modified. If the nominee predeceases the employee, the interest of the nominee will revert to the employee who has to make a fresh nomination.⁶⁸

⁶⁵ Section 7 (4) (c)

⁶⁶ Section 6 (3)

⁶⁷ Section 6 (4)

⁶⁸ Section 6 (6)

Gratuity amount payable to an employee is protected against attachment in execution of any decree or order of any court, revenue or criminal court.

In the cases of non payments the Controlling Authority, on an application made by the aggrieved person, has to issue a certificate for that amount to the Collector who will collect the amount along with interest as arrears of land revenue and pay the same to the person entitled.

To facilitate the execution of the provisions of the Act provisions have been made for the appointment of inspectors who have been given adequate powers. Further penalties have been prescribed for various offences under the Act. Any person who for the purpose of avoiding any payment to be made under this Act or to avoid such liability of another person knowingly makes or causes to be made any false statements or false representation will be punishable with imprisonment extending to six months or fine extending to ten thousand rupees or both.⁶⁹ An employer who contravenes or makes default in complying with, any of the provisions of this Act or any rule or order made thereunder is liable for punishment of imprisonment for a term which should not be less than three months but which may extend to one year or with fine which should not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both.⁷⁰ Where the offence relates to non payment of gratuity the punishment prescribed is imprisonment which should

⁶⁹ Section 19 (1)

⁷⁰ Section 19 (2)

not be less than six months but which may extend to two years unless the court trying the case, for reasons to be recorded, is of the opinion that lesser term of imprisonment or imposition of fine would meet the ends of justice.⁷¹

All offences punishable under this Act should be filed through the Controlling Authority to a court not inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of First Class.

The provisions of this Act have an overriding effect on all other enactments, instruments or contracts. The power to make rules under this Act has been vested on the appropriate Government.

D. The Payment of Bonus Act, 1965:

The consistent demand of workmen for social justice to render due share in the profits of the industry in which they have a major hand side by side the enterprise and the capital and the observation of the Hon'ble Supreme Court of India in *Associated Cement Companies v. Workmen*⁷² in 1959 made the Government of India to set up a Tripartite Commission on December 6, 1961 to consider in a comprehensive manner, the question of payment of bonus based on profits to employees employed in establishments, and to make

⁷¹ Proviso to Section 19 (2).

⁷² (1959) 1 LLJ 644 (SC)

recommendations to the Government. The Supreme Court in the above case observed:

“If the legislature feels that the claims for social and economic justice made by labour should be redefined on a clear basis, it can step in legislature in that behalf. It may also be possible to have the question comprehensively considered by a high powered commission which may be asked to examine the pros and cons of the problem in all its aspects by taking evidence from all industries and bodies of workmen.”

On the recommendations of the Commission as stated above the Parliament passed payment of Bonus Act, 1965 with the following objectives:

1. to impose statutory liability upon the employer of every establishment covered by the Act to pay bonus to employees in the establishment;
2. to define the principle of payment of bonus according to the prescribed formula; and
3. to provide for payment of minimum and maximum bonus and linking it with the scheme of set off and set on.

Bonus is a payment made by the employer to maintain industrial harmony. It is the workmen's share of prosperity of the concern for which they have their contribution. The concept of payment of bonus is not the product of any generosity of the employer but it is one paid in the interest of industrial peace and to make available to every employee a living wage which is generally more than the actual wages.⁷³

The Payment of Bonus Act applies to every factory and every other establishment in which twenty or more persons are employed on any day during an accounting year.⁷⁴ Keeping in view the area of the present work, it is important to note that this Act now will apply to the employees through contractors on building operations.⁷⁵ Further the appropriate Government has powers to exempt any establishment or class of establishments from the operation of all or any provisions of the Act⁷⁶

Every employee who has worked in an establishment for not less than 30 working days in a year is entitled to bonus.⁷⁷ For the purpose of the Act "employee" means any person other than an apprentice employed on salary or wage not exceeding ten thousand rupees⁷⁸ in any industry to do any skilled or

⁷³ S.K. Puri (Dr.), *Labour and Industrial Law* (8th ed.), Allahabad Law Agency, 2004 at 542

⁷⁴ Section 1 (3)

⁷⁵ The amendment in Section 32 for deletion of entry vi to include employees employed through contractors in building operation has been announced by the Union Cabinet Minister for Labour on October 1, 2007

⁷⁶ Section 36

⁷⁷ Section 5

⁷⁸ Increased from three thousand and five hundred rupees: announced by the Union Minister for Labour on October 1, 2007

unskilled, manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment is express or implied.

Where the establishment consists of different departments or undertaking or has branches, whether situated in the same place or in different places, all such departments or undertakings or branches are to be treated as parts of the same establishment.⁷⁹

The Act has elaborately explained the process of computation of bonus. Where the salary or wages of an employee exceeds one thousand and six hundred per month the bonus payable to such employee has to be calculated as if the salary or wages are two thousand and five hundred rupees per month.⁸⁰ Further for the purpose of computation of the days in which he has been off under an agreement (permitted by any law) or on which he has been on leave with salary or wages, or he has been absent due to temporary disablement caused by accident arising out of and in the course of employment or on maternity leave with salary or wages; the employee concerned would be worked in the establishment concerned.

⁷⁹ Section 9
⁸⁰ Section 13

For the newly set up establishments the right of bonus to the employee is partially governed by separate provisions. The Act says that in such cases:⁸¹

1. in the first five accounting years in which the employer sells the goods produced or services rendered, the bonus becomes payable only in respect of the year in which the employer derives profits. For this period the application of the provisions relating to set on and set off of allocable surplus enumerated in Section 15 of the Act will not be applicable;
2. For the sixth and seventh accounting years the provisions in Section 15 will be applicable subject to following modifications:
 - i. for the sixth accounting year, the set on or set off principle will be applicable as against the allocable surplus of fifth and sixth accounting year; and
 - ii. for the seventh accounting year, the set on or set off principle will be applicable as against the allocable surplus of fifth, sixth and seventh accounting year.⁸²
3. From the eighth accounting year following the accounting year in which the employer starts selling goods produced the provisions of Section 15 will apply.⁸³

⁸¹ Section 16 (A)

⁸² Section 16 (1-B)

Section 11 speaks about maximum bonus. It says that in an accounting year if the allocable surplus exceeds the amount of minimum bonus payable under Section 10 then the employer will be bound to pay bonus of an amount in proportion to the salary or wage of the employee during the year subject to a maximum of 20 percent of such salary or wage. Under Section 15, the excess amount after giving maximum bonus under Section 11 may be set on for the succeeding year. Similarly the deficiency to pay even the minimum bonus under Section 10 may be set off in the succeeding year if there is excess after meeting the minimum bonus in that succeeding year.

Minimum bonus for the above purpose is 8.33 percent of the salary or wage earned by the employee during the accounting year or one hundred rupees, whichever is higher. For an employee who has not completed fifteen years such minimum bonus is sixty rupees.⁸⁴

In cases where the employee has not worked for all the working days, the minimum bonus if higher than 8.33 percent of his salary or wages has to be proportionately reduced.

Computation of gross profits derived by an employer from an establishment in respect of the accounting year in cases other than that of a

⁸³ Section 16 (I-C)

⁸⁴ Section 10

banking company should be calculated according the procedure provided in the second schedule.

Section 6 provides the sums that have to be deducted form gross profit as prior charges. They are:

1. any amount by way of depreciation admissible under the Income Tax Act etc;
2. any amount by way of development rebate or investment allowance or development allowance which the employer is entitled to deduct from his income under the Income Tax Act;
3. any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year;
4. such further sums as are specified in the third schedule.

Direct tax payable by the employer should be calculated at the rates applicable to the income of he employer for that year. In calculating such tax rates no account should be taken of:⁸⁵

1. any loss incurred by the employer in respect of any previous accounting year and carried forward under any law;

⁸⁵ Section 7 (a)

2. any arrears of depreciation which the employer is entitled to add to the amount of depreciation under Sub Section (2) of Section 32 of the Income Tax Act;
3. any exemption conferred on the employer under Section 84 of the Income Tax Act.

Further, where the employer is an individual or Hindu Undivided Family the tax payable by such employer under the Income Tax Act should be calculated on the basis that the income derived by him from the establishment is his only income.⁸⁶ Rebates other than development rebate or investment allowance or development allowance have also been saved from being accounted in the calculation of the direct tax.

The Payment of bonus must be in cash. In a case where there was a dispute as to liability to pay bonus, the bonus must be paid within a month of the award of the authority trying the dispute. In all other cases it must be paid within 8 months from the date of closing of the accounting year. However on sufficient reasons the Government or the authority as the case may be, can extend the period of such payment beyond eight months but it should not in any case exceed two years.⁸⁷

⁸⁶ Section 7 (c)

⁸⁷ Section 19

The Bonus is recoverable from the employer. On an application by the employee or his authorized agent or his assignee or his legal heirs and on satisfaction the appropriate government or the authority as the case may be would issue a certificate of the amount to collector. The collector would collect the same as arrears of land revenue.⁸⁸ Apart from the authorities as already referred to the Act also requires the appointment of inspectors for the purpose of carrying on the provisions of the Act.⁸⁹

For the contravention of the provisions of the Act or failing to comply with the direction or requisition of any direction the punishment prescribed is imprisonment extending to six months or fine which may extend to one thousand rupees or both.⁹⁰

The disputes under the Act are deemed to be industrial disputes within the meaning of Section 2 (k) of the industrial Disputes Act. Therefore the settlement method of Industrial Disputes or any corresponding state law would apply.⁹¹ In a dispute referred under Section 22 of the Act regarding bonus payable under the Act, the Tribunal is under a duty to decide the rate of bonus payable by the employer. In the absence of the rate being specified, the

⁸⁸ Section 21

⁸⁹ Section 27 (1)

⁹⁰ Section 28

⁹¹ Section 22

employer would be handicapped in carrying out the directions contained in the award.⁹²

Recent steps of the Government to include workers employed through contractors in building operation and rising of the basic wages for eligibility for bonus from less than Rs. 3, 500 to less than Rs. 10, 000 opens up new hopes for the betterment of the conditions of workers employed in various employments. Government employees and Contract labourers are the ones who have a cause to celebrate. More such bold steps are necessary for a country which has a potential to change the shape of its economy through its massive workforce.

E. The Minimum Wages Act, 1948:

There are different theories of wages explaining us the concept of wages and elements and determining factors. Just Wage Theory of the noted Italian philosopher St. Thomas Aquinas, Subsistence Theory of Adam Smith later developed by David Ricardo, Bargaining Theory, Purchasing Power Theory, Marginal Productivity Theory largely developed by the American economist John Bates Clerk, Wages Fund Theory, etc. all explain many aspects of wage problems. However none of these theories can be used to shoot all problems.

⁹² *Md. Hanif v. J.B. Majdoor Union*, 1980 Lab IC (All), cited in K. Madhavan Pillai, *Labour and Industrial Laws* (7th ed.), Allahabad Law Agency (1998) at 455

In *Express Newspapers v. Union of India*⁹³, the Supreme Court classified wages into three categories viz. Living Wage, Fair Wage and Minimum Wage. Living Wage is one which is appropriate for normal needs of the average employee regarded as a human being living in a civilized community. A living wage should enable a male earner to provide for himself and his family (of about five persons) not merely the bare essentials of food, cloth and shelter but a measure of frugal comforts including education for children, protection against ill health, requirements of essential social needs and a measure of insurance against more important misfortunes including old age. Fair wage is another concept of wage which stands between living and minimum wage. Fair wage is said to be a step towards the progressive realization of a living wage. A fair wage is settled above the minimum wage and goes through the process of approximating towards the living wage while the lower limit to fair wage must obviously be the minimum wage; the upper limit is set by capacity of the industry to pay. Minimum wage differing from these two provide for bare subsistence. Minimum wage is sufficient to cover the bare physical needs of a worker and his family. This minimum wage is paid to the worker irrespective of the paying capacity of the industry. No right to exist can be attributed to an industry which is not in a position to pay its workmen minimum wage.

⁹³ AIR 1958 SC 576

Minimum wage generally means rate of pay fixed either by a collective bargaining agreement or by governmental enactment as the lowest wage payable to specified categories of employees. The setting of a minimum wage does not preclude the right of employees to demand wages above the established minimum. The method of establishing a minimum wage by collective bargaining method suffers from serious drawbacks. The realization of these shortcomings led trade unions to demand minimum wage programmes in several countries.

The first minimum wage law was enacted by the government of New Zealand in 1894. Subsequently Victoria State, Australia in 1886 followed the trend. Inspired by Australian law British Trade Boards was enacted in 1909. In the United States, Massachusetts enacted the first minimum wage law in 1912.

In India, law on minimum wages cannot be prescribed to correspond to the concept of living wage because of the level of income is very low. The Report of the National Commission on Labour recommends fixation of different minima for different industries which would have greater appeal and function fixing a minimum wage for the country's economy as a whole.⁹⁴ But after so many years of economic reforms it is certainly a time to progress towards the achievement of this end.

⁹⁴ Report of the National Commission on Labour (1969)

The question of minimum wages was studied in depth by the Whitley Commission in India. It observed:⁹⁵

“it is likely that there are many trades in which a minimum wage may be desirable but not immediately practicable.”

Thereafter many committees were formed to consider the issue. Finally, Indian Labour Conference gave shape to the Minimum Wages Bill which was enforced as an Act in 1948.

The whole philosophy underlying the enactment of Minimum Wages Act is to prevent exploitation of labour through the payment of unduly low wages. The Act empowers the Central and the State Governments to fix minimum rates of wages for different employments listed in the Schedule to the Act. Thus the Act ruled out the determination of wages entirely to the market forces.

In Minimum Wages Act, it may be noted that the powers to fix minimum wages has been vested on the appropriate Government only for a few employments relating to Tourism. In the context of the present work Construction and maintenance of roads and buildings⁹⁶ and public transports⁹⁷ are the only areas in tourism which is covered by the Minimum Wages Act

⁹⁵ Cited in the Report of the Royal Commission on Labour at 214

⁹⁶ Entry 7 and 17 of Part I of the Schedule to the Act

⁹⁷ Entry 21 of Part I of the Schedule to the Act

However under Section 27 of the Act, State Government is empowered to add other employments in the Schedule and the added employments would come under the purview of the Act.

The Act enumerates the methodology of fixing of minimum wages. In fixing or revising the minimum rate of wages different rates of wages may be fixed for different employments; different class of work in same employment; adult, adolescents, children and apprentice and for different localities. We may note here that wages for women cannot be different only on the ground of sex. However if she happens to work in a different class of work in same employment she may have different wage.

The appropriate Government has power under Section 3 of the Act to fix minimum wages for the employees employed in employments specified in either part of the Schedule or employments added in the Schedule by Notification of the State Government under Section 27. It also has power to review and revise minimum wages at such intervals not exceeding five years. Such minimum wage with regard to any employment may be fixed by the hour, by day, by month or by such longer wage period as may be prescribed.⁹⁸

⁹⁸ Section 13 (1)

On a minute study of the numerous decisions we find that the courts have insisted the following considerations to be irrelevant in fixation of minimum wages:⁹⁹

1. an employer may find it too difficult to carry on his business on the basis of minimum wages;
2. the financial capacity of the employer;
3. the employer company having incurred losses in the previous years;
4. employer's difficulty in importing raw materials;
5. the region-cum-industry principle;¹⁰⁰
6. the Financial condition of the establishment or the availability of the workmen in lower wages;
7. the minimum wage levels prevalent at other places.¹⁰¹

The appropriate Government is required to adopt any of the following procedures in fixing minimum rates of wages in respect of Scheduled employment for the first time i.e. in fixing or in revising rates of wages already fixed.¹⁰²

⁹⁹ *Karnataka Film Chamber of Commerce v. State of Karnataka* (1987) 1 LLJ 182 -

¹⁰⁰ *Kamini Metals & Alloys Ltd. v. The Workmen*, AIR 1967 SC 1175 -

¹⁰¹ *New Bhopal Textiles v. State of M.P.*, AIR 1960 M.P. 358

¹⁰² Section 5

- a. appoint as many committees and sub-committees as it considers necessary to hold inquiries and advise in respect of fixation of wages or revising them, as the case may be; or
- b. by notification in the official Gazette publish its proposals for the information of persons likely to be affected thereby and specify the date, not less than 2 months from the date of notification, on which the proposal is to be taken into consideration.

After considering the advice of the committees appointed for all representations received by it before the date specified in the official Gazette, the appropriate Government has to fix or revise the minimum rates of wages in respect of each scheduled employments.¹⁰³

Minimum wages payable under the Act has to be paid in cash. However where there is such a custom, with the authorization of the appropriate Government it can be paid wholly or partly in kind. Likewise supply of essential commodities in concession rates can also be authorized by the appropriate Government the cash value of which should be estimated in the prescribed manner.¹⁰⁴

¹⁰³ Section 5 (2)

¹⁰⁴ Section 11

Where minimum rates of wages in respect of a scheduled employment is fixed, the employer has to pay for that class of employees, wages not less than the specified minimum rate of wage without any deductions except as authorized.¹⁰⁵

The appropriate Government may also fix the number of hours of work in a working day, one or more intervals, a day rest in seven days for all or any specified class of employees and payment of remuneration for such rest, and payment of work on day of rest at not less than overtime rate. Exceptions may be provided for employees of certain class depending on the nature of employment.¹⁰⁶

The employee whose minimum wage has been fixed under this Act will receive overtime payments fixed under this Act or any other law whichever is higher.¹⁰⁷

A worker who works for less than normal working day except where his failure to work is caused by his unwillingness to work and not by omission of the employer to provide him work or other prescribed circumstances is entitled to receive wages for a full normal working day.¹⁰⁸

¹⁰⁵ Section 12

¹⁰⁶ Section 13

¹⁰⁷ Section 14

¹⁰⁸ Section 15

Where an employee is employed on piece work for which time rate and not piece rate has been fixed is entitled to receive wages not less than the minimum time rate.¹⁰⁹

In order to carry into effect the scheme of the Act, provisions have been made in the Act for the appointment of Advisory Board, Central Advisory Board and inspectors.¹¹⁰ The main function of the Advisory Board is to advise the Government as regards to the revision of minimum wages.¹¹¹ As the name itself implies it is only advisory in character and the Government is not bound by the advice tendered by such Board not is consultation with Advisory Board Compulsory. The inspectors appointed, are required to exercise functions assigned to them. They enjoy adequate powers of entering any premises for the purpose of examining and production of register or records of wages, examine employees, require workers to give information regarding other employees, work and payments etc., seizure of documents and such other powers as prescribed.

The Minimum Wages Act, 1948 also requires the employer to maintain registers and records containing the following:

1. particulars of employees employed by him;
2. the work performed by them;

¹⁰⁹ Section 16

¹¹⁰ Section 7, Section 8 and Section 19 respectively

¹¹¹ *Chandrabhavan Boarding & Lodging v. State of Bombay* AIR 1962 Bom 97

3. the wages paid to them;
4. the receipts given by the employees; and
5. any other information as prescribed.

The employer who employs the workers in the scheduled employment is also required to exhibit the prescribed notices in premises containing prescribed particulars.¹¹²

The Minimum Wages Act contains specific provisions for the enforcement and implementation of the minimum wages prescribed by notifications. With regard to disputes arising out of any claim preferred by a worker against the employer the Act has provided for the settlement machinery. The Act is primarily concerned with fixing of rates of minimum wages, overtime rates and rate of payment for work on a day of rest done by a worker and is not really intended to be an Act for which provisions are made in other laws, such as Payment of Wages Act, 1936 and Industrial disputes Act, 1947.¹¹³ Therefore, all claims relating to above matters can be enforced against the employer by a worker if a dispute arises by preferring a claim before an authority appointed by the appropriate Government for this purpose.

Under the scheme of the Act, both, individual employers, as well as companies or other corporate bodies who employ the workers in the scheduled

¹¹² Section 18

¹¹³ Section 22 (a)

employments can be prosecuted and punished for contravening the provisions of the Act or any rule or order made under Section 13 of the Act. Therefore, any employer whether an individual or a company or other corporate body, who pays to any employee wage less than the minimum rate fixed for the concerned class of work or less than the amount due to him can be punished under the Act. Similarly any employer who contravenes any rule or order issued by the appropriate Government relating to normal working day, rest day and the payments at prescribed rules on rest day can also be punished. For the above-stated offences, the punishment prescribed is imprisonment upto 6 months or fine upto Rs. 500/- or both.¹¹⁴

Section 25 of the Act keeps alive the spirit of the Act by declaring all contracts and agreements whereby an employee relinquishes or reduces his minimum wages or any privilege or concession under this Act as null and void.

Many countries today have national minimum wages and more still have minimum wages for certain occupations. The main concern with minimum wage legislation is that it will hurt those it is designed to protect by reducing the number of low-skilled jobs. Critics point to the plentiful labour force in the developing world and fear that minimum wage legislation will result in further increases in unemployment in developed countries. However, evidence is mixed on the exact impact of minimum wage legislation. Studies done in the

¹¹⁴ Section 22

United States in the 1990s for example, gave contradictory results on the impact.¹¹⁵ Much depends on economic strength of the companies forced to pay a higher wage and thus their ability to remain competitive.

The Act applies to the Unorganised Sector including the workers engaged in tourism. The Act considerably is capable to protect the minimum wage of the unorganized workers. However the result may be more effectively realized if the local self government or some machinery created at the local level is made active with the responsibility of working as a watchdog and ensuring that the minimum wages are actually paid and also empowered to forward reports and complaints of non payments of minimum wages to the appropriate forums. Such machinery would ensure the best interest of the unorganized workers. In the 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. The prescribed amount of fine seems inadequate in the present time and therefore the amount of fine also needs adequate increment.

F. Maternity Benefits Act, 1961

With the aim of implementing the directive laid down in Article 42 of the Constitution of India, the Indian Parliament enacted Maternity Benefits Act,

¹¹⁵ Microsoft Encarta Encyclopedia, Microsoft Corporation, 2006.

1961 providing for maternity benefits to the women workers. According to the Supreme Court "(any act of) denial of maternity benefits (may) be examined on the anvil of Article 42 which, though not enforceable at law, is nevertheless available for determining the legal efficacy of the action complained of."¹¹⁶

The maternity Benefits Act, 1961 is an Act with the object of regulating the employment of women in certain establishments for certain periods before and after child birth and to provide for maternity benefits and other benefits. The Act applies to every establishment being a factory, mine or plantation including any such establishments belonging to Government. It will also be applicable to other establishments industrial, commercial or agricultural or otherwise if the State Government with the approval of the Central Government extends its application after giving not less than two months notice by notification in the official Gazette but will not be applicable to any factory or establishment to which the provisions of Employee's State Insurance Act, 1948 apply.

Under the Act, the employer is prohibited from knowingly employing any women in any establishment during six weeks each immediately and immediately following the day of delivery or miscarriage. In case, a request is made by a pregnant woman she will not be given any work:

¹¹⁶ Reiterated in the case of *Municipal Corporation of Delhi v. Female Workers*, AIR 2000 SC 1274

1. of arduous nature;
2. involving long hours of standing, and
3. which is in any way likely to interfere with her pregnancy or in development of fetus or is likely to cause her miscarriage or otherwise adversely affect her health-

one month immediately preceding the six weeks before the date of her expected delivery and during the said period of six weeks for which the pregnant woman does not avail leave under Section 6.¹¹⁷

Every woman, under the Act is entitled to, and her employer is liable for the payment of maternity benefit at the rate of average daily wages for the period of her actual absence immediately preceding and including the day of her delivery and for six weeks immediately following that day. For this the average wage means the average of the women's wage payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absents herself on account of maternity, or one rupee per day whichever is higher.

A woman is eligible to maternity benefits only if she has worked in the establishment for not less than 160 days during the 12 months immediately preceding the date of her expected delivery. Those days during which she was held laid off should also be included in these 160 days.¹¹⁸

¹¹⁷ Section 4

¹¹⁸ Section 5

Maximum period of maternity benefit is fixed at 12 weeks- six weeks before the delivery and six weeks after the delivery. If the woman dies during this period the maternity benefit will be confined to the date of her death. If she dies after the delivery of the child than the maternity benefit continues to the entire period. If the child also dies then the maternity benefit will extend to the death of the child.¹¹⁹

Under Section 6, a woman entitled to maternity benefit may give notice to her employer claiming the amount and giving date of availing of the leave. The employer has to permit her absence till the expiry of six weeks after delivery; the employer is bound to pay maternity benefit amount in advance for the period before delivery on proof of pregnancy. The amount towards the subsequent six weeks must be paid within 48 hours of the production of proof that she delivered a child. It may be noted that child under the Act includes a still born child.¹²⁰

If a woman who is entitled to maternity benefit on any other amount under the Act dies before receiving such benefit or amount, the benefit or amount will be payable by the employer to her nominee or legal representative as the case may be.¹²¹

¹¹⁹ Section 5 (3)

¹²⁰ Section 3 (b)

¹²¹ Section 7

Section 8 of the Act provides that every woman entitled to maternity benefit under the Act is also entitled to receive from her employer a medical bonus of Rs. 25/- in case no prenatal confinement and postnatal care is provided by the employer free of charge.

Even in the case of miscarriage, leave with wages at the rate of maternity benefit for a period of six weeks immediately following the day of her miscarriage available.¹²² A woman is entitled to leave for one month with maternity benefit over and above the leave under Section 6, on proof of illness due to pregnancy, delivery, premature birth or miscarriage.¹²³

Every woman who has delivered child and who returns to duty after such delivery should be allowed in the course of the daily work to avail two breaks of prescribed duration for nursing the child over and above to the interval for rest allowed to her. Such nursing breaks should be allowed until the child attains the age of fifteen months.¹²⁴ Thus the Act also protects the child's health and ensures natural psychological attachment and growth mother child relationship.

The Act prohibits the employer from discharging a woman worker due to her absence permitted by the Act. Such dismissal or discharge or dismissal or any notice to that effect or any variation of the condition of her service to her

¹²² Section 9

¹²³ Section 10

¹²⁴ Section 11

disadvantage is unlawful. Further, such dismissal or discharge will not deprive the woman of her right to maternity benefit and medical bonus. However, if the dismissal is due to proved misconduct of the woman, she will not be entitled to the above right. In the former case, the woman can appeal to the prescribed authority against such dismissal or termination of employment order. Section 13 makes it clear that the usual daily wages of a woman entitled to maternity benefit should not be reduced due to assignment to her of less arduous work or due to giving of two nursing breaks.

Section 21 imposes penalty to the employer to the extent of three months imprisonment or fine upto Rs. 500/- or both for contravention of any provisions of any provisions of the Act Acts like obstructing the inspector appointed under the Act in discharge of his duties or failure to produce any register or document on demand or concealing of any fact or document etc. or preventing any person from appearing before such inspectors; are also punishable under the Act in the same tune.

Prosecution for an offence punishable under the Act or rules made thereunder may be instituted before the expiry of one year from the date of commission of the offence. However, the Act bars prosecution without previous sanction of the inspector.

The appropriate Government has been given wide powers to make rules for carrying out the purposes of the Act. The validity of such rules is subject to the previous publication and notification in the official gazette.

A woman is eligible for maternity benefits under the Act only when she has worked for not less than 160 days during the preceding 12 months from the date of her expected delivery. Though the Act covers a few unorganized employments, and the State Government has powers to extend the provisions of the Act to various other employments in the Sector, the application would not benefit a larger portion of women workers in this Sector. Since, the works in unorganized sector are mostly casual in nature and tourism in most places is seasonal, the Act would hardly cover a few unorganized women workers engaged in tourism.

The Act reaffirms India's commitment in the Convention on Elimination of All Forms of Discrimination Against Women which requires the States to commit themselves to undertake a series of measures to end discrimination against women in all forms, including incorporation of the principle of equality of men and women in their legal system, abolishing all discriminatory laws and adopting appropriate ones prohibiting discrimination against women. Most importantly the Convention provides the basis for realizing equality between women and men through ensuring women's equal access to, and equal opportunities in, political and public life -- including education, health and

employment. By ratifying the Convention States parties agree to take all appropriate measures, including legislation and temporary special measures, so that women can enjoy all their human rights and fundamental freedoms.

G. The Contract Labour (Regulation and Abolition) Act, 1970:

The system of employment of contract labour is impregnated with various problems. The employment in this system is abused in various ways. Certain recommendations were made by the planning commission in the Second Five Year Plan, namely, undertaking of studies to ascertain the extent of the problem of contract labour, progressive abolition of system and improvement of service conditions of contract labour where the abolition was not possible.¹²⁵ All these directed towards creation of a general consensus of opinion that the system should be abolished altogether; and in the areas where this system cannot be abolished, the working conditions of contract labour should be regulated so as to ensure payment of wages and provisions for essential amenities.

The Government of India has been deeply concerned about the exploitation of workers under the contract labour system. With a view to remove the difficulties of contract labour and bearing in mind the

¹²⁵ Refer to the Object Clause of the Contract Labour (Regulation and Abolition) Act, 1970

recommendations of various commissions and committees and the decisions of the Supreme Court, particularly in the case of Standard Vacuum Refining Company¹²⁶ in 1960, the Contract Labour (Regulation and Abolition) Act was enacted in 1970. This Act seeks to regulate the employment of contract labour in certain establishments and to provide for its abolition under certain circumstances. The Contract Labour (Regulation and Abolition) Act was brought into force on September 5, 1970. The main objective of the legislation was to abolish various malpractices indulged in by the Contractors/ Sardars/ Khatadars/ other intermediaries and to provide required facilities to these workers in view of the peculiar circumstances in which they work. The Act is applicable to every establishment where twenty or more workmen are employed in preceding twelve months as contract labour and to every contractor employing such number of workmen in such manner. However the Act is not applicable to establishments in which work only of an intermittent or casual nature is performed. A question in that respect is to be decided by the appropriate Government after the consultation of the Central Board or State Board as the case may be and such decision is final. It may be noted that the work will not be deemed intermittent where it has been performed for 120 days in preceding 12 months or where it is seasonal, more than 60 days in a year. In such cases the Act applies.¹²⁷

¹²⁶ *Standard Vacuum Refining Co. of India v. Workmen*, AIR 1961 SC 895

¹²⁷ Section 1

The Act creates responsibility on every employer (Principal) under this Act to make an application for registration of the establishment within the period fixed by the appropriate Government. An application of registration has to be made to the Registering Officer appointed under Section 6. On such an application which must be complete in all respects such Registering Officer has to register the establishment.¹²⁸

The Act empowers the appropriate Government with consultation of the appropriate Board to prohibit by notification in the official gazette, employment of contract labour in any process, operation or other work in any establishment. Before doing that the appropriate Government has to take into consideration conditions of work and benefits to such labour in the establishment and other factors such as:

- a. whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on;
- b. whether it is of sufficient duration having regard to its nature;
- c. whether the work is done ordinarily through regular workmen in that establishment or other similar establishments;
- d. whether it is sufficient to employ considerable number of whole-time workmen.¹²⁹

¹²⁸ Section 7

¹²⁹ Section 10

The primary object of the Act is to stop exploitation of contract labourers by contractors or establishment. The Act does not purport to abolish contract labour in its entirety, but it provides for abolition of contract labour in appropriate cases. Such power has been given to the appropriate Government and it is only the appropriate Government which has the authority to abolish contract labour system.

For regulating the areas where complete abolition is not possible or desirable, provisions have been made for registration of establishments as discussed earlier and licensing of contractors. Every contractor under the Act is required to undertake or execute any work through contract labour under and in accordance with a license issued by Licensing Officers appointed under Section 11. Such license may contain conditions including conditions as to hours of work, fixation of wages, and other essential amenities. A security amount may also be required to be deposited while the grant of such license.¹³⁰ No contractor, to which the Act applies, can undertake or execute any work through contract labour without such license. Contravention of this provision is punishable under the Act.

Under the Act powers have been vested on the appropriate Government to make rules requiring that in every establishment under the Act, one or more canteens shall be provided and maintained by the contractor, for the use of such

¹³⁰ Section 12

contract labour, including the standards in respect of construction, accommodation, furniture etc. and foodstuffs and charges thereof.¹³¹ In every place wherein contract labour is required to halt at night in connection with the work of an establishment such number of rest rooms or alternative accommodation as may be prescribed has to be provided and maintained by the contractor for the use of such contract labour.¹³² Such accommodation has to be sufficiently lighted and ventilated and has to be maintained in a clean and comfortable condition. The Act also makes provisions for the other facilities such as supply of wholesome drinking water, sufficient number of latrines and urinals, washing facilities etc.¹³³

The Act ensures that the first aid facilities are provided and maintained by the contractor so as to be readily accessible at all working hours. The first aid box equipped with the prescribed contents at every place where contract labour is employed has to be available.

A contractor under the Act has to be responsible for payment of wages to each worker employed by him as contract labour and such wages have to be paid before the expiry of such period as may be prescribed. The mode and manner of the payment has also been provided in the Act to ensure total security of the wages of the contract labour.¹³⁴

¹³¹ Section 16

¹³² Section 17

¹³³ Section 18

¹³⁴ Section 19

The requirement of maintaining registers and records is provided by the Act under Section 29. The Principal employer or the contractor is responsible to maintain registers and records giving prescribed particulars in the prescribed form.

For the contravention of the provisions of the Act or rules there under, the punishments have been provided under the Act. Whoever contravenes any provision of the Act or any rules made there under prohibiting or regulating the employment of contract labour or contravenes any condition of a license granted under the Act, would be punishable with imprisonment for a term which may extend to three months or with fine which may extend to one thousand rupees or with both and in the case of continuing contravention, with an additional fine which may extend to one hundred rupees for each day during which such contravention continues after conviction of first such contravention will be levied.

If a person contravenes any of the provisions of this Act or rules made thereunder for which no other penalty is elsewhere provided, he shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to one thousand rupees or with both.¹³⁵

¹³⁵ Section 24

Keeping with the argument regarding the definition of Unorganized Sector in the first chapter of this work, it can be said the Contract Labour (Regulation and Abolition) Act, 1970 is an Act which is entirely devoted to a section of unorganized workers. Though Unorganized Sector encompasses a much larger area of workforce, the Act takes into account all problems in the contract labour system to regulate the work conditions and abolish the system wherever possible. Such an Act should be properly implemented the Act is capable of being a definite answer to the existing exploitation of a large section of the workforce in our Country.

H. Equal Remuneration Act, 1972:

Article 39 of the Constitution of India directs the State to take steps through its policies, inter alia to secure that there is equal pay for equal work. To give effect to this provision the President promulgated the Equal Remuneration Ordinance, 1975 on 26th September, 1975 so as to enable its implementation in the International Women's Year. The Equal Remuneration Act replaced the ordinance in 1976. The Act was enacted to prevent discrimination between workers only on the ground of gender. The Preamble of the Act describes it as an Act to provide for the payment of equal remuneration to men and women workers and or the prevention of discrimination on the

ground of sex, against women in matter of employment and for matters connected therewith and incidental thereto.¹³⁶

The purpose of the Act therefore is to make sure that employers do not discriminate the employees on the basis of gender, in matters of wage fixing, transfers, training and promotion. It provides for payment of equal remuneration to men and women workers, for same work or work of similar nature and for the prevention of discrimination against women in the matters of employment.

Section 5 of the Equal Remuneration Act specifically forbids the employee from discriminating of women during recruitments etc. it states:

“On and from the commencement of this Act, no employer shall while making recruitment for the same work or work of similar nature, or any condition of service subsequent to recruitment such as promotions, training or transfer, make any discrimination against women...”

The Act also imposes duty on the employer to pay equal remuneration to men and women workers for same work or work of similar nature. It says:

¹³⁶ Vide the Object Clause to the Act

“No employer shall pay to any worker employed by him, remuneration, whether payable in cash or kind, at rates less favourable than those at which remuneration is paid by him to workers of opposite sex in each establishment or employment for performing the same work of similar nature.”¹³⁷

For the purpose of evading the possibility of reduction of wages, in order to ensure compliance with the requirement of equal pay, the Act specifically forbids any reduction of wages to that effect.¹³⁸

The Act, for the purpose of providing increased employment opportunities to women, directs the appropriate Government to constitute one or more advisory committees to advise it¹³⁹ with regard to the extent to which women may be employed in such establishments or employments. Such advisory committee should consist of not less than 10 persons to be appointed by the appropriate Government, of which half should to be women.¹⁴⁰ Such committee should regulate its own procedure.¹⁴¹ The appropriate government may, after giving to persons concerned in the establishment or employment, an

¹³⁷ Section 4 (1)

¹³⁸ Section 4 (3)

¹³⁹ Section 6 (1)

¹⁴⁰ Section 6 (2)

¹⁴¹ Section 6 (4)

opportunity of heard, issue such directions in respect of the employment of women workers, as it thinks fit.¹⁴²

The Act also empowers the appropriate Government to appoint authorities for hearing and deciding claims and complaints.¹⁴³ An employer or worker aggrieved by any order made by an authority so appointed may prefer, within thirty days of the date of such order, an appeal to such authority as the appropriate Government may specify. The power to confirm, modify or reverse the order so appealed against has been vested on such appellate authority. No further appeal is recognized and allowed under the Act.¹⁴⁴

Under Section 8 of the Act, every employer is required to maintain such registers and other documents in relation to the workers employed by him as may be prescribed.

The appropriate Government has powers to appoint inspectors for the purpose of making investigation as to whether the provisions of this Act, or rules made thereunder are being complied with by the employers.¹⁴⁵ They have been given adequate powers for effective functioning.¹⁴⁶

¹⁴² Section 6 (5)

¹⁴³ Section 7

¹⁴⁴ Section 7 (6)

¹⁴⁵ Section 9 (1)

¹⁴⁶ Refer to Section 9 (3)

The Act provides penalties for any contravention of the provisions under the Act. A simple imprisonment which may extend to a term of one month or fine which may extend to ten thousand rupees or both may be imposed on any employer for failing to maintain any register or other documents or for omitting or refusing to give any evidence or preventing his agent or servant or any other person and for omitting to give any information.¹⁴⁷ For making any appointment or recruitment in contravention to the provisions of this Act, for making any discrimination between male and female regarding payment of wages, for making such discrimination in contravention to the provisions of the Act and for omitting from carrying any direction made by the appropriate Government under Sub Section (5) of Section 6, the punishment prescribed is fine amounting not less than ten thousand rupees but which may extend to twenty thousand rupees or imprisonment which may extend to one year or both for the first offence and for all subsequent offences the fine is such as aforesaid and imprisonment which may extend to two years.¹⁴⁸ Any person omitting or refusing to produce to an inspector any register or other document or the give any information is also punishable with fine which may extend to five hundred rupees.¹⁴⁹

No court inferior to the Court of Metropolitan Magistrate or Judicial Magistrate of First Class is empowered under the Act to try any offence punishable under the Act. The Court is required to take cognizance of an

¹⁴⁷ Section 10 (1)

¹⁴⁸ Section 10 (2)

¹⁴⁹ Section 10 (3)

offence punishable under the Act upon its knowledge or on a complaint made by the appropriate Government or an officer by it or a person aggrieved or by any welfare institution or organization.¹⁵⁰

The power to make rules has been vested with the Central Government.¹⁵¹ The Central Government is also empowered to give directions to the State Governments as to the carrying on of the provisions of this Act in the States. The power to remove difficulties by notification is also reserved with the Central Government.¹⁵²

Many Countries have introduced legislations embodying the principle of equal pay for equal work. Equal Remuneration Act in India seeks equal remuneration for "the same work or work of similar nature." Thus unlike in many other countries the requirement of the 'same output' is not insisted upon in the Act. In United Kingdom the Equal Pay Act 1970 insists on "non discrimination on all forms and conditions of employment of a woman, if she is engaged in "like work" with a male or if her job has been rated equivalent to the job of a male counterpart following a job evaluation study. The Act was amended in 1983 to include instances where the woman's work was of equal value to the man's. In India though the Central Government can exercise its rule making power under Section 13 to do the same, such provision is desirable

¹⁵⁰ Section 12

¹⁵¹ Section 13

¹⁵² Section 17

in the Act itself. A work can be defined in terms of such things as skill, effort and responsibility. Thus an adequate amendment in Section 4 is desirable.

Despite improvements in the level of women's wages, average male wages is generally higher. Explanation to low pay among women include the fact that many work are part time in nature. Further due to the fact than women performs a major portion of household works like cooking, child care, cleaning, washing, care of the aged etc. at home, they are generally unable to equate with men at the workplace in terms of work. In an establishment which employs only women workers there are no men with whom a woman can compare her wages or value of work.

In a developing country like ours, where the socio-legal status of women in many cases is inferior to that of men, where major portion of women workforce is engaged in Unorganized Sector and where poverty and weak institution make enforcement of such laws impossible, efforts to establish the principle of equal pay have made little headway.

I. Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996:

Development of tourist spots is a direct input to tourism. This involves a great deal of construction works. Construction workers, therefore, become

major contributors of tourism in any country. More so in a country like ours where tourism is receiving greater attention in the financial planning and where tourism infrastructures are being developed on a large scale through thousands of mega projects all over the country.

The building and other construction workers are one of the most numerous and vulnerable segment of the Unorganized Sector in India. The building and other construction works are characterized by their inherent risk to life and limb of the workers. The work is also characterized by casual nature of work, temporary relationship between employer and employee, uncertain working hours and inadequacy of welfare facilities. Although the provisions of various labour laws are available to these workers, a need was felt for a comprehensive central legislation for this category of workers.

To regulate the employment of the building and other construction workers; to provide them safety, health welfare measures and to provide social security and various benefits to these workers, Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 was enacted by the Parliament. The Act came into force on 1st March 1996. Under this Act, a building worker includes any person to do any skilled, semi-skilled or unskilled-manual, technical or clerical work for hire (for) new or in connection any building or construction work and does not include any person employed in managerial or administrative capacity or supervision category or

who draws wages exceeding Rs. 1600/- per month or a person with functions mainly of a managerial nature.

Building and Other Construction Workers Act applies to every establishment which employs or has employed 10 or more workers.¹⁵³ The workers covered under the Act include workers engaged in construction, alteration, repairs, maintenance or demolition of streets, roads, bridges, air fields, embarkment and navigation works etc. and also includes those engaged in works relating to electric lines, telephone lines etc. The appropriate Government has power to further extend the application of the Act to the workers engaged in other employments.

The Act makes provision for the constitution of a Central Advisory Committee to advise the Central Government on such matters arising out of the administration of the Act as may be referred to it.¹⁵⁴

Provision for registration of establishment within a period of sixty days from the commencement of work to ensure that there are no malpractices and to discourage non-compliance of law is an important provision under the Act. However, if the Registering Officer is satisfied that the registration of the establishment is obtained by misrepresentation or suppression of material facts

¹⁵³ Section 1

¹⁵⁴ Section 3

or that the provisions of the Act are not complied with; he can revoke the registration of the establishment.¹⁵⁵

The Act also makes provision for registration of building workers as beneficiaries under this Act.¹⁵⁶ Such registered workers are entitled to the benefits provided by the Worker's Welfare Board from its fund under the Act. Under Section 13 of the Act provisions have been made requiring issue of identity cards to the beneficiary wherein the employer concerned is required to write the details of the work done by the beneficiary.

A building worker registered as a beneficiary under this Act is required to contribute to the fund at such rate per month as prescribed by the State Government. He has to pay such amount until he attains the age of 60 years.¹⁵⁷ On attaining 60 years of age a worker under the Act will cease to be a beneficiary. Such cessation will also take effect when the worker is not engaged in work for 90 days.¹⁵⁸ Further, in cases where the beneficiary fails to pay the contribution for a continuous period of one year, he ceases to be a beneficiary. But in this case, if the Secretary of the Welfare Board is satisfied that the non-payment was on reasonable grounds and that the worker is willing to deposit arrears, he may restore the registration.¹⁵⁹

¹⁵⁵ Section 8

¹⁵⁶ Section 12

¹⁵⁷ Section 16

¹⁵⁸ Section 14

¹⁵⁹ Section 17

An employer is required to maintain a register, in such form as may be prescribed, showing the details of the employment of beneficiaries. The Secretary of the Welfare Board or any other officer authorized by the Board has been authorized under the Act to inspect such registers without any prior notice.

For the purpose of exercising powers and functions assigned under the Act, the Act requires the constitution of State Boards. The Board should consist of a Chairperson who should be a person appointed by the Central Government and such number of members not exceeding 15 as may be appointed by the State Government.¹⁶⁰ The Board should give equal representation to the State Government, the employers and the workers. Provision has been made for the representation of at least one woman in the Board

Functions of the Board have been elaborately provided in Section 22.

The Board may:

1. provide immediate assistance to the beneficiary in case of accident,
2. make payment of pension to the beneficiary who have completed the age of 60 years,
3. sanction loans and advances for a prescribed sum to a beneficiary for construction of a house on prescribed terms and conditions;

¹⁶⁰ Section 15

4. pay such sum as premier to the beneficiaries of group insurance as it deem fit,
5. give such financial assistance for the education of children of the beneficiaries as may be prescribed,
6. meet such medical expenses for treatment of major ailment of beneficiaries or such dependants as may be prescribed,
7. make payment of maternity benefit to the female beneficiaries, and
8. make provision and improvement of such other welfare measures and facilities as may be prescribed.

The Board is also empowered to grant loan or subsidy to a local authority or an employer in aid of any scheme approved by the State Government for the purpose connected with the welfare of building workers in any establishment.¹⁶¹ In addition to this the Board may, if a local authority or an employer has provided any welfare measures or facilities to the workers, which has satisfied the Board, it may pay annual grants-in-aid not exceeding the amount actually spent on such activities or any prescribed amount whichever is less.¹⁶² In order facilitate the Board to perform these functions, the Central Government may after due appropriation made by the parliament by law in this behalf make it grants and loans of such amount as it may deem necessary.

¹⁶¹ Section 22 (2)

¹⁶² Section 22 (3)

All the income of the Board discussed hereinabove as grants and loans made by the Central Government, contributions made by the beneficiaries and sums received by the Board from other sources as may be decided by the Central Government, would form the Workers Welfare Fund.¹⁶³ The Fund should be utilized to meet the expenses towards the legitimate business of the Board specifically enumerated in the Act.

With a view to ensure that the funds be utilized in the welfare of the workers alone, there are express provisions to restrain the Board from incurring expenses towards salaries and other administrative expenses in any financial year of more than 5% of the total expenditure of the Board in that financial year.¹⁶⁴ Further the Board is required under the Act to maintain proper accounts and records and prepare a report giving full accounts and records and prepare a report giving account of the activities during the previous year and submit a copy to the State Government and the Central Government.¹⁶⁵

An important provision can be found in Section 28 of the Act. Under this Section the State Government has been given powers to fix the number of hours of work constituting normal working day inclusive of one or more specified intervals. It has powers to provide for a day to rest with wages in every seven days. Payment of the day of rest at the rate of not less than overtime wages can also be provided in the rules by the State Government.

¹⁶³ Section 24.

¹⁶⁴ Section 24 (3)

¹⁶⁵ Section 25

The building and other construction workers must be paid for their overtime work. The workers for such overtime work are entitled to twice the ordinary rate of wages. In calculating the overtime wages all allowances to which the worker is entitled except bonus should be taken into account with the basic wages.¹⁶⁶

The Act ensures the safety of the workers as it prohibits the employment of any person whom the employer knows or has reason to believe to be deaf or has a defective vision or has a tendency to giddiness in any work which is likely to involve a risk of accident.¹⁶⁷ The employer is also required to make available at the workplace first-aid facility containing such first aid equipments and medicines as prescribed by the rules.

For the welfare of the workers the Act requires the employer to provide wholesome drinking water and latrines and urinals at the workplace.¹⁶⁸ The appropriate Government may by rules require the employer provide canteen facilities.¹⁶⁹ Further the employer is required to provide living accommodation free of charge to the workers within or near the workplace. Such accommodation must have separate cooking place, bathing, washing and

¹⁶⁶ Section 29

¹⁶⁷ Section 31

¹⁶⁸ Section 32 and 33

¹⁶⁹ Section 37

lavatory.¹⁷⁰ For every workplace where fifty female building workers are ordinarily employed, the employer has to provide adequately lighted and ventilated rooms with adequate accommodation for the use of children of such workers as crèches. Such rooms should be maintained in a clean and sanitary condition and should be in charge of a workman trained in the care of children and infants.¹⁷¹

For every establishment where one hundred or more building workers are employed there is a requirement stipulated by the Act for the constitution of a safety committee consisting of the representatives of the workers and employers wherein the workers representation should not be less than that of the employer. The employer is also required under the Act to appoint qualified safety officers for the purpose of ensuring adequate safety to the workers.¹⁷²

Section 45 of the Act holds the employer responsible for the payment of wages and compensation. Under this Section the employer is responsible for payment of wages on or before the prescribed date.

The Act also deals with compensation and allied matters. Where in any establishment an accident occurs which causes any bodily injury which prevents the workers from working for period of 48 hours or more, the employer has to give notice of such accident to the prescribed authority within

¹⁷⁰ Section 34

¹⁷¹ Section 35

¹⁷² Section 38

prescribed time. On the receipt of the notice the authority has to make necessary investigation. In cases where such accidents results in the death of five or more persons the Act requires such investigating authority to investigate within one month of such notice.¹⁷³ The payment of compensation as required under the Act has to be made according to the provisions of the Workmen's Compensation Act, 1923.¹⁷⁴

On the commencement of the Building and Other Constructive work, the Act requires the employer to give information to the inspector having jurisdiction, of such commencement with details relating to contractor etc., nature of work, arrangements at the workplace, number of workers employed etc. Where any change occurs in the information so given, the employer has to immediately inform the said inspector of such changes. Thus arrangement for constant vigil in the conditions of work at workplace has been ensured.

Stringent penalties have been prescribed for the contravention of the provisions of the Act. Elaborate provisions prescribing suitable punishments for different offences under the Act have been incorporated in the Act. Proper implementation of these provisions may deter the commission of the offences and ensure proper compliance of the objects sought under the Act.

¹⁷³ Section 39

¹⁷⁴ Section 45 r/v Section 58

The operation of any law in the state which is more beneficial to the workers than the present Act is specifically allowed by the Act. Any corresponding State law providing welfare schemes which are more beneficial to the worker are allowed to operate.

Building and other construction workers contribute largely in tourism. They are one of the most numerous and most neglected workers in the work world. Though the present law seeks to provide a safety net and social security hopes to the workers, in reality in most states there is neither the Worker's Welfare Board nor the Contributory Fund and Schemes as stipulated under the Act are existent. The reason behind this is that the Labour Departments in the States are financially not in a position to initiate such schemes. When the developed world is working on living wages it is high time that we spend a little on minimum requirements of our workers like their safety, security and minimum wages.

J. The Protection of Women against Sexual Harassment at Workplace Bill, 2007:

Sexual harassment in workplace is a serious and common problem. The work places have always been hostile to working women, their dignity and personality. They often face problems of being sexually harassed. This harassment may come either from their male co-workers or from their bosses or

from any third party. The act of sexual harassment varies in its form. It is in the form of humiliation, eve teasing, molestation etc. The boss or senior tries to gain sexual favour in appointment, promotion or in the workplace itself. Such harassment is morally and legally blameworthy because it causes detrimental and long lasting adverse effects on the victims.

Though bills aiming the prevention of sexual harassment at workplaces are being introduced in the Parliament in almost every session since the last few years, the legislatures have, till date, not been able to come up with a law in this regard. The Protection of Women against Sexual Harassment at Workplace Bill is presently lying in the Parliament's table for discussion.

The Bill aims to provide prevention and redressal of sexual harassment of women at workplace. The Bill extends to the Unorganized Sector too¹⁷⁵ and it also provides for the notional expansion of time and place as the definition of workplace in the Bill includes the places where the employee visits for the works arising out of and in the course of employment.¹⁷⁶

Section 3 of the Bill says-

“ No woman employee at a workplace shall be subjected to sexual harassment including unwelcome sexually determined behavior, physical

¹⁷⁵ Section 2 (l) (v)

¹⁷⁶ Section 2 (l) (iv)

contacts, advances, sexually coloured remarks, showing pornography, sexual demand, request for sexual favours or any other unwelcome conduct of sexual nature whether verbal, textual, physical, graphic or electronic or by any other actions which may include-

- i. implied or overt promise of preferential treatment in employment, or
- ii. implied or overt threat of detrimental treatment in employment, or
- iii. implied or overt threat about the present or future employment status,
- iv. conduct which interferes with work or creates an intimidating or offensive or hostile work environment, or
- v. humiliating conduct constituting health and safety problems.”

The Bill requires the constitution of Internal Complaints Committee in every workplace. Where the offices or administrative units of the workplace are located at different districts or sub-divisions, the Committee should be constituted in all such units.¹⁷⁷ The Committee should have the following composition:

1. a chairperson from amongst the employees who should be a senior level woman and should be committed to the cause of women. In case such a senior level woman is not available, the chairperson should be appointed from a sister organization or a non-governmental organization.

¹⁷⁷ Section 4 (1)

2. not less than two members amongst employees committed to the cause of women or who have had experience in social work; and
3. one member from other interest committed to the cause of women, as may be specified.

In such Complaints Committee at least fifty percent of the members should be women. The responsibility of constitution an Internal Complaints Committee rests on the employer.¹⁷⁸

The Bill also makes provision for the appointment of District Magistrate or Additional District Magistrate or the Collector or Deputy Collector of the respective jurisdiction as District Officer for every District to carry out the functions under the Bill.¹⁷⁹

In a workplace where the constitution of the Internal Complaints Committee is not possible or practicable, or where the complaint is against the employer himself, the District Officer may, constitute at every Block, a Local Complaints Committee.¹⁸⁰ Such Local Committee should consist of:¹⁸¹

1. a chairperson to be appointed by the appropriate Government from amongst women committed to the cause of women;

¹⁷⁸ Section 5 (1)

¹⁷⁹ Section 5

¹⁸⁰ Section 6 (1)

¹⁸¹ Section 6 (2)

2. one member to be appointed by the appropriate Government from amongst the registered trade unions or workers' associations functioning in that block or district;
3. two members, of whom at least one should be a woman, from amongst such non-governmental organizations or associations or other interests committed to the cause of women, as may be specified.

Section 7 of the Bill provides for the manner in which the complaint is to be made. A complaint of sexual harassment is to be made by the aggrieved woman to the Internal Complaints Committee or the Local Complaints Committee, as the case may be, in writing. The Chairperson or any member of the Committee or Local Committee as the case may be should render all reasonable assistance to the woman making the complaint, to reduce the same in writing. Where such aggrieved woman is not in a position to make a complaint on account of her physical or mental incapacity or death or otherwise, her heir or such other person as may be prescribed may make a complaint under this Section.¹⁸²

Section 8 of the Bill incorporates a provision for the amicable settlement of the case through conciliation. It says "at the request of the aggrieved woman the Committee or the Local Committee, as the case may be, may before initiating enquiry under the Bill, take steps to settle the matter between her and

¹⁸² Section 7 (2)

the respondent through conciliation." On such settlement, the Committee or the Local Committee, as the case may be, should record the settlement and recommend the employer not to take any action in the matter. The copies of settlement should also be provided to the aggrieved woman and the respondent. No further enquiry into the matter should be done after the settlement.¹⁸³

Where the conciliation is not arrived at, the Committee or Local Committee as the case may be, should proceed to make enquiry into the complaint in such manner as may be prescribed. In the cases where the respondent does not comply with any of the terms or condition of the conciliation arrived at, the Complaints Committee or Local Committee as the case may be should proceed into the complaint.¹⁸⁴ The Bill makes the enquiry time bound. Every such inquiry is required under the Bill to be completed within ninety days.¹⁸⁵

During the pendency of enquiry, on a written request made the aggrieved woman, the Committee or the Local Committee, as the case may be, may recommend to the employer to:¹⁸⁶

1. transfer the aggrieved woman or the respondent to any other workplace,
- or

¹⁸³ Section 8 (4)

¹⁸⁴ Section 9

¹⁸⁵ Section 9 (3)

¹⁸⁶ Section 10

2. grant leave to the aggrieved woman, or
3. grant to the aggrieved any other relief as may be prescribed.

On the basis of the recommendation, the employer or the District officer may take such action as may be deemed proper.

After the completion of an enquiry under the Bill, the Committee or the Local Committee, as the case may be should provide a report of the findings to the employer or, as the case may be, to the District Officer.¹⁸⁷ Where the Committee or the Local Committee arrives at the conclusion that the allegation against the respondent has been proved, it should recommend to the employer or the District Officer as the case may be to:¹⁸⁸

1. take action for misconduct in accordance with the provisions of the service rules applicable to the respondent or where no such service rules have been made, in such manner as may be prescribed;
2. deduct from the salary of the respondent such sum of compensation to be paid to the aggrieved woman or to legal heirs, as it may determine, or direct the respondent to pay such compensation to the aggrieved woman.

¹⁸⁷ Section 11 (1)

¹⁸⁸ Section 11 (3)

The employer or the District Officer is required under the Bill to act upon the recommendation made by the Complaints Committee or the Local Committee within a period of ninety days.¹⁸⁹ However, if the employer or the District Officer is not in agreement with any conclusion or recommendation in consultation arrived at or recommendation made, he may alter the conclusion or recommendation in consultation with the Committee or the Local Committee as the case may be.¹⁹⁰

The Bill also contains provisions for the action to be taken in cases of false or malicious complaints and false evidence where the Committee or the Local Committee, as the case may be, arrives at a conclusion that the allegation against the respondent is false or malicious or the woman concerned or any other person making the complaint has produced any forged or misleading document, it may recommend to the employer or the District Officer to take action against the woman or the person who has made the complaint in accordance with the service rules or where no such service rules have been made, as may be prescribed by the rules under this Bill. If during the enquiry any witness has given false evidence or produced any forged or misleading document, similar action has been prescribed under the Bill.¹⁹¹

For the determination of compensation under Section 11 (3) (b) the Bill requires certain things to be given regard to. Section says that in determining

¹⁸⁹ Section 11 (4)

¹⁹⁰ Proviso to Section 11

¹⁹¹ Section 12 (1) & (2)

the compensation the Complaints Committee or the Local Committee as the case may be should have regard to:

1. the mental trauma, pain, suffering and emotional distress caused to the aggrieved woman;
2. the loss of the career opportunity due to the incident of sexual harassment;
3. medical expenses incurred by the victim for physical or psychiatric treatment;
4. the income and financial status of the respondent;
5. feasibility of such payment in lump sum or in installments.

Section 14 prohibits the publication or circulation of the complaints and enquiry proceedings under the Bill. Notwithstanding anything contained in the Right to Information Act, 2005 the identity and addresses of the aggrieved woman, respondent and witnesses, any information relating to conciliation and enquiry proceedings, recommendations of the Complaints Committee or the Local Committee and the action taken should not be published, communicated or made known to the public, press and media. However, the information regarding the justice secured to any victim of sexual harassment under the Bill may be disseminated without disclosing the identity and address of the aggrieved woman, respondents and witnesses.¹⁹² In cases where any person

¹⁹² Section 14

entrusted with the duty to handle or deal with the complaint, enquiry or any recommendations or action to be taken under the Act fails to observe the above requirement, action should be taken against such person in accordance with the service rules or in the absence of such service rules as prescribed.¹⁹³

Section 17 of the Bill casts certain duties on the employer. The employer is under duty to:

1. provide a safe working environment at the workplace;
2. display at any conspicuous place in the workplace the office order constituting the Complaints Committee;
3. Undertake workshops and training programmes at regular intervals for sensitizing members;
4. provide necessary facilities to the Committee or the Local Committee as the case may be;
5. ensure the attendance of respondent and witnesses before the Committee or the Local Committee as the case may be; and
6. make available such information to the Committee or the Local Committee as the case may be, as it may require with regard to the complaint made.

¹⁹³ Section 15

The Complaints Committee and the Local Committee are required to prepare an annual report and submit the same to the employer. The employer should include the report so submitted in the annual report of his organization.¹⁹⁴

Where it is felt necessary in the public interest to do so, the appropriate Government may call upon the employer or the District Officer to furnish information in writing or authorize any officer to make inspection of records and the employer or the District Officer are under the obligation to co-operate such investigating officer with records and other documents or information as required by him.¹⁹⁵

In cases where the employer or the District Officer fails to constitute Committee or fails to take action under Sections 11, 12 and 19 or contravenes the provisions of the Bill or rules made under the same, the Bill proposes a penalty of fine which may extend to ten thousand rupees:

The power to make rules under the Bill is rests on appropriate Government.

Though the Bill aims at prevention of "sexual harassment of women in workplaces,"¹⁹⁶ it is not free from loopholes. One of the loopholes in the Bill

¹⁹⁴ Section 18 & Section 19

¹⁹⁵ Section 20

¹⁹⁶ Vide the Object Clause

can be seen in Section 3 (2) (a) which requires the Chairperson of the Committee to be a "senior level woman". It is unclear as to what the words "senior level woman" mean. 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 in all probability fail to pronounce bold 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". Such a provision guarantees encouragement to the wrongdoers to pressurize through treats or other means for a settlement.

The biggest loophole in the Bill can be seen in the Proviso to Section 11. This provision 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 reduces the act of sexual harassment to a mere compoundable offence. Though the word "workplace" in the Bill 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. It can safely be concluded that the Bill is an emasculated version of law on sexual harassment which in all probability will fail to achieve the objective of ensuring safe working environment to women.

K. The Unorganized Sector Workers' Social Security Bill, 2007:¹⁹⁷

The Unorganized Sector is contributing 59 percent in the Gross Domestic Product of Our Country. It employs 92¹⁹⁸ to 93¹⁹⁹ percent of the total working population in our country. Some estimates say that 94 percent of the total working population in India works in Unorganized Sector.²⁰⁰

¹⁹⁷ As introduced in the Rajya Sabha, 10th September 2007

¹⁹⁸ Estimate of the Second Labour Commission

¹⁹⁹ Estimate of the National Commission for Enterprises in the Unorganised Sector

²⁰⁰ As estimated in the Unorganised Sector Workers' Social Security Bill, 2007

The unorganized workers on account of their nature of employment do not get adequate social security. Some welfare schemes are being implemented by the Central Government for specific groups of Unorganized Sector workers. State Governments are implementing welfare programmes for certain categories of Unorganised Sector workers and some Non Government Organizations also provide social security to certain categories of workers. Despite all these efforts, there is a huge deficit in the coverage of the Unorganized Sector workers in the matters of labour protection and social security measures ensuring the welfare and well being of workers in the Unorganized Sector including various employments in tourism.²⁰¹

The growth and the quality of the jobs in the Unorganized Sector has been very much hit by the timely low cost credit, improved infrastructure and technology, quality consciousness, modern marketing, proper organization and a synergy with large organized industries. Most of the education and skill development in the past have been geared to satisfy the need of the Organized Sector. The education and skill need to be oriented towards the needs of the Unorganized Sector in the traditional areas like agriculture, small industry, service, and self-employed and also the new areas like tourism, information technology and financial sectors. In this there is a need for a legislative and administrative framework for the unorganized Sector, besides new initiatives

²⁰¹ See generally, the Object Clause, the Unorganized Sector Workers' Social Security Bill, 2007

by the Employees' Provident Fund Organization and Employees' State Insurance Corporation to reach this segment.

In response to the above stated facts the Unorganized Workers Social Security Bill, 2007 has been introduced in the Parliament.²⁰² The Unorganized Sector Workers Social Security Bill, 2007 aims to provide for social security and welfare of the Unorganized Sector workers and for matters connected therewith or incidental thereto. The Bill *inter alia* proposes for the following matters, namely:

1. The Central Government to constitute a National Social Security Advisory Board to recommend suitable welfare schemes for different sections of Unorganized Sector workers, and upon consideration of these recommendations, the Central Government may notify suitable welfare schemes relating to life and disability cover, health and maternity benefits, old age protection or any other benefits.²⁰³
2. The State Government to constitute State Social Security Advisory Board to recommend suitable welfare schemes for different sections of unorganized workers in the State and the

²⁰² Bill No. LXVII of 2007

²⁰³ Section 5 r/w Section 3 (1)

State Government may notify suitable schemes for one or more sections of the unorganized workers.²⁰⁴

3. A worker in the Unorganized Sector to be eligible for social security benefits if, he is duly registered. Every registered worker in the Unorganized Sector to be issued an Identity Card which is to be a smart card carrying a unique number of identification.²⁰⁵
4. The Central Government and the State Government to have powers to make rules for the purpose of carrying out the objects of the Bill.²⁰⁶

Any scheme notified by the Central Government may be:²⁰⁷

1. wholly funded by the Central Government, or
2. partly funded by the Central Government and partly funded by the State Government, or
3. partly funded by the Central Government, partly funded by the State Government and partly funded through contributions collected from the beneficiaries of the scheme or the employers as may be prescribed in the scheme by the Central Government.

²⁰⁴ Section 6 r/w Section 3 (4)

²⁰⁵ Section 9

²⁰⁶ Section 12 & Section 13

²⁰⁷ Section 4 (1)

In Central Board in addition to the Chairman who is to be appointed by the Central Government and the Director General, Labour Welfare who will hold the office of the ex-officio Member Secretary, the Bill requires the nomination of thirty one members to be nominated by the Central Government out of whom:²⁰⁸

1. seven members would represent Unorganized Sector workers;
2. seven members would represent employers of Unorganized Sector;
3. seven members would represent eminent persons from civil society;
4. five members would represent the State Governments; and
5. five members would represent Central Government Ministries and Departments concerned.

The Bill stresses for adequate representation of the persons belonging to the Scheduled Castes, the Scheduled Tribes, the minorities and women.²⁰⁹

Similarly, in the State Board except the Chairperson to be appointed by the State Government and the Principal Secretary or Secretary, Department of Labour who will hold the office of ex-officio Member Secretary, the Bill requires the nomination of twenty six members out of whom:²¹⁰

²⁰⁸ Section 5 (2)

²⁰⁹ Section 5 (4)

²¹⁰ Section 6 (2)

1. seven would represent the Unorganized Sector workers;
2. seven would represent the employers in the Unorganized Sector;
3. five would represent eminent persons of civil society; and
4. seven would represent State Government Departments concerned.

Adequate representation of the persons belonging to the Scheduled Castes, the Scheduled Tribes, the minorities and women in the State Board has also been stressed in the Bill.²¹¹

The Central Government has powers to give direction. It can give direction to the National Board or the State or the State Board in respect of matters relating to the implementation of the provisions of the Bill.²¹²

Some schemes have been recognized as the welfare schemes under the Bill and are enumerated in the Bill itself. The schedule appended with the Bill contains following schemes:

1. National Old Age Pension Scheme,
2. National Family Benefit Scheme,
3. National Maternity Benefit Scheme,
4. Mahatma Gandhi Bunker Bima Yojna,
5. Health Insurance Scheme For Handloom Workers,
6. Scheme For Pension To Master Craft Persons,

²¹¹ Section 6 (4)

²¹² Section 10

Second Labour Commission. The Bill is too wide in scope and breadth and is too abstract. The Bill also talks of tripartite participation, employers being one of them which are difficult to identify in many cases and thus is not feasible to protect the interests of various employments.

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." Further the Memorandum also says that "the fund for the schemes, as and when they are announced, will be channelised through the existing channels of funding as is being done for other schemes of the Government." Our experiences with the building workers reveal contrary outcome. In the absence of clear provisions for funding, the schemes cannot be implemented. 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. In the want of adequate funds, the welfare measures in the Bill will only remain mirages.

The concern with the Unorganized Sector workers including the unorganized workers engaged in tourism is not just limited to social security. Protection is also a major concern in this sector. Though the regular labour laws apply to Unorganized Sector, the Indian legislature is all set to recognize

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The concern with the Unorganized Sector workers including the unorganized workers engaged in tourism is not just limited to social security. Protection is also a major concern in this sector. Though the regular labour laws apply to Unorganized Sector, the Indian legislature is all set to recognize

the workers who are left out from the coverage of these laws as Unorganized Sector. It would be improper to presume that the areas targeted by the regular labour laws are immune of all difficulties and that these laws have really been implemented in all places. The areas covered by the regular labour laws are also prone to many difficulties. Therefore the proper approach would be to further extend the operation of these laws through proper amendments in the provisions and through reducing the requirement of the number of persons employed and giving the employer certain subsidies, concessions and protection to meet up the burden arising therefrom. If the intention of the legislature is honest through the present attitude the social security goal would be realized in large area of the Unorganized Sector, but the protection of workers would be best ensured through making the employer liable/accountable. The workers who remain unprotected through any law can be protected through newer initiatives. The present approach of the Government does not attend to the problems of casual and contract labourers who work in the establishments employing ten or more persons. Further, there are numerous establishments in the country where though the number of employees exceed nine but are not provided any protection or welfare under the laws. In some States many labour laws are not implemented. In such a state of affairs, though such policies seem to cover all working people, the workers generally remain devoid of the benefits flowing therefrom.

The unorganized workers engaged in tourism, do not have much to benefit from the regular labour laws. The casual nature of employment, their

ignorance etc. debar them from availing the rights under these laws. As most of the laws apply to the establishments employing 10 or more persons, a huge majority of the unorganized workforce in the country is excluded. Even in the establishments employing more than 10 persons the casual and contract labourers cannot be benefited under the existing laws. The casual and contract labourers in the organized sector are also excluded by the Unorganized Sector Workers Bill. In many cases the employments themselves are not identified. There arise many new employments daily in the unorganized sector. It is true with the tourism industry too. Therefore the laws cannot get in tune with the changing needs. There is also a huge difficulty in implementation of the laws in this sector. It cannot be disputed that the regular labour laws cannot cover the entire unorganized sector. Therefore a new legislation to cover this lot of the workforce is the need of the hour. However, a huge portion of the unorganized workforce can be benefited under the regular labour laws if the requirement of the 10 or more workers for the application of these laws is dropped to seven or eight. For the rest of the workforce a new legislation may be planned.

Legislative steps to tone up the stringency of the regular labour laws are also desired. Particularly, the penalties stipulated in the Acts are outdated. The discretionary penalties of fines stipulated in the Acts adequate increments. For example 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. Similarly in Payment of Bonus Act, 1965 Section 28 prescribes a discretionary penalty of imprisonment for a term of six months or fine upto rupees one thousand. The penalty of fine being discretionary with the penalty of imprisonment is too small. 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. Therefore the amounts of fines need adequate increments.

The Unorganized Sector Workers Social Security Bill, 2007 entirely ignores 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. The Bill speaks of the tripartite participation. It 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 implications for funding of the schemes as stated in the Financial Memorandum would be determined "as and when such schemes are

formulated." Financial implications are hard to be formulated in our country. In the absence of clear provisions for funding, the schemes cannot be implemented. The welfare provisions in the present Bill face threats because of the paucity of funds.

It is an irony of this giant nation that workers are expected to move places for the vindication of their rights. A person struggling for a piece of bread 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. Therefore it should be ensured that a worker is able to file complaint locally.

A new outlook and strong political will is required to ensure that the aspirations of workers, dreams of the founding fathers of the Constitution and India's commitments at the international level are realized. It certainly would create a huge financial burden on the State. But spending on labour is worthwhile. Workers are builders of civilizations and the backbone of the country's economy. Peaceful working environment and satisfaction among the workers would enlarge production. Enlarged production would add to the economy and bring prosperity in the country.