

## Chapter VIII

### A Study of the Shifting Contours of Judicial Perception

Labour jurisprudence owes its origin to the Pre-independence era, where it existed in an elementary form but after independence, it is the Supreme Court that has infused new-fangled essence in the legislative framework of the welfare State. The Indian judiciary has played an extensive role in the advancement of industrial jurisprudence and makes a discrete contribution towards innovative methods and devised strategies to ensure justice to vulnerable section of the society which could be witnessed from a number of Supreme Court landmark decisions.

India is a welfare state<sup>410</sup> and has enforced many labour welfare legislations. A social system is characterized by such policies adopted by the Government for the welfare of the people. Judiciary upholds the spirit of social equity and social justice and protects the interest of vulnerable groups. Thus, this chapter focuses to study the shifting contour of judicial perception of social security of labour in India. This chapter also consists of a discussion on what could be termed as ‘social Justice’, the Indian constitutional structure of the division between fundamental rights and directive principles, and the debates in the Constituent Assembly on the nature and enforcement of social Justice.

#### 8.1 Introduction

India being a welfare state plays a key role in the protection and promotion of the economic and social well-being of its citizens. It is based on the principles of equality of opportunity, equitable distribution of wealth, and public responsibility for those unable to avail themselves of the minimal provisions for a good life. The general term of social security cover a variety of forms of economic and social organization. Before discussing the welfare state it is important to analyze the term “State” State is an important legal institution as it is a source of all the powers and rights.<sup>411</sup> The relation between the state and law is inherent.

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<sup>410</sup> Welfare state is that system in which the Government undertakes various welfare programmes for its people such as insurance, old age pension and other social security measures.

<sup>411</sup> According to *Salmond*, “A state is an association of human beings established for the attainment of certain ends by certain means.” The relationship between state and law is inherent. According to *Holland*, “A state is a political society. He further writes society means a natural; unit of a large number of human beings united together by a common language and by a common language and by similar customs and opinions resulting from common ancestry,

The concept of welfare state<sup>412</sup> developed during 19<sup>th</sup> and 20<sup>th</sup> century. At the time of independence, the Constitution makers were highly influenced by the feeling of social equality and welfare of the people which led to incorporation of such provisions in the Constitution of India that made the role of state in India important. State plays a key role in protecting and promoting the economic and social well-being of its citizens based on the principles of equality of opportunity, equitable distribution of wealth, and public responsibility for those who lack the minimal provisions for the good life which is enshrined in the Fundamental Rights and Directive Principles of State Policies in the Constitution of India.

The principal aim of the socialist state is to eliminate inequality in income, status and standards and this concept was also appreciated by the Hon'ble Supreme Court in *D. S. Nakara v. Union of India*<sup>413</sup>

The Apex Court in *Excel Wear v. Union of India*,<sup>414</sup> headed by Hon'ble Chief Justice Y.V. Chandrachud, Justice R.S. Sarkaria, Justice N.L. Untwalia Justice A.D. Koshal and Justice A.P. Sen in deciding the case held that:

“The addition of the word “socialist” might enable the courts to learn more in favour of nationalization and state ownership of an industry. But, so long as private ownership of industry is recognized which governs an overwhelming large proportion of economic structure, is it possible to say that principles of socialism and social justice can be pushed to such an extreme so as to ignore completely, or to a very large extent, the interest of another section of the public, namely the private owners of the undertaking.”<sup>415</sup>

“From a wholly feudal exploited slave society to a vibrant, throbbing socialist welfare society reveals a long march, but, during this journey to the fulfillment of goal every state

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religious and historical circumstance”. *Grotius* defines state as “ the complete union of freedom who joins themselves for the purpose of enjoying law and for the sake of public welfare”

<sup>412</sup> A basic feature of the welfare state is social benefits, intended to provide benefit during period of greatest needs i.e old age, illness, unemployment. The welfare state also usually includes public provision of education, health , housing.

<sup>413</sup> (1983) 1 SCC 305 the Hon'ble Supreme Court held at para 33 held that “the principal aim of a socialist state is to eliminate inequality in terms of income, status and standards of life. The basic frame work of socialism is to provide a proper standard of life to the people, especially, security from cradle to grave. This amongst other on economic side envisaged economic equality and equitable distribution of income. This is a blend of Marxism and Gandhism, leaning heavily on Gandhian socialism.”

<sup>414</sup> AIR 1979 SC 25 at para 24

<sup>415</sup> *Ibid*

action, whenever taken, must be directed and must be so interpreted, so as to take the society one step towards the goal”.<sup>416</sup>

## 8.2 Social Security: Fundamental Rights & Directive Principles of the Indian Constitution

The Indian Constitution strikes a balance between individualism and socialism. The Indian Constitution is divided into two separate parts. Part III of the constitution deals with the ‘Fundamental Rights’<sup>417</sup>, and Part IV of the constitution contains the Directive Principles of State Policy (DPSPs),<sup>418</sup>. While Fundamental Rights are justifiable under the constitution, the Directive Principles are not justifiable rights and their non-compliance cannot be taken as a claim for enforcement against the State.

The Directive Principles have specifically been made non-justifiable or unenforceable by Article 37<sup>419</sup> of the Indian constitution. The Supreme Court supported this view in *State of Madras v. Chempakam Dorairajan*<sup>420</sup> and in *Re Kerala Education Bill*,<sup>421</sup>

However, in *Sajjan Singh Case*,<sup>422</sup> it was held by the Hon’ble Supreme Court that the Fundamental Rights cannot be amended. But this view was contradicted by the Supreme Court in *Golaknath v. State of Punjab*<sup>423</sup> where the Hon,ble Supreme Court in dealing the case held that

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<sup>416</sup> *Supra*

<sup>417</sup> Fundamental Rights include the right to life, the right to equality, the right to free speech and expression, the right to freedom of movement, the right to freedom of religion, which in conventional human rights language may be termed as civil and political rights

<sup>418</sup> DPSP include all the social, economic and cultural rights, such as the right to education, the right to livelihood, the right to health and housing

<sup>419</sup> The constitution of India, art 37 provides that -“the provisions contained in this part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the state to apply these principles in making laws.”

<sup>420</sup> A.I.R. 1951 S.C. 226. At Para 10 The Hon’ble supreme court held that “*Directive Principles* had to conform to run as subsidiary to the chapter on *Fundamental Rights* on the reason that the later are enforceable in the courts, while yje former are not.”

<sup>421</sup> In *Re Kerala Education Bill*, A.I.R. 1958 S.C. 956. Para 8 Hon’ble Chief Justice S.R.Das observed that “ the Directive Principles had to conform to and run as subsidiary to the chapter on Fundamental Rights.

<sup>422</sup> *Sajjan Singh v. State of Rajasthan* A.I.R 1965 SC 845

<sup>423</sup> *Golaknath v State of Punjab*, A.I.R. 1967 S.C. 1643.

“The Directive Principle and Fundamental Rights enshrined in the Constitution formed an ‘integrated scheme forming a self-contained code. The scheme flexible enough to respond to the changing needs of the society’”.<sup>424</sup>

Subsequently, in 1972 The Constitution was amended and inserted i.e., *Article 31-C*<sup>425</sup> and The Hon’ble Supreme Court in<sup>426</sup> by majority upheld the validity of this Amendment.

In *Mumbai Kamgar Sabha v. Abdulbhai Faizullabai*<sup>427</sup> Justice V.R. Krishna Iyer and N.L. Untwalai held that, Directive principles of state policy will be given preferred while two judicial choices are available.

Further the Justice O. Chinnappa Reddy in *Uttar Pradesh State Electricity Board & Another v. Hari Shanker jain*<sup>428</sup> headed by the bench Justice Krishna Iyer, Justice D.A Desai and Justice O. Chinnappa Reddy, expressed the view that the court do not have power to legislate. They are bound to interpret the principles enshrined in the constitution of India which does not hinder the goal that is set out in the Directive Principles of State Policies.

The question for consideration before the Supreme Court was whether the amendments introduced by section 4 and 55 of the constitution (42<sup>nd</sup> Amendment) Act, 1976 damage the basic structure of the Constitution by destroying any of its basic feature or essential elements where to be decided in *Minerva Mills Ltd. v. Union of India*<sup>429</sup> in which the Supreme Court observed that “the Constitution is a precious heritage; therefore, you cannot destroy its identity. The majority conceded to the Parliament the right to make alterations in the constitution so long as they are within its basic frame work. Further, the

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<sup>424</sup> *Id.* at 1656. Para 19

<sup>425</sup> Constitution of India, art 21 C was inserted by the 25<sup>th</sup> Constitution Amendment. Act. The 25th Amendment was to make Articles 14, 19 and 31 inapplicable to the laws made by the Parliament or State legislature for implementing the directive principles enshrined in Article 39 (b) and (c). Consequently, those legislations could not be questioned in a court of law.

It was introduced against the backdrop of increasing judicial scrutiny of land reforms introduced by the government to abolish Zamindari; the tussle between the court and the government was seen in the Bank Nationalization case where it was held mandatory for the government to give due compensation to those deprived of their property.

<sup>426</sup> (1973)4 S.C.225

<sup>427</sup> (1976) 3 S.C.C. 832. Supreme Court at Para 29 held that “where two judicial choices are available, the construction in conformity with the social philosophy of the part IV has to be preferred

<sup>428</sup> (1978)4 S.C.C 16 the Hon’ble Supreme Court at Para 5 held that “even though the courts could not direct making of legislations, courts are bound to evolve and adopt principles of interpretation which will further and not hinder the goals set out in Directive Principle in the state policy”.

<sup>429</sup> A.I.R. 1980 S.C. 1789.

court held that section 4 of this amendment was beyond the amending power of the Parliament and was void since it damages the basic or essential features of the constitution and destroyed its basic feature by a total exclusion of challenge to any law on the ground that it was inconsistent with or took away or abridged any of the rights conferred by Art. 14 or Article 19 of the constitution Justice Bhagwati, in 'his dissenting judgment expressed that: "if the exclusion of the Fundamental Rights embodied in Article 14 and 19 could be legitimately made for giving effect to the Directive Principles set out in clauses (b) and (c) of Article 39 without affecting the basic structure, I fail to see why these Fundamental Rights cannot be excluded for giving effect to the other Directive Principles if the constitutional obligation in regard to the other Directive Principles which stand on the same footings". Further he observed that "I find it difficult to understand how it can at all be said that the basic structure of the constitution is affected when for evolving a *modus vivendi* for resolving a possible remote conflict between two constitutional mandates of equally fundamental character, Parliament decides by way of amendment of Art 31-C that in case of such conflict the constitutional mandate in regard to Directive Principles shall prevail-over the constitutional mandate in regard to the Fundamental rights under Articles 14 and 19".The amendment in Article 31-C far, from damaging the basic structure of the constitution strengthens and reinforces it by giving fundamental importance to the rights of the members of the community as against the rights of a few individuals and Merging, the objective of the constitution to build an egalitarian social order. But so far as section 4 of the 42<sup>nd</sup> Amendment of the Constitution is concerned Justice Bhagwati said; "I hold that, on the interpretation placed on the amended Article 31- C by me, it does not damage or destroy the basic structure of the constitution and is within amending power of Parliament and I would therefore, declare the amended Article 31-C of the constitution as valid."

The Hon'ble *Justice Krishna Iyer* in one of the leading case<sup>430</sup> held that it is the duty of the court to uphold the ideas of the Directive Principles of State Policies while interpreting the Constitution and other legislation. Later in landmark Right to Education Judgment<sup>431</sup>, the Justice Jeevan Reddy said that the Fundamental Rights and Directive Principles of the State Policies are supplementary and complementary to each other.

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<sup>430</sup> A.B.S.K Sangh (Rly) v. Union of India A.I.R. 1981 SC 298.

<sup>431</sup> Unnikrishnan v. State of A.P A.I.R. 1993 S.C. 2178 the Hon,ble Supreme Court held that "The provisions of Part III and IV are supplementary and complementary to each other and not exclusionary of each other and that the fundamental rights are but a means to achieve the goal indicated in Part IV

These Fundamental Rights can be enforced directly by the Supreme Court by virtue of Article 32 and through High Courts under Article 226

In *Air India Statutory Corporation v. United Labour Union*<sup>432</sup> it was observed by Supreme Court that the Directive Principles are substantially human rights.

The Hon'ble Supreme court also pointed out that the rights of the workers are protected under the Constitution of India through the Directive principles of state policies<sup>433</sup>. The Hon'ble Supreme Court in one of the case elaborately considered the scope of review of economic policy affecting rights of labour<sup>434</sup>.

The Supreme Court *Randhir Singh v. Union of India*,<sup>435</sup> held that principle of "equal pay for equal work" though not a fundamental right but it is certainly a constitutional goal, so it can be enforced, while dealing with the case where the petitioner and other other driver constables made a representation to the authorities that their case was omitted to be considered separately by the Third Pay Commission and that their pay scales should be the same as the drivers of heavy vehicles in other departments. As their claims for better scales of pay did not meet with success, the application has been filed by the petitioner for the issue of a writ under Article 32 of the Constitution. It is clear that the Judiciary is playing a pivotal role to promote Indian state as a social welfare state. In addition to these, Public Interest Litigations (PILs) have also played an important role in this field and have maintained social order.<sup>436</sup>

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<sup>432</sup> A.I.R. 1997 SC 645

<sup>433</sup> . In *National Textile Worker's Union v. P.R.Ramakrishnan* A.I.R. 1983 S.C. 75, the Supreme Court pointed out the significant position of workers in Indian society and reiterated the profound concern to the workers by the socioeconomic order envisaged in the Preamble and the Directive Principles of the Constitution. Though the Companies Act does not provide any right to the workers to intervene in the winding up proceedings it was decided that such a right of the workers had to be spelt out from the Preamble and *Articles 38, 39, 42, 43 and 43A* of the Constitution. The directive in *Article 43A*, i.e., the provision for securing the worker's participation in management, were accordingly read into fundamental right of the share holders to carry on or not to carry on their trade or business guaranteed under *Article 19 (1) (g)*. "The constitutional mandate is therefore clear and undoubted that the management of the enterprise should not be left entirely in the hands of the suppliers of capital but the workers should also be entitled to participate in it, because in a socialist pattern of society, the enterprise which is a centre of economic power should be controlled not only by economic power but also by capital and labour

<sup>434</sup> *BALCO Employees Union (Regd.) v. Union of India & Ors* (2002) 2)SCC 333

<sup>435</sup> AIR 1982 SC 879

<sup>436</sup> According to the Constitution of India, art. 38 " State in order to secure social order for the promotion of welfare of the people. The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which social, economic and political justice shall inform all the institutions of the national life. Further, The State shall, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations"

Thus, from the above it is evident that The Indian Constitution not only aimed at achieving political independence from colonial rule but also resolve to establish new social order based on social, economic and political justice. Social revolution was put at the top of the national agenda by the Constituent assembly when it adopted the Objectives Resolution, which called for social, economic and political justice and equality of status, opportunity and before the law for all people. The DPSPs, it was thought, would make explicit the 'socialist' as well as the social revolutionary content of the constitution.<sup>437</sup>

### 8.3 Constitutional Prohibition<sup>438</sup>:Contract Labour

In *Secretary, State of Karnataka and Ors.v. Umadevi*<sup>439</sup> the hon'ble court held that that a sovereign government while considering the economic situation in the country was not prohibited from making temporary appointments or engaging workers on daily wages.

The Hon'ble Supreme Court while deciding, inter alia, whether the violation of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 are also violative of article 21 of the Constitution in *People's Union for Democratic Rights v. Union of India*<sup>440</sup> answered the question in the affirmative and observed:

The rights and benefits conferred on the workmen employed by a contractor are protected by the enacted of creation social welfare legislation which intended to ensure basic human dignity to the workmen<sup>441</sup>and if the workmen are deprived of any of these rights and benefits to under the provisions would clearly be a violation of fundamental Rights of the constitution<sup>442</sup>

In *Steel Authority of India Ltd. v. National Union Water Front Workers and Others*,<sup>443</sup> a Constitution bench of the Supreme Court delivered a landmark judgment on contract labour as:

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<sup>437</sup> Mahavir Tyagi from the United Provinces, during the Constituent Assembly Debates said, '... the directive principles accommodate all the revolutionary slogans in a particular form as it is social and economic justice that is demanded by the most radical of the radicals of the world.' Constituent Assembly Debates Official Report 1999) 19<sup>th</sup> Nov. 1948, Vol. No. VII, Book No.2 (New Delhi Lok Sabha Secretariat New Delhi).

<sup>438</sup> Article 21 of the Constitution, as observed earlier, lays down that no person shall be deprived of his life and personal liberty except according to the procedure established by law.

<sup>439</sup> A.I.R.2006 S.C.1806.

<sup>440</sup> (1982)2 LLJ 454

<sup>441</sup> Such as Contract Labour (Regulation and Abolition) Act, 1970 and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979

<sup>442</sup> Constitution of India, art. 21

<sup>443</sup> 2001, 111 LLR 349

“Neither Section 10 of the Contract Labour (Regulation and Abolition) Act nor any other provision in the Act, whether expressly or by necessary implications, provides for automatic absorption of contract labour on issuing a notification by appropriate Government under sub section 1 of Section 10<sup>444</sup>, prohibiting employment of contract labour in any process, operation or other work in any establishment, consequently the principle employer cannot be required to order absorption of contract labour working in the concerned establishment.”

*Air India Statutory Corporation v. United Labour Union*<sup>445</sup> is an epoch-making judgment on contract labour. Here the Supreme Court ruled that after abolition of the contract labour system, if the principal employer fails to absorb the labour working in the establishments of the employer on regular basis, the workmen could seek judicial redress under article 226 of the Constitution. This is so because "judicial review being the basic feature of the Constitution, the High Court has to see that the notification is enforced. The citizen has fundamental right to seek redress of their legal injury by judicial process to enforce his rights in the proceedings under Article 226. The court added: "the workmen have a fundamental right to life. Meaningful right to life springs from the continued work to earn their livelihood. The right to employment, therefore, is an integral facet of right to life". The court accordingly held that when the workmen are engaged as contract labour continuously in establishment of the employer where work is of perennial nature, then on the abolition of contract labour system, the contract labour are entitled per force to be absorbed on regular basis transposing their erstwhile contractual status into that of employer employee relationship under the principal employer.

In *Secretary, Haryana State Electricity Board v. Suresh*<sup>446</sup> the state electricity board employed workers through a contractor to maintain cleanliness in the plant. The contract itself specified the number of karamcharis to be employed. They having put in 240 days of continuous service claimed regularization by the board. The labour court ordered reinstatement of the service along with ten per cent back wages. The Hon'ble High Court in appeal confirmed the decision of the labour court but without back wages on the ground that there existed relationship of employer and workmen between the electricity board and the karamcharis. The Supreme Court, agreeing with the decision of

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<sup>444</sup> Section 10 Prohibition of employment of contract labour:-

(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultaion with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

<sup>445</sup> (1997) LLR 288

<sup>446</sup> (1999) 3 SCC 601

the high court observed that the work was of a permanent nature and the overall control of the contract labour including administrative rested with the board. Further, neither the board was registered as a principal employer nor the contractor was a licensed contractor. Therefore, the so called contract system was a mere camouflage or a smoke screen. The real contractual relationship was "between the board and the karamcharis. As such they were entitled to be regularized in the service of the board. The doctrine of 'lifting of veil' enunciated in *Salomn v. Salomon*<sup>447</sup> was applied in this case to decide the actual relationship of employer employee.

The judgment given the SAIL case was followed in *Promod Kumar and Others v. National Aluminium Company Ltd.*<sup>448</sup> in which the High Court dismissed the petition seeking a declaration of petitioners to be regular workman as security guards, sergeants and cooks, and give direction to opposite parties to pay them remuneration equal to that paid to regular employees. The high Court observed that the Contract Labour was continuing in the establishment with due permission of the competent authority.

Further by virtue of a notification under section 10 of The Contract Labour Act, 1970, employment of contract labour in the establishment had not been prohibited. While relying upon the decision of SAIL case Court further held that there could be no automatic absorption of contract labour on issuing notification under section 10(1) of the Act as it does not provide any such relief. The principle laid down in SAIL was followed in many cases, also in *Cipla Ltd. v. Maharashtra General Kamgar Union*<sup>449</sup> and *Food Corporation of India v. The Union of India*<sup>450</sup> while supporting the judgment of SAIL case held that the workers has no right of automatic absorption on abolition of contract labour system.

Judiciary maintained its trend of protecting the interest of unorganised labour. In *National Iron and Steel Company v. State of West Bengal*<sup>451</sup>, maintained the protection of contract labour interest and the court discouraged the system of contract labour and even directed its abolition in certain circumstances to prevent exploitation. At the same time, in *Standard Vaccum Refining Company Ltd. v. Their Workmen*<sup>452</sup> court held that if it cannot be possible to abolish contract labour system, according to the objectives of

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<sup>447</sup> 1896 AC 22

<sup>448</sup> (2002) III LJ 657 Ori

<sup>449</sup> 2001 LLR 305

<sup>450</sup> 2003 Lab. IC 166

<sup>451</sup> (1967)2 LLJ 23 (SC)

<sup>452</sup> (1960) 2 LLJ 233 (SC)

the Act, fair conditions of service and security of tenure should be ensured to them. The Court also emphasized the need of workmen and interest of industry by extending the coverage of the employees by widely interpreting the definition of employee. For instance, the hon'ble supreme Court in one of the case held that the employees of the canteen and the cycle stand run in the cinema theatre by contractor were to be covered by the definition of employee under the Employees State Insurance Act,<sup>453</sup> Act and also *in Siddheswar, Hubli v. Employees State Insurance Corporation*,<sup>454</sup> the Court, while interpreting the term 'employee' under the Employees State Insurance Act held that the definition appears to be of wider implication and applies to those persons even whose services are lent to the principle employer.

In the case of *Mangesh Salodkar v. Monsanto Chemicals of India Ltd*<sup>455</sup> the issue concerned conditions of work at plants run by Monsanto Ltd. The company manufactures pesticides and it was alleged that a particular worker had suffered a brain hemorrhage because of the work environment. He survived but suffered major after - effects. He was paid Rs 3 lakh by the company towards medical expenses, but he filed a petition in the high court. The court initially appointed a commission headed by a retired judge of the high court. The commission, in turn, summoned documents from the factory inspectorate and asked certain experts to go into the conditions of work at the factory. A medical examination was also carried out on some of the other workers. During the pendency of the matter, the dispute between the workers and the employer was resolved as the employer agreed to pay an additional Rs 17.80 lakh to the concerned employee and Rs 7.40 lakh to other employees who had been affected. The commission accordingly filed a report with the high court. Since the dispute between employer and employees had been resolved, the court was not called upon to determine that aspect. However, it did go into other aspects concerning the right of employees to a safe workplace, etc. The court held that the workers had a fundamental right to health in the workplace. In addition, it observed:

As this case demonstrate the absence of updated medical records results in a virtual denial of access to justice. In the absence of information, factory workers and all those who promote the cause of workers cannot realistically attempt to redress the

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<sup>453</sup> *Royal Talkies, Hyderabad v. Employees State Insurance Corporation*, (1978 ) 4 SCC 204

<sup>454</sup> (1998) Lab I C 214 (Orissa)

<sup>455</sup> Writ Petition No. 2820 of 2003, decided by Bombay High Court on July 13, 2006

systemic failure on the part of the regulated industry to maintain regulatory standards. The court issued various directions, including the following:

- I. The medical examination of workers which is to be conducted under Section 41 E of the Factories Act, 1948 should be such as would enable an identification of diseases and illnesses which are a likely outcome of the process and material used in the factory;
- II. Copies of medical records of workmen must be handed over to them as and when medical examinations are conducted and the appropriate government will consider the issuance of suitable directions mandating the permanent preservation of medical records in electronic form by factories engaged in hazardous processes;
- III. In respect of factories involved in hazardous processes, safety and occupational health surveys as required by Section 91 A should invariably be carried out at the time of renewal of licenses, apart from other times.

In deciding one of the public interest Litigation case The Hon'ble supreme Court went to the extent of declaring right to health as a part of right to livelihood and life under Article 21 read with Article 39(e), 41, 43, 48-A of the Constitution<sup>456</sup> ,.

In *Muir Mills Co. Ltd. v. Suti Mazdoor Union*<sup>457</sup>, Justice Bhagwati explained Social Justice. According to him social justice is a very unclear and undefined expression, and added that whatever it meant, the concept of social justice does not derive from the imaginary ideas of any adjudicator but must have a more solid foundation. On the other hand, In *Parkash Cotton Mills v. Bombay*<sup>458</sup>, Mr. Chagla C.J. rejected the submission that

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<sup>456</sup>*Consumer Education and Research Centre v. Union of India* AIR (1995) SC 922 Thus the court observes: "The jurisprudence of personhood or philosophy of the right to life enlarges its sweep to encompass human personality in its full blossom with invigorate health which is a wealth to the workman to earn his livelihood to sustain dignity and to live a life with dignity and equality.... The expression 'life' assured in Article 21 of the Constitution does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard to life, by hygienic conditions in work place and leisure". The court further held that the State, be it Union or State Government or and industry, public or private is enjoined to take all action which will promote health, strength and vigour of the workmen during period of employment and leisure and health even after retirement as basic essentials to life with health and happiness. Health of the workers enables him to enjoy the fruit of his labour. Medical facilities to protect the health of the workers are, therefore, the fundamental human rights to make the life of workman meaningful and purposeful with dignity.

<sup>457</sup> (1995)ISC 991

<sup>458</sup> 59 BOM L.R 836

the Court should not impose its own ideas of social justice in interpreting statutory provisions by saying that social justice was an object of the Constitution.

The labour welfare is one which lends itself to various interpretations and it has not always the same significance in different countries. State is an important legal institution as it is a source of all the powers and rights. According to Bosanque, “the ‘state’ is a working conception of life as a whole.”

#### **8.4 Judicial Protection to Workers Right of Provident Fund and Employee State Insurance Act**

This is another piece of social security legislation. These are consistent with the constitutional guarantee for social, economic justice, to secure freedom from want and security against economic fear. The Supreme Court in several cases interpreted this Act as a beneficial legislation that provide benefits to the employees in case of illness, occupational injury, maternity Act<sup>459</sup> The Scheme under the Employees State Insurance Act and Provident Fund Act were framed by the central government in 1948 and 1952. In 1971, The Act was extended to comprehend family pension and life insurance benefit also. It is designed to provide for some retirement benefit.

The schemes under the ESI Act and Provident Fund Act were framed by the central government in 1948 and 1952. The Act was extended to comprehend family pension and life insurance benefit also. It is designed to provide for some retirement benefit.

Under the ESI Act, temporary and casual workers are covered and the wages paid to them are liable for contribution. This question was settled by the Courts which have held that “a casual worker is entitled to payment of contribution by the employer towards employer's contribution as well as employee's contribution, though he is employed even for a day or two or a few days in a week. The effect of these two clauses is emphatic enough to declare that the word 'employee' as defined under Section 2(9) of the Act includes casual worker also.”<sup>460</sup> A full Bench decision of the Karnataka High Court in *ESI Corporation v. Suvarna Saw Mills*,<sup>461</sup> observed that Courts have held time and again that there is no such difference between a casual or temporary or permanent employee for

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<sup>459</sup> Such as in *Bombay Anand Bhavan Restaurant v. Dy. Director ESI Corporation and In Transport Corporation of India v. Employees' State Insurance Corporation* (2000) 1 SCC 332 and *Cochin Shipping Co. v. ESI Corporation* (1992) 4 SCC 245

<sup>460</sup> *A.P.S.E Board v. S.S.J.C,Hyderabad*, 1977 L.I.C 316

<sup>461</sup> 1990 (5) FJR 154; 1979 L.I.C 1335 (FB).

the expression “employee” as defined under the Act and held that the term is wide enough to even include a casual employee who is employed just for a day for wages.

The apex court Bench comprising of Justice V. Gopala Gowda and Arun Mishra also in *Royal Western India Turf Club Ltd. v. ESI*<sup>462</sup> corporation has held that casual worker are covered under the definition of employees as defined in section 2 (9) of the Employees State Insurance Act. 1948

In the case of Director General, *ESI Corporation v. Scientific Instrument Co. Ltd.*<sup>463</sup>, the question that came up for consideration before High Court of Allahabad was whether employees who worked outside of the State of Allahabad which is where the registered office was, could avail of the benefits of the ESI Act, since the main work of the branch office outside Allahabad was to distribute products of a foreign company. The Court answering in the affirmative held that, “If the main business of the company itself at the branch sales offices, is to sell and distribute products of foreign company and the employees working have been employed by the company basically in connection with this work, it would be difficult to hold that the employees at branch sales offices are not 'employees' within the meaning of the term defined in Section 2(9) of the Act.

The ESI authorities in *Abu Marble Mining Pvt. Ltd. v. Regional Director, ESI Corp., Mumbai*<sup>464</sup> demanded contribution on the payment made to the contractor for the work of marble fixation done outside the factory premises. The appellant challenged the said demand under section 75 of the Act before the ESI court which held that the job of marble fixing outside the factory of the appellant by the employees engaged by the contractor had no connection with the factory and such employees engaged by the contractor would not fall even within the extended definition of employee' under section 2(9) of the Act.

The employees working in the club was also brought within the ambit of ESI Act<sup>465</sup> as Hon,ble *Justice R. Banumathi* stated in one of his deciding case that the act is one of the beneficial legislation which provides social security to the most susceptible

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<sup>462</sup> (2016)4SCC521

<sup>463</sup> 1995, lab. IC 651, (1990) 70 FLR 154.

<sup>464</sup> 2005 LLR 184

<sup>465</sup> In *Employees State Insurance Corporation v. Hyderabad Race Club* (2004) 6 SCC 191

section of the society who is in constant need of protection and assistance. Thus, the Act should be effective enough to have more coverage areas<sup>466</sup>.

In the recent case *Jaya Biswal & Ors. v. Branch Manager, Iffco Tokio General Insurance Company Ltd.*<sup>467</sup> Justice V. Gopala Gowda, held that the E.C. Act is a social welfare legislation meant to benefit the workers and their dependents in case of death of workman due to accident caused during and in the course of employment should be construed as such.

### **8.5 Judicial Approach on Employees Provident Fund and Miscellaneous Provisions Act, 1952**

In India Employees Provident Fund and Employees State Insurance Schemes, the contribution is the main resource to keep the Scheme financially viable and administratively effective. In *Regional Provident Fund Commissioner v. Hooghly Mills Company Limited*<sup>468</sup> the Supreme Court held that the Employees Provident Fund and Miscellaneous Provisions Act, 1952 granted exemption to the respondent Company from the operation of

all the provisions of the EPF Scheme, 1952 subject to the conditions specified in the Scheme which were in addition to the conditions mentioned in the Explanation to Sec. 17(1). After the grant of execution, the respondent company framed a scheme and created a trust and appointed a Board of trustees for the management of the said trust fund and was thus enjoying exemption under Sec. 17 (1-A) (a) of the EPF Act.

However, there were defaults on the part of the respondent company in making timely payment of dues towards the provident fund. Therefore, proceedings were initiated against the respondents and after affording an opportunity to the respondent to represent their case, as contemplated under Section 14 and 13 hearing, the Regional Provident Fund Commissioner by a detailed order directed the respondent company to remit a specified amount by way of damages, failing which, it was stated that further action as provided under the Act and the Schemes framed there under shall be initiated. The Supreme Court held that there is a large volume of legislation enacted with the purpose of introducing social reform by improving the conditions of certain class of persons who might not have been fairly treated in the past. These statutes are normally called remedial statutes or social welfare legislation, the normal canon of interpretation is that a remedial statute

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<sup>466</sup> *Delhi Gymkhana Club Ltd v. Employees State Insurance Corporation* (2015) 1 SCC 142 at para 23

<sup>467</sup> CIVIL APPEAL NO.869 OF 2016(Arising out of S.L.P. (C) No.1903 of 2015

<sup>468</sup> (2012) 2 SCC 489

receives liberal construction. If there is any doubt, the same is resolved in favour of the class of persons for whose benefit the statute is enacted. The court observed that the EPF Act is a beneficial social welfare legislation to ensure benefits to the employees. It affected the economic message of the Constitution as articulated in the Directive Principles of State Policy.<sup>469</sup>

Constitutional validity of EPF was discussed by Supreme Court in *Mohmedallii v. Union of India*.<sup>470</sup> The Supreme Court observed that the Act does not suffer from the vice of discrimination and, therefore, does not infringe Article 14 of the Constitution. The underlying principles of the Provident Fund Act is to bring all kinds of employees within its ambit as when the central Government might think fit after viewing the circumstances of different classes of establishments. The general rule as to the application of the Act is laid down in Sec. 1(3) of EPF. By way of exception to that general rule, the appropriate Government is authorized by section 17 to exempt any establishment from the operation of all or any of the provision of any Scheme framed under the Act. The exemption is with a view to avoid duplication and permit the employees concerned the benefit of the pre-existing Scheme which, presumably has been working satisfactorily so that the exemption is not meant to deprive the employees concerned of the benefit of a provident fund but to ensure to them the continuance of the benefit which is not less favorable to them. Hence, Section 1(3), read along with section 17 cannot be said to have conferred an un controlled power on the appropriate Govt.

In the case of *Employees Provident Fund Commissioner v. Official Liquidator of ESSKAY Pharmaceuticals Limited*,<sup>471</sup> the EPF Commissioner filed the special leave was whether the priority given to the dues payable by an employer under section 11 of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 is subject to section 529-A of the Companies Act 1956 in terms of which the workmen's dues and debts due to secured creditors are required to be paid in priority to all other debts. The Court held that the EPF

Act is a social welfare legislation intended to protect the interest of a weaker section of the society i.e. the workers employed in factories and other establishments who have made significant contribution to the economic growth of the country. The workers and other employees provide services of different kinds and ensure continuous production of

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<sup>469</sup> Under the Directive Principles of the State Policy has the obligation for securing just and humane conditions of work which includes a living wage and decent standard of life.

<sup>470</sup> 1963 Supp (1) SCR 993

<sup>471</sup> (2011) 10 SCC 727

goods, which are made available to the society at large. Therefore, a legislation made for their benefit must receive a liberal and purposive interpretation keeping in view the Directive Principles of State Policy contained in Articles 38 and 43 of the Constitution.

The government servant cannot approach any of the forums under the Act for any of the retirement benefits. In *Dr. Jagmittar Sain Bhagat v. Director Health Services, Haryana*<sup>472</sup> the appellant joined Health Department, of the respondent State, as Medical Officer on 5.6.1953 and took voluntary waiver retirement on 28.10.1985. During the period of service, he stood transferred to another district but he retained the government quarter. Appellant claimed that he had not been paid all his retirement benefits, and penal rent for the said period had also been deducted from his dues of retirement benefits without giving any show cause notice to him. Appellant made various representations, the appellant preferred a complaint before the District Consumer Disputes Redressal Forum, Faridabad on 5.1.1995 and the said Forum dismissed on merits observing that his outstanding dues i.e. pension, gratuity and provident fund etc. had correctly been calculated and paid to the appellant by the State authorities.<sup>473</sup>

The appellant approached in appeal to the State Commission. The State Commission dismissed the appeal the order dated 31.1.2007 observing that though the complaint was not maintainable as the District Forum did not have jurisdiction to entertain the complaint of the appellant he was not a “consumer” and the dispute between the parties could not be redressed by the said Forum, but in view of the fact that the opposite party (State) neither raised the issue of jurisdiction before the District Forum nor preferred any appeal, order of the District Forum on the jurisdictional issue attained finality. However, there was no merit in the appeal.<sup>474</sup>

It is evident that by no stretch of imagination a government servant can raise any dispute regarding his service conditions or for payment of gratuity or GPF or any of his retiral benefits before any of the Forum under the Act. The government servant does not fall under the definition of a “consumer” as defined under Section 2(1)(d)(ii) of the Act. Such government servant is entitled to claim his retiral benefits strictly in accordance with his service conditions and regulations or statutory rules framed for that purpose. The appropriate forum, of redressal of any his grievance, may be the State Administrative Tribunal, if any or Civil Court but certainly not a Forum under the Act.

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<sup>472</sup> AIR 2013 SC 3060

<sup>473</sup> *Ibid* at 3064

<sup>474</sup> *Ibid* at 3065

## 8.6 Judicial Approach on Maternity Benefit Act, 1947

The Act defines a “woman” as a woman employed directly or through an agency for wages. The Supreme Court has held that not just regular women employees but even women who are engaged on a casual basis or on muster roll on daily wage basis can avail of the benefits of this Act.<sup>475</sup> In this case Union of Female Workers who were not on regular rolls, but were treated as temporary workers and employed on Muster roll, claimed that they should also get maternity benefit like regular workers. The court held that the provisions of the Act would indicate that they are wholly in consonance with the Directive Principles of State Policy, as set out in Article 39 and in other Articles, especially Article 42. A woman employee, at the time of advanced pregnancy cannot be compelled to undertake hard labour as it would be detrimental to her health and also to the health of the fetus. It is for this reason that it is provided in the Act that she would be entitled to maternity leave for certain periods prior to and after delivery.

The Supreme Court of India, in case of *Dhanwatey v. Commissioner of Income Tax*,<sup>476</sup> has formulated that the law is a social mechanism to be used for the advancement of the society. It should not be allowed to be a dead weight on the society. While interpreting ancient texts, the courts must give them a liberal construction to further the interest of the society. Our great commentator in the past bridged the gulf between law as enunciated in the Hindu law texts and the advancing society by wisely interpreting the original texts in such a way as to bring them in harmony with the prevailing conditions.

The present system of government in India is based on the principle of shaping it into a “Welfare State”. The government is therefore striving to transform India into a progressive society. From time to time the government has introduced laws aimed at social reformation and efforts are being made to bring about a social change. Law in such a Welfare State is conceived not only as an instrument to preserve law and order to assure rights of the individual, but also to achieve a society where justice-social, economic and political prevails. The concept of 'social justice' and 'social engineering' are thus a part of the wider concept of a welfare state.<sup>477</sup> So Maternity Benefit Act, 1961 was established. The Apex Court held in this case that a just social order can be achieved only when

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<sup>475</sup> Municipal Corporation of Delhi v. Female Workers (Muster Roll), 2000 LLR 449

<sup>476</sup> AIR 1968 SC 683

<sup>477</sup> *Ibid* at 689

inequalities are obliterated and everyone is provided what is legally due. Women who constitute almost half of the segment of our society have to be honored and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work, they must be provided all the facilities to which they are entitled.

The Court observed that the purpose of Maternity Act is to protect dignity of motherhood by providing for the full and healthy maintenance of the women and her child when she is not working. Since number of women employees grows, maternity leave and other maternity benefits are becoming, increasingly common in employment today. The Maternity Benefit Act has been of great value in social justice oriented welfare state in securing adequate rest and financial assistance to factory women workers. Maternity Act gives a special protection to the women and increases the dignity of motherhood.

In the case of *B. Shah v. Presiding Officer, Labour Court*,<sup>478</sup> wherein the petitioner claimed that she was paid her maternity benefit wages by deducting the wage due to her on Sundays, the Supreme Court defined the term „week“ to include wages for 7 days including Sundays and not 6 days. The Court applying the principles of Article 4 of Convention No.103, i.e the Maternity Protection Convention (Revised), 1952 held that the Act was a beneficial social legislation and thus will fall under the purview of Article 42 of the Constitution of India.

The Apex Court introduced the concept of reasonableness, in interpreting Article 14 of the Constitution in *In Air India v. Nergesh Meerza*<sup>479</sup> Air India Corporation (AIC) Act and Indian Airlines Corporation (IAC) Act formulated certain regulations between the conditions of retirement and termination of service pertaining to air hostesses (AH) and those of male pursers (MP) forming part of the same cabin crew and performing similar duties. These conditions were that an AH under AIC retired from service in case of ‘first pregnancy’. The Court held it to be “grossly unethical” and as smacking of “deep rooted sense of utter selfishness at the cost of all human values” as compelling to terminate services if a woman becomes pregnant would amount to forbidding her not to have any children. It has been stated that mere pregnancy should not be considered to be a

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<sup>478</sup> AIR 1975 SC 12

<sup>479</sup> (1981)4 SCC 335

disability but a natural outcome of marriage and any distinction made on the ground of pregnancy is extremely unreasonable and manifestly arbitrary.

*Neera Mathur v. Life Insurance Corporation of India*,<sup>480</sup> in this case the petitioner's applied for the post of Assistant in the Life Insurance Corporation of India ("the Corporation"). She was called for written test and also for interview. She was successful in both the tests. She was asked to fill a declaration form which she did and submitted to the Corporation on May 25, 1989. On the same day, she was also examined by a lady doctor and found medically fit for the job. The doctor who examined the petitioner was in the approved panel of the Corporation. The petitioner was directed to undergo a short term training programme. After successful completion of the training she was given an appointment letter dated September 25, 1989. She was appointed as Assistant in the Corporation. She was put on probation for a period of 6 months. She was entitled to be confirmed in the service subject to satisfactory work report. The petitioner took leave from December 9, 1989 till March 8, 1990. In fact, she applied for maternity leave on December 27, 1989 followed by medical certificate dated January 6, 1990. She was admitted to the Nursing Home of Dr Hira Lal on January 10, 1990. She delivered a full-term baby on January 11, 1990. She was discharged from Nursing Home on January 19, 1990. Employment with the LIC was terminated after she returned from maternity leave. The reason given was that she had withheld information about her pregnancy in a questionnaire she had filled out at the time of her appointment. After a perusal of the questionnaire, the Supreme Court found that it required female candidates to provide information about the dates of their menstrual cycles and past pregnancies. The Court held that the questionnaire was an invasion of privacy and directed the LIC to reinstate the petitioner and delete the offending columns from its future questionnaires.

*In Municipal Corporation of Delhi v. Female Workers*<sup>481</sup> The Supreme Court declared that there is nothing in the Maternity Benefit Act, 1961 which entitles only regular women employees to the benefit of maternity leave and should be extended to women engaged in work on casual basis or on muster roll on daily-wage basis. The Building and Other Construction Workers (Regulation of Employment and Condition of Service) Act 1966 grant maternity benefit to those worker. Further, the Supreme Court

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<sup>480</sup> (1992) 2 SCC 286

<sup>481</sup> AIR (2000) SC 1274

held that the Delhi Municipal Corporation was an “industry” under the Industrial Disputes Act, 1947 and that the workers on the muster roll were “workmen”. Thus the court held that the benefits of the Act, was directly applicable to the women employees on the muster roll as much as regularized employees.<sup>482</sup>

In the landmark judgment *Kakali Ghosh v. Chief Secretary, Andaman & Nicobar Administration*<sup>483</sup> where the appellant initially applied for CCL<sup>484</sup> for six months commencing from 5-7-2011 by her letter dated 16-5-2011 to take care of her son who was in 10th standard. In her application, she intimated that she is the only person to look after her minor son and her mother is a heart patient and has not recovered from the shock due to the sudden demise of her father; her father-in-law is almost bedridden and in such circumstances, she was not in a position to perform her duties effectively. While her application was pending, she was transferred to Campbell Bay in Nicobar District (Andaman and Nicobar) where she joined on 6-7-2011. By her subsequent letter dated 14-2-2012 she requested the competent authority to allow her to avail CCL for two years commencing from 21-5-2012. However, the authorities allowed only 45 days of CCL by their Office Order No. 254 dated 16-3-2012. Thus, the court were left to deal with the question that whether a woman employee of the Central Government can ask for uninterrupted 730 days of child care leave (hereinafter referred to as “CCL”) under Rule 43-C of the Central Civil Services (Leave) Rules, 1972 (hereinafter referred to as “the Rules”). Thus, the Justices S.J. Mukhopadhaya and V. Gopala Gowda of the Supreme Court held that a female employee of the Central Government is entitled to two years uninterrupted leave for childcare, which may also include illnesses and schoolwork. It held that the judgment of the Calcutta High Court, Circuit Bench at Port Blair was ignorant of the rules framed by the Central Government and directed the respondents to comply with the directions issued by the Central Administrative Tribunal, Calcutta, Circuit Bench at Port Blair.

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<sup>482</sup> The hon’ble Court applied the non-discrimination provision Convention on the Elimination of all forms of Discrimination Against Women, (CEDAW) while deciding this case

<sup>483</sup> (2014) 15 SCC 300

<sup>484</sup> Central Civil Services (leave) rules 1972

## 8.7 Judicial Interpretation of Factories Act

The Madras High Court in the case of *Vasantha R. v. Union of India*,<sup>485</sup> struck down Section 66(1)(b) on the grounds that it was violation of Article 14, 15 and 16 of the Constitution of India. The petitioners were women workers who were working in the mill and some who were on the management of the various mills or factories filed petitions challenging the constitutionality and the batch of writ petitions was filed on the grounds that no discrimination should be practiced against women on account of their gender. The petitioner could not work in the third shift between 10 p.m. and 6 a.m. due to the statutory provisions banning night work of women. The Court held that, “potential employment cannot be denied on the sole ground of sex when no other factor arises” and struck down Section 66(1) (b) The Court laid out detailed guidelines in order to ensure the safety and welfare of women workers in the night shift.

## 8.8 Judicial Interpretation on Minimum Wage Act

Wage fixation is done under the Minimum Wages Act, through adjudication, Arbitration, Wage Boards and Collective Bargaining. There have been various important decisions of the Supreme Court involving different wage Problems where the Court has laid down certain far-reaching principles. The Supreme Court has come across the wage related disputes under The Minimum Wages Act, Collective bargaining process and the appeals from the industrial tribunals. While deciding these cases, the Court has Used in different context and connotations, the related terms for ‘ minimum Wage ’ such as bare minimum, basic minimum, minimum wage, industrial Minimum wage, statutory minimum wage, sustenance wage or subsistence Plus level and the need based minimum wage. The reasons for emergence Of these different nomenclature for the term ‘minimum wage’ is that each

Case stood before the Supreme Court from its own background.

The Minimum Wages Act was passed in the year 1948 and the Constitution came into existence in the year 1950. The Supreme Court was first assigned with the task of determining the constitutional validity of the Minimum Wages Act in *Edward Mills Co. Ltd. v. State of Ajmer*,<sup>486</sup> wherein the validity of Sec. 27<sup>487</sup> of the Act was challenged on the ground of excessive delegation. The power of the appropriate Government to appoint

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<sup>485</sup> (2001) II ILJ Mad. See also Triveni K.S. V. Union of Indi , 2002 (5) ALT 223 (High Court of Andra Pradesh)

<sup>486</sup> 1954 II LLJ (S.C.) 686

<sup>487</sup> Minimum wage Act, sec 27

the Committees to hold enquires to advice it in the matter of fixing minimum wage came before the Court. It was argued that the Act prescribed no principles and laid down no standard which could furnish an intelligent guidance to the administrative authority in taking such a decision and that the matter was left entirely to the discretion of the appropriate Government. Such delegation virtually amounted to surrender by the legislature of its essential legislative functions. On that the Supreme Court held that conditions of labour vary under different circumstances and from State to State and the expediency of including a particular trade or industry within the schedule depend upon a variety of facts which are by no means uniform and which van best be ascertained by the person who is placed in charge of the administration of a particular State. Therefore, the legislature could not be said to have stripped itself of its essential powers or assigned to the administrative authority anything except a subordinate power which was thought necessary to carry out the purpose and policy of the Ad. The second issue is that the Government reconstituted the Advisory Committee after the expiry of its term retrospectively. The Court held that the nature of the Advisory Committee under Sec. 5(2) is only recommendatory and the final decision is left in the hands of the Government and hence it is valid.

In 1955, the validity of the Minimum Wages Act was again challenged in *Bijay Cotton Mills Ltd. v. State of Ajmer*,<sup>488</sup> wherein Sections 3,4 and 5 of the Act were challenged on the ground that the restrictions imposed by these Sections upon the freedom of contract and thus violated the fundamental right guaranteed under Article 19 (1) (g) of the Constitution. There was an industrial dispute between the appellants company and its workmen regarding enhancement of wages and the dispute was referred to an Industrial Tribunal. The tribunal held that “the capacity of the mill precludes the award of higher rates of wages and higher dearness allowance.” The employees appealed to Appellate Tribunal when this appeal was pending, the Government fixed the minimum wages at Rs. 56 in the textile industry under the Act. In the meantime the Appellate Tribunal sent back the case to the industrial tribunal for further investigation and the latter rejected the basis upon which the minimum rates of wages of Rs. 56 were fixed by the State, and fixed the minimum rates of wages including the dearness allowance at Rs. 35 only. The Company in its petition stated that, the minimum wages fixed by the State is prohibitory and it beyond possible carry on its business on payment of such wages fixed

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<sup>488</sup> 1955 | LLJ 129 SC

by the government and hence closed its mills. An interesting feature in this case was that, all the workers working in the mills approached the Company and expressed their willingness to work at lower rate of wages than the rates prescribed under the Act. Despite the willingness of the workers the Company is unable to open the mills by reason of the fact that the Act makes it a criminal offence for not paying the wages fixed under the Act.<sup>489</sup> The workers also filed the other petition supporting the contentions of the Company. Mr. Seervai, appearing for both the petitioners invited the Court to hold that the material provisions of the Act are illegal and ultra vires by reason of their conflict with the fundamental rights of the employer. The Act puts unreasonable restrictions upon the rights of the employer, and the rights of the employees are also restricted, in as much as they are disabled, from working in any trade or industry on the terms agreed to between them and their employers. The Court held that ‘it can scarcely be disputed that securing of living wages to labourers which ensure not only bare physical subsistence but also the maintenance of health and decency is conducive to the general interest of the public. This is one of the directive principles of State policy embodied in Article 43 of our Constitution. The employers cannot be heard to complain if they are compelled to pay the minimum wages to their labourers even though the labourers, on account of their poverty and helplessness are willing to work on lesser wages. Further it was held that “if it is in the interest of the general public that the labourers should be secured adequate living wages, the intentions of the employers whether good or bad are really irrelevant.”

In the instant case the Court held, in its opinion, constitute an adequate safeguard against any hasty or capricious decision by the ‘appropriate Government’. In suitable cases the ‘appropriate Government’ has also been given the power of granting exemptions from the operation of the provisions of this Act. The Court held that the restrictions, though they interfere to some extent with the freedom of trade or business guaranteed under Article 19 (1) (g) of the Constitution, are reasonable and being proposed in the interests of the general public, are protected by the terms of Cl. (6) of Article 19. The Court had specifically laid down that the workmen should at least be given adequate living wages, which in reality mean minimum wages. Secondly the Court analyzed the scope of the term ‘minimum rates of wages’ fixed under the Act that it should ensure not

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<sup>489</sup> Minimum Wage Act section 22

only bare physical subsistence but also the maintenance of health and decency and thus concurred with the definition of 'minimum wage' as defined by the Committee on Fair wages. The Court here liberally interpreted the progressive spirit of the Constitution. Again the employers in different cases raised the similar contentions without much new impact on the Supreme Court. It is proposed to examine them at the appropriate stage.

In the above two cases the Supreme Court was called upon to decide the validity of the Minimum Wages Law itself as well as on the question of power vested with the appropriate Government to interfere with matters of wage fixation which under common law was considered to be in the realm of contract between parties based upon notions of freedom of contract. Very rightly the Court had no difficulty to reject the older jurisprudence as pleaded even by Mr. Seervai and opt for the new jurisprudence of Industrial Law. The outcome of these two decisions clearly establishes that in fixing the statutory minimum wage the capacity of the employer to pay is not a relevant factor.

Apart from the above, there are series of judgments through which it can be traced the development of judicial pronouncements on the question of wages.

In the present state of society the primary requirement is that all workmen must get at least a minimum wage, which should not only be a bare minimum but it should also provide them some measure of education, medical requirements and other amenities. *In Express News Papers (p) ltd v. Union of India*<sup>490</sup> supreme court held that in a case where the employer is already paying minimum wage and the claim is for fair wage, the question of the financial capacity of the employer is not only relevant but is pertinent, because fixing the limit of fair wage would depend upon the capacity of the employer to pay. has analyzed different theories enunciated by economists on wage fixation and had gone in depth studying the I.L.O. Conventions, various Committees Reports and the position regarding the wage structure prevailing in other countries. By an Act of Parliament, a Wage Board was constituted to frame a wage structure for all journalists working in the paper industry. In this case, the Wage Board did not pay any regard to the capacity of the industry to pay while recommending wage fixation to the Government and therefore, its award was challenged as being bad and unreasonable. Excerpts from the judgment, delivered by Bhagwati J are as follows: Broadly speaking wages have been

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<sup>490</sup> 1961 ILLJ 365 SC

classified into three categories viz. (1) the living wage (2) the fair wage and (3) the minimum wage.

The concept of minimum wage<sup>491</sup> in India, however, the level of national income is so low at present that it is generally accepted that the country cannot afford to prescribe by law a minimum wage, which would correspond to the concept of the living wage. What would be the level of minimum wage, which can be sustained by the present stage of the Country's economy? Most employers and some Provincial Governments consider that the minimum wage can at present be only a bare subsistence wage, in fact, even one important Ail India Organization of employees has suggested that a minimum wage is that wage, which is sufficient to cover the bare physical needs of a worker and his family. Many others however, consider that a minimum wage must provide not merely for the bare subsistence of life but for the preservation of the efficiency of the worker. For this purpose, the minimum wage must also provide for some measure of education, medical requirements and other amenities... There is also a distinction between a bare minimum or minimum wage and a statutory minimum wage. The former is a wage which would be sufficient to cover the bare physical needs of a worker and his family that is a rate which is mandatory on the part of the employer to pay the worker. Irrespective of its losses incurred. If an industry is unable to pay to its workmen at least a bare minimum wage it has no right to exist. The statutory minimum wage however is the minimum, which is prescribed by the Statute and it may be higher than the bare subsistence or minimum wage providing for some measure of education, medical requirements and amenities, as contemplated above.

The three concepts, the minimum wage, fair wage and living wage were examined and it was pointed out that the content of these three expressions was not fixed and static, and that it varies and was bound to vary from time to time.

In *Standard Vacuum Refining Co. v. Its Workmen*<sup>492</sup>, the workmen claimed a bonus for the year 1956, equivalent to nine months total earnings on the ground that the employers had admitted their capacity to pay and that the wage actually received was less than the living wage. The employers contended that they were paying a living wage and

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<sup>491</sup> The Court has quoted extensively the relevant portions of the Report of the Committee on Fair Wages, (1949) and approved the concepts of 'living wage', 'Minimum Wage' and 'Fair Wage' as defined by the Committee. However, it expressed its own views with regard to the principles of fixation of 'minimum wage' to that of the Committee's.

<sup>492</sup> 1960) 2 LLJ 233 (SC)

that no bonus was due. The employers relying on the Report of Textile Committee, 1940, contended that if the living wage there for 1940, is Rs. 55/- and if this was multiplied by 3.5 (due to a 35 per cent rise in prices between 1940 and for 1956) it comes to Rs.192.55 as the living wage for 1956, and they were paying their workmen more than that. The workmen relied on the recommendations of the Indian Labour Conference, 1957, to show that Rs.209.70 approximated to the need- based minimum wage, and that the average wage paid by the employers was fair, but that there was still a gap between the actual wage and the living wage. The tribunal accorded a bonus equivalent to five months basic wages. Both the parties challenged this award.

Speaking for the Court Gajendragadkar J. observed:

“It is well known that the problem of wage structure with which industrial adjudication is concerned in a modern democratic State involves in the ultimate analysis to some extent ethical and social considerations. The advent of the doctrine of a Welfare State is based on notions of progressive social philosophy, which have rendered the old doctrine of laissez faire obsolete. In the nineteenth century the relations between employers and employees were usually governed by the economic principles of supply and demand, and the employers thought that they were entitled to hire the labour on their terms and to dismiss the same at their choice, subject to the specific terms of contract between them, if any. The theory of ‘hire and fire’ as well as the theory of ‘supply and demand’, which were allowed free scope under the doctrine of laissez faire no longer hold the field. In constructing a wage-structure in a given case industrial adjudication does take into account to some extent considerations of right and wrong, propriety and impropriety, fairness and unfairness. As the social conscience of the general community becomes more alive and active, as the welfare policy of the State takes a more dynamic form, as the national economy progresses from stage to stage, and as under the growing strength of the trade union movement, the collective bargaining enters the field and the wage-structure ceases to be a purely arithmetical problem. Considerations of the financial position of the employer and the state of the national economy have their say, and the requirements of a workman living in a civilized and progressive society also come to be recognized. It is in that sense, and no doubt to a limited extent, that the social philosophy of the age supplies the background for the decision of industrial disputes as to wage-structure. It is because of this socio-economic aspect of the wage-structure that industrial adjudication postulates that no employer can engage industrial labour unless he pays it what may be regarded as

the minimum basic wage. If he cannot pay such a wage, he has no right to engage labour, and no justification for carrying on his industry; in other words, the employment of sweated labour which would be easily available to the employer in all undeveloped and even underdeveloped countries is ruled out on the ground that the principle of supply and demand has lost its validity in the matter of employment of human labour, and that it is the duty of the society and the welfare State to ensure to every workman engaged in industrial operations the payment of what in the context of the times appears to be the basic minimum wage. This position is now universally recognized. Further it was observed that in dealing with wage-structure it is usual to divide wages into three broad categories: the basic minimum wage or the bare subsistence wage; above it is the fair wage; and beyond the fair wage is the living wage. It would be obvious that the concepts of these wages cannot be described in definite words because their contents are elastic and they are bound to vary from time to time and from country to country. Sometimes the said three categories of wages are described as the poverty level, the subsistence level and the comfort or the decency level. It would be difficult, and also inexpedient, to attempt the task of giving an adequate precision to these concepts. What is a subsistence wage in one country may appear to be much below the subsistence level in another, the same is a fair wage in one country may be treated as a living wage in another. Several attempts have nevertheless been made to describe generally the contents of these respective concepts from time to time.

In *Novex Dry Cleaners v. Its workmen*<sup>493</sup> Justice Gajendragadkar observed that “It appears from the award that the tribunal addressed itself correctly to the true legal position governing the fixation of a wage structure in industrial disputes. It realized that in deciding upon a wage structure it may be relevant to take into account the wages prevailing in the industry in the said region, that the wages will have to be fixed in a fair and just way and above all it would be necessary to examine whether the wage structure proposed to be fixed would be fairly and reasonably borne by the financial position of the establishment. It is now well settled that in fixing a minimum wage, the capacity of the industry to pay that wage is not relevant. But in fixing a fair wage, the capacity of the employer to bear the burden of the said wage is very much relevant and very important factor. Therefore, there can be no doubt that before fixing the wage structure, it was

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<sup>493</sup> 1962 I LLJ 271 SC

necessary that the tribunal should have examined the financial position of the appellant and came to a definite conclusion in that behalf

Once again we find the Court reiterating its earlier view that capacity to pay is really irrelevant when it comes to the question of fixing a minimum wage. But we must also take a note of the fact that lack of precision in terminology that is used regarding the concept of 'minimum wage' has resulted in all this confusion.

In *Unichoy v. State of Kerala*<sup>494</sup> the Court dealt with the question of constitutional validity of the Minimum Wages Act and the capacity of the employer to pay the minimum wages fixed under the Minimum Wages Ad by applying the 'need based minimum wage' norms as laid down by the 15\* Session of Indian Labour Conference 1957. The following are the other issues considered by the Court in this case.<sup>488</sup>

(1) The wage structure recommended by the Committee by following the criteria of need based minimum wage, would lead to fair wage.

(2) That the observation made in *Express Newspapers* i.e. the fixation of statutory minimum wage requires to be considered the capacity of the employer to pay - is valid.

(3) The settlement arrived contrary to the provisions of the Minimum Wages Act at the instance of the Government taking in view the fact that thirty tile industries were closed down because of the notification issued under the Act - is valid

Courts have observed that the concept of minimum wage is likely to undergo a change with the growth of the economy and with the change in the standard of living and that concomitants must necessarily increase with the progress of the society.<sup>495</sup> In the case of **Raptakos Brett**<sup>496</sup> the Supreme Court specified that additional factors such as children's education, medical requirement, provision for old age, marriage, etc. which should constitute 25% should be used while fixing the minimum wage.

Bonded labour and forced labour are prohibited by Article 23 of the Constitution of India. The scope of this provision was discussed by the Supreme Court in the *Asiad*

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<sup>494</sup> 1961 ILLJ 631 SC

<sup>495</sup> Chandrabhavan Boarding and Lodging, Bangalore v. State of Mysore and Ors, AIR 1970 SC 2042 (1970) LIC 1632

<sup>496</sup> Workmen Represented by Secretary v. Management of Reptakos Brett and Co. Ltd. & Anr., AIR 1992 SC 504; See also

Unnichoyi v. State of Kerala, 1961 SC I LLJ

*Workers Case*<sup>497</sup>, which concluded that where a person was working for less than the minimum wages, it would be considered forced labour which is prohibited by Article 23. The law is settled on the point that if a worker receives less than the minimum wages, it is considered to be forced/ bonded labour unless proven otherwise.<sup>498</sup>

In *Employees State Insurance Corporation v. Bhakra Beas Management Board*<sup>499</sup> & *Fertilizers and Chemicals Travancore Ltd. v. Respondent: Regional Director, ESIC*<sup>500</sup> The Supreme Court pointed out that the ESI Act has been enacted for the benefit of the workers to give them medical benefits, which have been mentioned in Section 46 of the Act. Hence the principal beneficiary of the Act is the workmen and not the ESI Corporation. The ESI Corporation is only the agency to implement and carry out the object of the Act and it has nothing to lose if the decision of the Employees Insurance Court is given in favour of the employer. It is only the workmen who have to lose if a decision is given in favour of the employer. Hence, the workmen (or at least some of them in a representative capacity, or their trade union) have to be necessarily made a party/parties because the Act is a labour legislation made for the benefit of the workmen. It further held that wherever any petition is filed by an employer under Section 75 of the Act, the employer has not only to implead the ESIC but has also to implead at least some of the workers concerned (in a representative capacity if there are a large number of workers) or the trade-union representing the said workers. If that is not done, and a decision is given in favour of the employer, the same will be in violation of the rules of natural justice.

## **8.9 Judicial Interpretation on Compensation for Workers**

### **1. Compensation For Employment Injury**

In *Works Manager Central Railway Workshop v. Vishwanath*.<sup>501</sup> All legislations in a welfare state are enacted with the object of promoting general welfare, but certain types of enactments are more responsive to some urgent social demands and also have a more immediate and visible impact on social vices, by operating more directly to achieve social reforms.

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<sup>497</sup> People's Union for Democratic Rights v. Union of India, AIR 1982 SC 1473

<sup>498</sup> Bandhua Mukti Morcha V. Union of India, (1984) 3 SCC 161.

<sup>499</sup> (2009)10SCC671

<sup>500</sup> (2009)9SCC485

<sup>501</sup> (1970) ILLJ 351

In *Partap Narain Singh Dev v. Shri Niwas Sabata*,<sup>502</sup> the Supreme Court held that in case employer does not pay any compensation for employment injury, the Workmen Compensation Commissioner is fully justified in imposing interest and penalty. The Court observed that the measure followed the Workmen Compensation Act in its main principles and in some of its details, but it contained a large number of provisions designed to meet the special conditions in India. This Act was the first step towards social security in India. Its most striking feature was its rigidity, designed to prevent vexatious litigation. In respect of the tribunals set up to decide disputes, the Act followed the American model in preference to the British model and special commissioners were appointed with wide powers where required; and although provision was made for appeals to the High Court the right to appeal was severely limited. Honorable court observed that its object has been expressed by Royal Commission that moreover, provision for compensation is not the only benefit flowing from workmen's compensation legislation, it has important effects in furthering work on the prevention of accidents, in giving workman greater freedom from anxiety and in rendering industry more attractive.<sup>503</sup>

In *Aryamuni v. Union of India*<sup>504</sup>, the employee sustained injury to his eye due to spark. The Company's notice written in English required the use of goggles for such work. Goggles were not provided to the workman nor were asked so by the supervisor. The employee injured did not know English under these circumstances, it was held that the employee was not willfully disobedient as he did not know English and he could not know the contents of the notice nor it was explained to him. It was duty of supervisor to interpret the need of wearing goggles and it was duty of employer to provide it. So employer was held liable to pay compensation. Controversy regarding procedure explained in Section 8 of Workmen's Compensation Act was settled in the case of *Oriental Insurance Co. Ltd. v. Dyamavva*<sup>505</sup> According to Apex courts section 8 of Act provides that when a workman during the course of his employment suffers injuries resulting in his death, the employer has to deposit the compensation payable, with the Workmen's Compensation Commissioner. The procedure envisaged can be invoked only by the employer for depositing compensation with the Employees Compensation

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<sup>502</sup> (1976) ILLJ 235

<sup>503</sup> *Ibid* at 241

<sup>504</sup> (1963) 1 LLJ 24

<sup>505</sup> AIR (2013) SC 1853.

Commissioner consequent upon such “suo motu” deposit of compensation by the employer with the Commissioner, the Commissioner may summon the dependents of the concerned employee to appear before him under sub-section (4) Section 8. Having satisfied himself about the entitlement of the dependants to such compensation, the Commissioner is then required to order the rightful apportionment thereof amongst the dependents. As against the aforesaid, where an employer has not suo motu initiated action for payment of compensation to an employee or his/her dependants, in spite of an employee having suffered injuries leading to the death, it is open to the dependants of such employee, to raise a claim for compensation under Section 10 of the Workmen’s Compensation Act, 1923. The procedure under Section 8 is initiated at the behest of the employer “suo motu”, and as such, cannot be considered as an exercise of option by the dependants/claimants to seek compensation under the provisions of the Workmen’s Compensation Act, 1923. Mere acceptance of compensation by the dependent would not disentitle him from filing claim petition.<sup>506</sup>

The Court held that Sub-sections (1) to (3) of Section 8 reacted above, leave no room for any doubt, that when a workman during the course of his employment suffers injuries resulting in his death, the employer has to deposit the compensation payable, with the Workmen’s Compensation Commissioner. Payment made by the employer directly to the dependants is not recognized as a valid disbursement of compensation. The procedure envisaged in Section 8 of the Workmen’s Compensation Act, 1923, can be invoked only by the employer for depositing compensation with the Workmen’s Compensation Commissioner. Consequent upon such “suo motu” deposit of compensation (by the employer) with the Workmen’s Compensation Commissioner, the Commissioner may (or may not) summon the dependants of the concerned employee, to appear before him under subsection (4) of Section 8 as stated herein above. Having satisfied himself about the entitlement (or otherwise) of the dependants to such compensation, the Commissioner is then required to order the rightful apportionment thereof amongst the dependants, under subsections (5) o (9) of Section 8 of the Workmen’s Compensation Act, 1923. Surplus, if any, has to be returned to the employer.<sup>507</sup>

As against the aforesaid, where an employer has not suo-motu initiated action for payment of compensation to an employee or his/her dependants, in spite of an employee

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<sup>506</sup> *Ibid at 1856*

<sup>507</sup> *Ibid at 1859*

having suffered injuries leading to the death, it is open to the dependants of such employee, to raise a claim for compensation under Section 10 of the Workmen's Compensation Act, 1923. Sub-section (1) of Section 10 prescribes the period of limitation for making such a claim as two years, from the date of occurrence (or death). The remaining sub-sections of Section 10 of the Workmen's Compensation Act, 1923 delineate the other process requirements for raising such a claim. Having perused the aforesaid provisions and determined their effect, it clearly emerges, that the Port Trust had initiated proceedings for paying compensation to the dependants of the deceased Yalgurdappa B. Goudar "suo motu" under Section 8 of the Workmen's Compensation Act, 1923. For the aforesaid purpose, the Port Trust had deposited a sum of 3,26,140 with the Workmen's Compensation Commissioner on 4.11.2003. Thereupon, the Workmen's Compensation Commissioner, having issued notice to the claimants (dependants of the deceased Yalgurdappa B. Goudar), fixed 20.4.2004 as the date of hearing. On the aforesaid date, the statement of the widow of Yalgurdappa B. Goudar, namely, Dyamavva Yalgurdappa was recorded, and thereafter, the Workmen's Compensation Commissioner by an order dated 29.4.2004 directed the release of a sum of 3,26,140/-to be shared by the widow of the deceased and his daughter in definite proportions.<sup>508</sup>

The Court has observed that, "the issue to be determined by us is, whether the acceptance of the aforesaid compensation would amount to the claimants having exercised their option, to seek compensation under the Workmen's Compensation Act, 1923. The procedure under Section 8 aforesaid (as noticed above) is initiated at the behest of the employer "suo motu", and as such, in our view cannot be considered as an exercise of option by the dependants/claimants to seek compensation under the provisions of the Employee's Compensation Act, 1923. The position would have been otherwise, if the dependants had raised a claim for compensation under Section 10 of the Workmen's Compensation Act, 1923. In the said eventuality, certainly compensation would be paid to the dependants at the instance (and option) of the claimants. In other words, if the claimants had moved an application under Section 10 of the Workmen's Compensation Act, 1923, they would have been deemed to have exercised their option to seek compensation under the provisions of the Workmen's Compensation Act. Suffice it to state that no such application was ever filed by the respondents -claimants herein under Section 10 aforesaid. In the above view of the matter, it can be stated that the

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<sup>508</sup> *Ibid at 1860.*

respondents-claimants having never exercised their option to seek compensation under Section 10 of the Workmen's Compensation Act, 1923, could not be deemed to be precluded from seeking compensation under Section 166 of the Motor Vehicles Act, 1988.<sup>509</sup>

*Anand Bihari v. RSRT Corporation*<sup>510</sup>, is another landmark decision in the quest for compensatory relief for employment injury. In this case the Rajasthan State Transport Corporation employed a number of drivers who were required to drive the heavy motor vehicles in the sun, rain, dust and dark hours of night. In the demand of their service they were exposed to the glaring and blazing sun light and beaming and blinding lights of the vehicles coming from the opposite direction due to which the drivers who had put in service with the corporation for long periods and were above 40 years of age, developed a weak or sub-normal eye-sight or lost their required vision. The Corporation, therefore, terminated the service of 30 such drivers. The petition were filed before this court praying for ground under which the Hon'ble court were required to decide the present case on the issues such as whether the termination of service of the drivers are covered by sub-clause (c) of section 2(00) of the Industrial Disputes Act, 1947 and are drivers entitled to compensation for occupational injury under the Employees State Insurance Act, 1948. Regarding the availability of benefits under the ESI Act, the Hon'ble Court held that the present case would not be covered by item 4 of part I and items 31, 32 and 32A of part II of the second Schedule of the Act, as no provision is made there for compensation for a disability to carry on a particular job. In order to fill the gap left by the legislature and to provide compensatory relief to workmen who are disable to carry on a particular job but not incapable of taking any other job and gave judgment along with certain direction to be obeyed by the Corporation.<sup>511</sup>

## **8.1 Judicial Interpretation on Retrenchment, Lay Off, Transfer and Closure Of Undertaking**

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<sup>509</sup> Id

<sup>510</sup> 1991 lab.IC494

<sup>511</sup> the Hon'ble Court directed the Corporation To offer alternative job along with retirement benefit if available and the employee is able to perform, In case no such alternative job is available, each of the workmen shall be paid additional compensatory amount along with his retirement benefits, as a) Where the employee has put in five years or less the amount of compensation shall be equivalent to seven days' salary per year of the balance of his service; b) Where the employee has put in more than 10 years but less than 15 years' service, the amount of compensation shall be equivalent to 21 days' salary per year of the balance of his service; c) Where the employee has put in more than 15 years' service but less than 20 years' service, the amount of compensation shall be equivalent to one month's salary per year of the balance of his service.

## 1. Compensation for Lay-Off

Industrialization has demonstrated the vital role of labour laws as an instrument of social justice. It is estimated that nearly one -sixth of litigations in the Supreme Court pertains to industrial law matters and a substantial portion of legislative activity at Centre and States covers subjects of industry and labour.

The freedom of contract theory, emerged out of the Laissez-faire principle, authorized the employer to discharge his workmen due to breakdown of machinery or such other reasons beyond the control of the employer. This invariably exposed the workmen to frequent risk of involuntary unemployment. This absolute power of the employer to discharge his workman gradually began to disappear with the erosion of the Laissez-faire philosophy and the introduction of more state interventions in industrial relations.

The case of compensation of lay-off position is quite different from compensation for injury. This issue rose in the case of *Workmen v. Firestone Tyre and Rubber Co.*<sup>512</sup>The Apex Court while resolving it held that if the terms of contract of service or the statutory terms engrafted in the standing orders do not give the power of lay-off to the employer. The employer will be bound to pay compensation for the period of lay-off which ordinarily and generally would be equal to the full wages of the concerned workmen. If, however, the terms of employment confess a right of lay-off on the employer, there in the case of an industrial establishment which is governed by chapter V-A, compensation will be payable in accordance with the provisions contained therein.

It is an action by the workman against the employer. Under this, the workman has the opportunity to work and earn wages. The employer is, therefore, required to pay compensation to the workman who is laid off, as the workman's case falls within the provisions of section 25C of the Act which entitles a workman to lay -off compensation equivalent to fifty percent of the total of the basic wages and dearness allowance for the period of his lay-off. For Compensation a workman should be fulfilled the following conditions:-

- a) His name should be borne on the muster rolls and not have been retrenched.
- b) He should not be 'badli' workman or a casual workman;

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<sup>512</sup> (1976) 1 LLJ 493 (SC).

- c) He should have completed not less than one year of continuous service under the employer.<sup>513</sup>

The Supreme Court in *Payment of Wages Inspector v. Suraj Mal Mehta*<sup>514</sup>, has held that the payment of compensation under section 25-F, 25-FF, 25-FFF is wages within the meaning of S. 2 (vi) (d) of the Payment of Wages Act. The same principles will apply to lay off compensation of section 25-C. Court held that employer is duty bound under the provisions of Act to pay compensation to the laid off workers.

Looking to the whole scheme of chapter V-A of the industrial Disputes Act the power of employer to layoff is implicit. It determines not merely the right of the workmen to receive compensation but also the wider rights and liabilities with regard to lay-off itself. So it is a statutory right available to the workers.<sup>515</sup>

## 2. Compensation in Case of Retrenchment

Retrenchment compensation used to be awarded on equitable considerations by the tribunals before section 25-F was inserted in 1953 the Industrial Disputes Act, 1947. Provisions of section 25F cannot apply to retrenchment effected prior thereto. This section, for the first time gave legislative recognition to the principle of awarding retrenchment relief. It was inserted because of the then impending large scale closures in the textile industry, particularly in the then Bombay State. It was the intention of the legislature to prevent such closures and where that was not possible to ensure payment of some compensation to retrenched workers so as to enable to tide over the difficult days of unemployment<sup>516</sup>

Retrenchment generally means "discharge of surplus labour or staff" by the employer on account of a long period of lay-off or rationalization or production or improved machinery or automation of machines or similar other reasons. It is adopted as an economy measure. The subsisting employer -workmen relationship is, however, terminated in cases of retrenchment.<sup>517</sup>

Chief Justice Chagla and Justice Dixit of the Bombay H.C. held that the workmen who had been retrenched by the Railway Co., was liable to pay compensation to them in

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<sup>513</sup> *Zandu Pharmaceutical Works Ltd. v. R.m. Kulkarni and Co.*, (1996) 1 LLJS 60.

<sup>514</sup> (1969) ILLJ 762 SC

<sup>515</sup> *Veiyra M.A v. Fernadez*, (1956) ILLJ 547 (Bom)

<sup>516</sup> Supra note 301 at 123.

<sup>517</sup> S.C. Srivastava, *Industrial Relation and Labour laws*, 537 (2008).

*Barsi Light Railway Co. v. K.N. Joglekar* ,<sup>518</sup> while considering the meaning and scope of the definition of retrenchment. In this case under an agreement dated Aug. 1, 1895 between the Secretary of the State for India and Railway Company, the President of India gave notice to the Railway Company would be taken over with effect from Jan 1, 1954. Consequently, the Railway Co. served a notice to its workmen that the services of all the workmen of the Railway Company would be terminated with effect from the afternoon of Dec. 31, 1953. It was also stated therein that the Government of India intended to employ those staff of the Company who would be willing to serve the railways on terms and conditions fixed by the Government. Majority of the Staff of the Railway Co. were reemployed on the same scales of pay. However, 23 percent of the staff were re-employed on somewhat lower scales though the pay which they actually drew at the time of re-employment was not affected. Only about 24 of the former employees of the Railway Company were not taken back by the Government. Soon after Railway Union filed 61 applications under the Payment of the Wages Act, 1936 before the Payment of Wages Authority for payment of retrenchment compensation under section 25F. The Authority held that it had no jurisdiction to deal with the application but held that the workers were entitled to compensation as these had been retrenched. After this order Railway Union moved to the Bombay High Court for a writ under Art. 226 and 227 of the Constitution for quashing the order of dismissal passed by the authority.

In *Bharat Sanchar Nigam Limited v. Man Singh*<sup>519</sup> The respondent workmen worked with the appellant as casual labourers on daily wages during the year 1984-1985. Due to non-availability of work, their services were terminated in the year 1986. No notice or retrenchment compensation was given to them before terminating their services. After about five years, they raised an industrial dispute in the year 1991. The appropriate government referred the dispute to the labour court for adjudication. The labour Court vide its award dated 27-5-2005 ordered reinstatement of the respondent workmen on the same post which they were holding at the time of their termination. The order of the labour court was challenged by the department filing writ petition before the High Court. The respondent workmen were engaged as "daily wagers" and they had merely worked for more than 240 days, High Court considered view, relief of reinstatement cannot be said to be justified and instead, monetary compensation would meet the ends of justice. The High Court as also the award dated 27-05-2005 passed by the labour court were set

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<sup>518</sup> (1957) SCR 121

<sup>519</sup> (2012) 1 SCC 558

aside by Supreme Court. Bharat Sanchar Nigam Ltd. was directed to pay Rs.2 Lakh to each of the respondents in full and final settlement of their claim, within six weeks from today. In case the payment is not made within the aforementioned stipulated time, the amount shall carry interest at the rate of 12% per annum.

### **3. Judicial Interpretation on Compensation For Transfer Of Undertaking**

Section 25-FF was originally introduced in chapter V-A of Industrial Disputes (Amendment) Act, 1956. The Supreme Court in *Hari Prasad Shiv Shankar Shukla v. A.P. Divelkar*<sup>520</sup> and *Barsi Light Railway Co. v. K.N. Joglekar*,<sup>521</sup> held that no retrenchment compensation under section 25-F was payable to workmen whose services were terminated by the employer on a real and bonafide closure of business or when termination occurred as a result of transfer of ownership from one employer to another. The original section 25 FF was negative in nature. The above decisions of the Supreme Court demanded amendment to section 25-FF. Hence, Section 25-FF was recast to its present form by the Industrial Disputes (Amendment) Act, 1957. The amended section has made it clear that the employer is liable to give notice and pay compensation in case of transfer of undertaking to workmen.

In *New Horizon Sugar Mills Limited v. Ariyur Sugar Mills Staff Welfare Union*<sup>522</sup> the assets of new Horizon Sugar Mills were seized and sold by an auction under the Provisions of the SRFAESI Act 2002<sup>523</sup> by Indian bank, a secured creditor. The writ petition was dismissed and the court held that the workmen of New Horizon will be entitled to the benefits under Section 25-FF of the Industrial Disputes Act, 1947 from the employer New Horizon. A Court directed the authority to compute the claims of the workmen and submit a report to the Court. Further, Hon'ble court also directed Indian Bank which had the sale proceeds in respect of sale of the assets of New Horizon to deposit initially a sum Rs.6,00,00,000 (Six Crores) for being disbursed to the workmen. The said amount was ordered to be placed in a non-lieu account in Pondichery main branch of the said Bank. Appeal was disposed by a Division Branch of the Madras High Court. New Horizon then filed appeal by special leave.

The main issue was that who should be made liable to pay the compensation under Section 25-FF of the Industrial Disputes Act, 1947 and the appeal was dismissed by the Supreme Court and held that Indian Bank will now transfer the sum of rupees six crores

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<sup>520</sup> AIR 1957 SC 121

<sup>521</sup> AIR 1957 SC 121

<sup>522</sup> (2009) 17 SCC 487

<sup>523</sup> Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002,

as directed by the High Court, from the sale proceeds, without prejudice to its contentions to a no lieu account in its Pondicherry main branch which shall be operated by the commissioners, who shall endeavor to complete the exercise of verification, qualification and payment of the employees dues within three months. The balance, if any, remaining in the no-lieu account after such settlement of workers dues, shall be paid to New Horizon without prejudice to the contentions of the Bank. If the amount of 6 crores is found to be insufficient by the commissioner, the commissioner may apply to the Madras High Court for release of further funds, from the amount in deposit with it.

The Honorable Supreme Court awarded compensation to workers in the case transfer of workers in *State of Maharashtra and another v. Sarva Shramik Sangh, Sangli*<sup>524</sup> The Government of Maharashtra established a Corporation named as the Irrigation Development Corporation of Maharashtra Limited, in December 1973. This Corporation was a Government of Maharashtra undertaking. It set up 25 lift irrigation schemes to provide free services to farmers. The Corporation was established in the aftermath of a terrible drought which afflicted the State in the year 1972. Some 256 workmen were employed to work on the irrigation schemes of the said Corporation. Though it was claimed that the workmen were casual and temporary, the fact remains that many of them had put in about 10 years of service when they were served with notices of termination. The notice sought to terminate their services w.e.f. 30.6.1985, and offered them 15 days compensation for every completed year of service. The retrenchment was being affected because according to the appellants the lift irrigation schemes, on which these workmen were working, were being transferred to a sugar factory viz. Vasantdada Shetkari Sahakari Sakhar Karkhana, Sangli.<sup>525</sup>

These 163 workmen and the other 10 workmen viz. Pandurang Vishnu Sandage and others were working on the same lift irrigation schemes. Those 10 workers also got award of reinstatement with 25% back wages. That award was dismissed by the Bombay High Court. The Special Leave Petition and the Curative Petitions there from also came to be dismissed, although on the ground of gross delay. The fact, however, remains that as far as those 10 workmen are concerned; the order of relief in their case viz. reinstatement with 25% back wages and continuity in service was left undisturbed. Therefore, a question arises should the Government having been lethargic in the case of those 10 workmen, where it suffered an order of reinstatement with 25% back wages, be now

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<sup>524</sup> AIR 2014 SC 61

<sup>525</sup> *Ibid* at 64

permitted to insist that when it comes to these 163 workmen, who are similarly situated, they may be denied a comparable relief.<sup>526</sup>

In the facts and circumstances of the present case also, accepting that the termination did result on amount of transfer of the undertaking, the relief to be given to the workmen will have to be molded to be somewhat similar to that given to the other group of 10 workmen. It will not be just and proper to restrict it to the rigorous of the limited relief under Section 25FF read with 25F of the Industrial Dispute Act. Prior to the termination of their services on 30.6.1985, many of the workmen concerned had put in a service of about 10 years. In as much as so many years have gone since then; most of them must have reached the age of superannuation. In the circumstances, there cannot be any order of reinstatement. However, they will be entitled to continuity of service, and although they have been receiving last drawn wages under section 17B of the Industrial Disputes Act, 1947, they will be entitled to 25% back wages and retirement benefits on par with the other 10 workmen. Award of 25% back wages in their case will be adequate compensation.<sup>527</sup>

#### **4. Judicial Interpretation on Compensation for Closure**

Closure means the permanent closing down of a place of employment or part thereof.<sup>528</sup> It is a permanent discontinuance of the business. The reasons or motive behind the closure is immaterial<sup>529</sup> the employer is required to serve a sixty days notice to its employee before closure of an undertaking clearly stating the reason for the closure.<sup>530</sup>

When the terms of reference are limited to the narrow question as to whether the closure was proper and justified, the tribunal by the very terms of the reference, had no jurisdiction to go beyond the fact of closure and inquire into the question whether the business was in fact closed down by the management<sup>531</sup>.

Section 25-FFF was substituted in 1957 by the Industrial Disputes (Amendment) Act, 1957 to override the decision of the Supreme Court. The Section is focused to

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<sup>526</sup> *Ibid* at 69

<sup>527</sup> *Ibid* at 70

<sup>528</sup> Sec. 2 (CC) of Industrial Disputes Act, 1947

<sup>529</sup> . Section 25-FFF makes it clear that a closure for any reason what sooner imposes liability on the employers or company with the notice and compensation under section 25F also available at <https://dokumen.tips/documents/chapter-2-historical-development-of-indianlabour-.html> (last visted at 13/12/2018 at 9:34 PM)

<sup>530</sup> *Kalinga Tubres Ltd. V. Workmen* (1969) 1 LLJ 557 Section 25-FFA inserted by the 1972 amendment requires an employer who intends to close down an undertaking to give at least sixty day's advance notice in the prescribed manner to the appropriate Government. The notice shall clearly state the reasons for the intended closure of the undertaking. Where the factum of closure is admitted or established, a tribunal shall not go into the question as to the motive of the management to close down the establishment

<sup>531</sup> *Pottery Mazdoor Panchayat v. the Perfect Pottery Co. Ltd.* (1983) 1 LLJ 232 (SC)

provide some relief to the workmen whose services stand terminated consequent to the closing down of an undertaking except on certain situations. At the time of the closure, every workman, who has been in one year's continuous service in that undertaking before the closure, is entitled to notice and compensation. If the closing down of the undertaking is on account of unavoidable circumstances beyond the control of the employer, then the compensation under section 25-F (2) shall not exceed the workmen's average pay for 3 months.

The Supreme Court in one of the case while deciding the case closure of 168 laid down various norms in order to protect the interest of workers of those industries that the 168 industries cannot be permitted to operate and function in Delhi. These industries may shift themselves to any other industrial estate in the NCR. These industries had to close down and stop functioning and operating in the city of Delhi with effect from November 30, 1996. The concerned Deputy Commissioner of Police had to affect the closure of the industrial units with effect from November 30, 1996 and file compliance report in this Court within 15 days thereafter. The allotment of plots, construction of factory buildings, etc. and issuance of any licenses, permissions etc. was to expedited and granted on priority basis. The shifting industries on their relocation in the new industrial estates were given incentives in terms of the provisions of the Master Plan and also the incentives which were normally extended to new industries in new industrial estates. The closure order with effect from November 30, 1996 was unconditional. Even if the re-location of industries is not complete, they had to stop functioning in Delhi with effect from November 30, 1996.<sup>532</sup>,

The workmen employed in 168 industries were entitled to the rights and benefits, the workmen would have continuity of employment at the new town and place where the industry is shifted. The terms and conditions of their employment shall not be altered to their detriment. The period between the closure of the industry in Delhi and its restart at the place of relocation shall be treated as active employment and the workmen shall be paid their full wages with continuity of the service. All those workmen who agree to shift with the industry would be given one year's wages as "shifting bonus" to help them settle at the new location. The workmen employed in the industries which fail to relocate and the workmen who were not willing to shift along with the relocated industries would be deemed to have been retrenched with effect from November 30, 1996 provided they had

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<sup>532</sup> *M. C Mehta v. Union of India* AIR 1996 SC 2231

been in continuous service for not less than one year in the industries concerned before the said date. They should be paid compensation in terms of Section 25-F (b) of industrial Disputes Act, 1947. These workmen would also be paid, in addition, one year's wages as additional compensation. The "shifting bonus" and the compensation payable to the workmen in terms of this judgment was to be paid by the management before December 31, 1996. The gratuity amount payable to any workmen shall be paid in addition.<sup>533</sup>

Enforcement of any legislation is as important as the law itself. Without proper enforcement a law is a paper piece and a dead letter. Therefore to make law a meaningful phenomenon, the effective enforcement is necessary. Coming to the enforcement of social security legislation, apart from administrative and quasi judicial apparatus for the purpose, the judiciary has played an active role for securing an effective enforcement of social security legislation. This is clear from the analysis of various cases where the judiciary has been particular for the enforcement of various enactments of social security by justifying the penalties imposed on contravention of the relevant law.<sup>534</sup>

#### **i. Compensation for Disability of Workers**

The Supreme Court gave this landmark judgment, while awarding compensation to a young worker. In *Govind Yadav v. New India Insurance Company Ltd.*<sup>535</sup> the appellant was 24 years of age when he met with an accident resulting in amputation of his one leg and awarded compensation of 1,78,500 treating his income as 1500 per month, disability to be 70% and by applying a multiplier of 17. In appeal, the High Court enhanced the compensation to 3,06,000 with interest at the rate of 7% per annum at treating his income as 2000 per month. The Highest Court held that both the Tribunal and the High Court over looked that at the relevant time minimum wages payable to a worker were 3000 per month. In the absence of any cogent evidence, the Tribunal and the High Court should rationally have determined the appellant's income to be 36,000 per annum and loss of earning with 70% disability at 25,200 per annum. As the appellant was 24 at the years at the time of accident, multiplier of 18 was considered. Therefore, compensation payable to the appellant for loss of earning would be 4,53,600. Considering increase in the cost of living, cost of artificial limbs the honorable court awarded a sum of 2,00,000 to the appellant for future treatment. As it is not possible to make precise

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<sup>533</sup> *Ibid* at 2235

<sup>534</sup> *Supra* note 18 at 246.

<sup>535</sup> (2011)10SCC683

assessment of compensation for pain on suffering, the appellant must be awarded a sum of .1,50,000 in lieu of pain, suffering and trauma caused due to the amputation of leg. The appellant can be expected to live for at least 50 years and during the period he would not lead and enjoy life like a normal man. Prospects of his marriage had also considerably reduced. Hence a sum of 1,50,000 must be awarded towards loss of amenities and enjoyment of life. Thus, overall compensation of the appellant must be enhanced to 9,53,600 with interest @7% per annum from the date of filing the claim petition till the date of realization.

In case of sickness benefit an insured person can avail the benefit only after the production of medical certificate which need to be duly certified by the medical practitioner appointed or specified by the commissioner <sup>536</sup> The Act provides for disablement benefit to insured persons suffering from disablement due to employment injury sustained to an employee in a factory or establishment to which the Act applies.

### **8.11 Interpretation on Compensation Relating to Gratuity**

Gratuity was originally an ex-gratia or voluntary payment or a gift for long and meritorious services. With the passage of time of progressive social philosophy, it became a matter of constant industrial strife, and like bonus, it was accepted as a right of labour. Statutory regulation of gratuity schemes started with Working Journalists (Conditions of Services and Miscellaneous Provisions) Act, 1955. Gratuity is a retrial benefit to employees for their long and continuous service. It was designed to help the workers on their

retirement, whether it is due to superannuation, physical disability or otherwise. The principle underlying gratuity is that by virtue of the length of their services, the workmen are entitled to claim certain amount as retrial benefit. It is one of „efficiency devices“ and is considered necessary for an orderly and humane elimination from the industry of superannuated or disabled employees, who but for such retiring benefits could continue in employment even though they function inefficiently. It is paid not gratuitously or as a matter of boon, but for long and meritorious services rendered by the employees to their employer<sup>537</sup>

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<sup>536</sup> *K.K. Nair v. The Regional Director, ESI Corporation* AIR 2008 SC 1726

<sup>537</sup> *Indian Hume Pipe Co. Ltd v. Workmen, (1959) II LLJ 830 SC*

The Apex Court, in the case of *Lalappa Lingappa v. Laxmi Vishnu Textiles Mills Ltd.*,<sup>538</sup> emphasized the purpose of giving the comprehensive coverage to the Payment of Gratuity Act, 1972. The Act is enacted to introduce a scheme for Payment of Gratuity for certain industrial and commercial establishments, as a measure of social security. It has now been universally recognized that all persons in society need protection against loss of income due to unemployment arising out of incapacity to work due to invalidity and old age etc. For the wage earning population, security of income, when the worker becomes old or infirm, is of consequential importance. The provisions of social security, retiral benefits like gratuity, provident fund and pension are of special importance. In bringing the Act on the Statute book the intention of the legislature was not only to achieve uniformity and reasonable degree of certainty, but also to create and bring into force a self-contained, all-embracing, complete and comprehensive code relating to gratuity.<sup>539</sup>

The Court observed that social security and labour welfare legislation helps to achieve the value goals set by the Constitution and, hence, they are to be enacted and amended according to the principles enshrined and, procedure prescribed in the Constitution. Social security legislation derives its vis (force) and, validity from the Constitution. In other words, they are to be enacted and amended according to the scheme of distribution of legislative powers in the Constitution and, according to the procedure prescribed for the purpose, without infringing fundamental rights and also, within the framework of the spirit of broad goals and ideals set in the Constitution.<sup>540</sup>

Many a times the Constitutional validity of the various social security legislations has been challenged in the Courts of Law to protect against arbitrary legislation. Such challenges seen to be prompted by certain interests of business and traditional attitudes of individual liberties.

In *Chairman Cum Managing Director, Mahanadi Coalfields Ltd. v. Rabindranath Choubey*,<sup>541</sup> the respondent was working as Chief General Manager (Production) since 17-02-2006 at Rajmahal area under Mahanadi Coalfields Ltd. A memo containing articles of charge was issued to him on 01-10-2007 alleging that there was shortage of stock of coal in Rajmahal Group of mines which was under his management

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<sup>538</sup> AIR 1981 SC 852

<sup>539</sup> *Ibid* at 855

<sup>540</sup> *Supra* note 18 at 180.

<sup>541</sup> AIR 2014 SC 234

and enquiry was proposed to be conducted under Rule 29 of the Conduct, Discipline and Appeal Rules.<sup>542</sup>

During the pendency of the departmental proceeding, the Respondent was allowed to retire on 31.7.2010 on attaining the age of superannuation. The Respondent submitted an application on 21.9.2010 to the Director (Personnel) for payment of gratuity. On the same date, he also submitted an application before the Controlling Authority under Payment of Gratuity Act- cum-Regional Labour Commissioner for payment of gratuity. Notice was issued to the Appellant to appear. The appellant appeared and stated that the payment of gratuity was withheld due to reason that disciplinary case is pending against him. The controlling authority held that the claim of the Respondent was pre-mature.<sup>543</sup>

The respondent challenged the order by filing the writ petition. The single Judge dismissed the writ petition holding that in view of the existence of an appellate forum against the order passed by the authority, the respondent may file an appeal before the Appellate Authority within 21 days from the date of passing of the impugned order.<sup>544</sup> The Respondent then filed Intra Court Writ Appeal. The Division Bench of the High Court has held that writ petition was maintainable. On merits, it ruled that the disciplinary proceedings against the respondent were initiated prior to attaining the age of superannuation. The respondent retired from service on superannuation and hence the question of imposing a major penalty of removal or dismissal from service would not arise.

As per the decision of the Hon'ble Court in *Jaswant Singh Gill v. Bharat Coking Coal Ltd.*<sup>545</sup> It was held that the power to withhold payment of gratuity as contained in Rule 34(3) of the Rules, 1978 shall be subject to the provisions of the Act of 1972. Therefore, the statutory right accrued to the respondent to get gratuity cannot be impaired by reason of the Rules framed by the Coal India Ltd. which do not have the force of a statute. On that basis, direction is given to the appellant to release the amount of gratuity payable to the respondent. Thus for invoking Clause (a) or (b) of subsection 6 section 4 necessary pre-condition is the termination of service on the basis of departmental enquiry or conviction in a criminal case. This provision would not get triggered if there is no termination of services.<sup>546</sup>

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<sup>542</sup> *Ibid* at 235

<sup>543</sup> *Ibid* at 238.

<sup>544</sup> *Id*

<sup>545</sup> (2007) 1 SCC 663

<sup>546</sup> *Ibid* at 667.

It is the case of the appellant that in the charge-sheet served upon the respondent herein, there are very serious allegations of misconduct alleging dishonestly causing coal stock shortage amounting to Rs. 3 1 .65 crores, and thereby causing substantial loss to the employer. If such a charge is proved and punishment of dismissal is given thereupon, the provisions of Section 4(6) of the Payment of Gratuity would naturally get attracted and it would be within the discretion of the appellant to forfeit the gratuity payable to the respondent. As a corollary one can safely say that the employer has right to withhold the gratuity pending departmental inquiry. This issue needs to be considered authoritatively by a larger Bench. Therefore, the opinion that presents appeal be decided by a Bench of three Judges.<sup>547</sup>

### **8.12 Other Related Case**

Although the legal jurisprudence developed in the country in the last five decades is somewhat precedent based. The judgments which have a bearing on socio-economic conditions of citizens and issues relating to compensation payable to the victims of motor accidents, those who are deprived of their land and similar matters need to be frequently visited keeping in view the fast-changing societal values, the effect of globalization on the economy of the nation and their impact on the life of the people.<sup>548</sup> There are a number of cases in which the Supreme Court helped to advance the labour laws and strike down those laws or practices that were discriminatory. It is extremely difficult to fathom any rationale for the observation made in the judgment in *Sarla Verma v. Delhi Transport Corporation*<sup>549</sup>, that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances. The Highest court observed in the case of *Centre for Environment and Food Security v. Union of India*<sup>550</sup> that “the majority of the Indian population is residing in rural areas and unemployment was the greatest challenge before any state or the central government, Parliament decided to enact law to provide rural employment to restrict persons as stated in such law. It was an enactment

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<sup>547</sup> *Ibid at 241.*

<sup>548</sup> *Santosh Devi v. National Insurance Company Limited and Others*, (2012) 6 SCC 421

<sup>549</sup> (2009) 6 SCC 121

<sup>550</sup> (2011) 14 SCC 252

“MGNREGA” to provide for enhancement of livelihood security of households in the rural areas of the country by providing.<sup>551</sup>

The Court observed that the paramount feature of the Act was that if an eligible applicant is not provided worse as per the provisions of this legislation within the prescribed time-limit, it will be obligatory on the part of the state government to pay unemployment allowance at the prescribed rate who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. Although the wages/income of those employed in unorganized sectors of the economy has not registered a corresponding increase and has not kept pace with the increase in the salaries of the government employees and those employed in the organized private sector but it cannot be derived that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30% increase in his total income over a period of time and if he/she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation.

The Supreme Court took serious note of social security of the unorganized sector workers in *National Campaign Committee for Central Legislation on Construction Labour v. Union Of India*<sup>552</sup>, the court held that object of the Act 1996<sup>553</sup> is to confer various benefits to the construction workers, like fixing hours for normal working days, weekly paid rest day, wages for overtime, basic welfare amenities at site, temporary living accommodation near site, safety and health measures, etc. Every State is required to constitute a State Welfare Board to provide assistance in case of accident, to provide pension, to sanction loans, to provide for group insurance to provide financial assistance for educating children, medical treatment etc. Though the welfare board was to be constituted with adequate full time staff, many states has not constituted the welfare boards. In some states, even though the boards are constituted, they are not provided with

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<sup>551</sup> Through this programme at least hundred days of guaranteed wage employment in every financial year to every household whose adult members volunteer to do unskilled manual work and for matters connected therewith and incidental threats

<sup>552</sup> (2011)4SCC647

<sup>553</sup> Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996

necessary staff or facilities. As a result, welfare measures to benefit the workers have not been taken.

In *Dewan Chand Builders and Contractors v. Union Of India*<sup>554</sup> Justice D.K. Jain and A.K. Ganguly, held that the Scheme of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 is that it empowers the Central Government and the State Government to Constitute Welfare Boards to Provide and monitor social security schemes and welfare measures for the benefit of the building and other construction workers. It is thus clear from the Scheme of the BOCW Act that its sole aim is the welfare of building and construction workers, directly relatable to their constitutionally recognized right to live with basic human dignity, enshrined in art. 21. It envisages a network of authorities at the Central and State levels to ensure that the benefit of the legislation is made available to every building and construction worker, by constituting welfare boards and clothing them with sufficient powers to ensure enforcement of the primary purpose of the BOCW Act. The means of generating revenues for making effective the welfare provisions of the BOCW Act is through the Cess Act. Its sole object is to provide for their safety, health and other welfare measures to exploited sections of the society.

Court took note of corruption in social security schemes for workers of unorganized sector. Under these two aspects concerned one relating to corruption in the implementation of the NREGA Scheme and other implementation of the guidelines issued by the Central Government under Sec. 27 of the 2005 Act. There are certain States in which serious irregularities exist as per the extracts of CAG Report as well as the report of the National Institute of Rural Development. If what is stated in those reports is true then not only the guilty should be punished but also the monies lost should be retrieved. The Central Government is considering whether CBI should be appointed to examine the case of misappropriation of grants for that purpose, are giving to the central government four weeks' time and implement the guidelines issued by the Central Government with regard to muster rolls, maintenance of job cards, applications and transfers to the account of the beneficiaries and given the four weeks' time to look into the matter.

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<sup>554</sup> (2012) 1 SCC 101

### 8.13 Conclusion

Interpretation of statute is one of the vital functions of the courts in administering justice so as to know the intention of the legislature making the law. The novel character of the Hon'ble Supreme Court of law making is an unquestionable realism. Therefore, the main idea behind this chapter was to explore the just form of judicial view for the socio-economic rights in India. Recently, there has been a radical change in the role of the Supreme Court of interpreting laws and it is evident from the above judicial perception that Indian judiciary has frolicked beneficial role in interpretation of legal provisions for the implementation of the existing labour welfare laws. It is significant to mention here that the Judiciary has no doubt given landmark judgments relating to social security, payment of compensation for employment injury and disability etc.

The fundamental rights and the Directive Principles are not strictly divided according to civil and political rights on one hand and economic, social and rights on the other hand respectively. If there is a responsibility upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be absolute literalism to exclude the right to livelihood from the content of the right to life. The State may not, by affirmative action, be compellable to provide adequate means of livelihood or work to the citizens. Directive Principles of state policies<sup>555</sup> are designed to give an idea to the Government, both Central and State, to make laws towards the labour to secure for them social order and living wages, keeping with the economic and political conditions of the country. The workers are most vulnerable especially those working in the unorganized sector of the economy like agriculture, forestry, livestock, textile and textile products, construction etc. In these sectors workers, generally, tend to be employed in the lowest paid, most tedious tasks using the least technology. The principles contained in Articles 39(a) and 41 must be regarded as equally fundamental in the understanding and interpretation of the meaning and content of fundamental rights.

The analysis of the litigations reaching the Supreme Court as described above, have given rise to the Court articulating and recognizing the specific rights of the Labour. While the above discussed cases validate the instances in which the Supreme Court stepped in to safeguard the fundamental human rights of workers and it is also apparent that there are several instances where such rights are blatantly desecrated. The different segments of the labour force in an unorganized sector are getting the lowest wages. There

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<sup>555</sup> The Articles 21, 38, 39, 41, 42, 43, 43-A and 47 of the Constitution

are even instances in some sectors of workers being paid less than work they do for example in the tea plantations, construction, agriculture etc., as compared to the minimum wages fixed by the state.