Social Justice and Labour Rights during the Era of Globolization- A Cause for Concern

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I. Introduction:

Indian jurisprudence has many dimensions and labour law does occupy a prominent legislative and judicial space by way of catena of legislations and case law. This is evident from the profusion of judicial rulings on Parts III and IV of the Constitution and labour statutes. The working class in India is not confined to urban factories and technological services that are organized, but extend to the vastly dispersed villages of semi rural and rural India. This is prominently visible in the era of present political economy of the State. We are a socialist republic, as the Preamble to the Constitution articulates. There are several statutes that deal with the rights, privileges and duties of the labour class which are enforceable through courts[2]. The Labour are the actual builders of India with sweat, toil and hard engineering.

The primary concern of industrial jurisprudence is to maintain peace among the various parties and ensure the contentment of the workers, the end product being increased production informed by distributive justice. Law, especially labour law, is the art of establishing economic order sustained by social justice. It aims at pragmatic success, but is guided by value-based realities[3]. Two socially vital factors must inform the understanding and application of industrial jurisprudence. The first is the Constitutional mandate in Part IV, obligating the State to make 'provision for securing just and humane conditions of work'. Security of employment is the first requisite of a worker's life. The second, equally axiomatic consideration is that a worker who willfully or anti-socially holds up the wheels of production or undermines the success of the business is a high risk and deserves, in the industrial interest, to be removed without tears[4].

The Constitutional bias towards ensuring social justice to the weaker sections, including the working class, in the Directive Principles of State Policy is a factor that must enliven the executive and judicial consciousness while interpretating the meaning of labour legislations[5]. In the decision of vital labour

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2 Justice V. R. Krishna Iyer's *'Foreword'* in *Social Justice and Labour Jurisprudence, Justice V.R. Krishha Iyer's Contributions:* by Dr. Sharath Babu and Rashmi Shetty, Sage India, (2007) (New Delhi)

3 *Straw Board Manufacturing Co. vs Its Workmen,* AIR 1977 SC 941 (para 8)

4 *Michael and another vs M/s Johnson Pumps and another,* AIR 1975 SC 66 (para 1)

5 *L.I.C of India vs D.J. Bahadur, AIR 1980 SC 2181 (para 28) 4 Hussainbhai vs The Alath Factory T ezhilali Union Kozikode and others*

claims, three factors are thus involved. The interests of the employees, who have received Constitutional guarantees under the Directive Principles; the interests of the employers, who have received a guarantee under Article 19 and other articles of Part III of the Constitution; and the interests of the community at large, which are so important in a welfare state. It is on lines cognizant of these that labour jurisprudence has developed during the last four decades after the enactment of the Constitution.

The source and strength of the industrial branch of Third World jurisprudence is social justice, as proclaimed in the Preamble to the Constitution[6]. Industrial justice is not an application of rigid formula but, in consonance with Part IV of the Constitution. The Constitution has expressed a deep concern for the welfare of workers under Articles 39, 42 and 43[7]. The pre-Constitutional era under the Industrial Policy Resolutions also subscribed to the same commitment resulting in the enactment of basic regulatory as well as welfare labour legislations dealing with primary aspects of labour welfare. This was further carried more rigorously during the immediate post-Constitutional era. Up to a certain point the Government of India strengthens a labour jurisprudence based essentially on Directive Principles of State Policy. Until that stage the Judiciary and Executive worked in tandem keeping the interests of workers and employers evenly in mind. This trend was clear till immediate post emergency period.

With the initiation of new economic policy from later 1990s, the country witnessed a trend of shifting away by the State from the commitment of 'social justice' as enshrined in Part IV of the Constitution followed by a shift in the attitude of the judiciary in key matters of labour welfare such as 'security of employment or employment protection', social security and wage protection and thus clearly paving way for the employer to go for more incidence of 'flexible labour', 'term-contract', 'causal labour' and 'contract labour'. The employment of these types of labour certainly results in the denial of certain basic rights to the labour and leads to the situation of 'exploitation of labour' and thus leading to denial of social justice. Judges have their biases, because they often belong to the bourgeoisie. Consequently, capitalists resist socialist meanings…[8]

Thus the author intends to present these tendencies leading to the denial of social justice as guaranteed in Part IV of Constitution in this Paper containing basically of four major areas. The first one deals with general introduction leading to a conceptual clarity on the doctrine of social justice and labour rights as enshrined in Part IV read with Article 21 of the Constitution. The basic frame work of existing labour legislations enacted during the pre and post Constitutional

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7 Article 43 of the Constitution provides that the State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers-agricultural, industrial or otherwise-work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure …

8 *Supra n. 1*

era in tune with judicial reflections in respect of vital areas dealing with labour rights – a trend setting towards the attainment of social justice for the labour in tune with the Constitutional spirit. The changing perceptions of the political economy of the State and the attitude of the judiciary – a trend resulting in moving away from the Constitutional commitment to 'social justice' especially towards the weaker sections of the society, i.e. labour class. Changing perceptions of employment protection – term contract – contract system – causualization – global competition – cost cut – labour retrenchment ; leading to the increasing trend of informal sector labour – multiple kinds of informal labour – low wages – absence of structured social security arrangement – resulting in labour exploitation. The author records certain conclusions and suggestions leading towards the attainment of social justice to the economically poorer section of the society, namely labour class.

II. Basic Frame Work of Labour Legislations in India:

The whole content of labour statutes prevailing in India is based on four broad kinds dealing with different types of entitlements to the working class, namely.—

(i) Laws dealing with regulation of employment;
(ii) Laws dealing with regulation of payment of wages;
(iii) Laws dealing with labour welfare pertaining to the conditions of employment; and
(iv) Laws dealing with social security for labour

A plethora of labour legislations have emerged in this context prior to and after the commencement of the Constitution enacted both by the Parliament and as well as State legislatures.

III. Laws Dealing with Regulation of Employment:

The concept of 'regulation of employment' generally deals with the aspect of security or continuity of employment for industrial workers. The Industrial Employment (Standing Orders) Act, 1946 and the Industrial Disputes Act, 1947 are primary in this context. The Industrial Employment (Standing Orders) Act, 1946 requires employers in industrial establishments to define with sufficient precision the conditions of employment and to make them known to the persons employed there under[9]. The employer under the model standing orders to be made applicable to his industrial establishment has to define the matters relating to total number of persons employed and the categories such as permanent, temporary, casual, badlis, fixed-term employment, termination of employment, suspension or dismissal for misconduct and acts and omissions which constitute

9 See the long title to the Act. The Act at first instance under Section 1 (3) applies to every industrial establishment wherein one hundred or more workmen are employed.

misconduct[10]. Further item 10A to the Schedule of the Act requires the employer to specify the manner of filling vacancies, confirmation of appointment, age of retirement and transfer. Every workman shall be given a permanent ticket unless he is a probationer, badli, temporary worker or an apprentice[11]. Further the employer is required by notice to specify the rates of wages payable to all classes of workmen and for the classes of work by displaying the same on the notice board[12]. In this way this law ensures the workmen in the industrial establishments a greater security in respect of employment and wages. In this context the role of the trade unions is paramount in safeguarding the interests of the workers. Of late, with the dominance of the liberalization trend, the employer in practice is totally discouraging the formation of the trade unions in the establishments. This trend is more in prevalence in private sector and is also gradually creeping into public sector with active concurrence of the judiciary. Here is an interesting case. Regulations 9(5) and 9(6) of the Karnataka State Road Transport Corporation Servants' (Conduct and Discipline) Regulations, 1971 prevent the Supervisory cadre of employees and Security Personnel shall not associate themselves and or be members of any Trade Union or Federation or Association formed by the workers. They shall also not associate with or be members of any Trade Union or Federation or Association formed by any other Class of Employees of the Corporation. The same was challenged before the High Court and the Division Bench of the Court held that the relevant regulations were not so liable to be struck down and such restrictions had to be judged keeping in mind the interest of public order and morality and are not violative of Article 19(1) (c) of the Constitution[13].

The Industrial Disputes Act, 1947 provides for the investigation and settlement of industrial disputes and for certain other purposes. The provisions relating to lay-off, retrenchment and closure are the key areas that deal with the matters of security of employment for the industrial workers. The definition of 'retrenchment[14]' empowers the employer to terminate the services of a workman

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10 See items 1, 8 and 9 of the Schedule to the Act.

11 See item 3 of the Schedule I of the Industrial Employment (Standing Orders) Central Rules, 1946.

12 See item 6 of the Schedule I of the Industrial Employment (Standing Orders) Central Rules, 1946.

13 KSTRC V KSRTC Staff & Workers Federation 2005 I LLJ 306 (Kar)

14 Section 2 (oo) of the Industrial Disputes Act, 1947 defines 'retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include —

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

for any reason whatsoever in accordance with the procedure prescribed under the Act[15]. The legal position relating to 'closure' of an establishment also stands on the same footing as in the case of 'retrenchment' under Chapter VA and VB respectively. The provisions relating to 'retrenchment 'and 'closure' under Chapter VB of the Act ensure greater security for workers in respect of employment. However, the Government made two unsuccessful attempts in the recent past to dilute these provisions more in favour of employers[16]. What could not be achieved by the State was assumed by the higher judiciary subsequently.

The Supreme Court in *Indian Drugs & Pharmaceuticals Ltd case*[17] held that the term 'temporary employee' is a general category which has under it several categories e.g. casual employee, daily-rated, ad-hoc employee, etc. A daily-rated or casual worker is only a temporary employee, and it is well settled that a temporary employee has no right to the post, or to be continued in service, to get absorption, far less of being regularized and getting regular pay. No doubt, there can be occasions when the State or its instrumentalities employ persons on temporary or daily-wage rate basis without following the rules, Such appointees do not have any right to claim permanent absorption in the establishment. The court cannot direct continuation in service of a non-regular appointee. The distinction between a temporary employee and a permanent employee is well settled. A permanent employee has a right to the post, a temporary employee has no right to the post and he has no age of superannuation because he has no right to the post at all. No direction can be passed in the case of any temporary employee that he should be continued till the age of superannuation. Similarly, no direction can be given that a daily-wage employee should be paid salary of a

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(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill health:

15 Under Section 25F of Chapter VA of the Act, the employer can dispense the services of a workmen by giving one month notice indicating the reasons for retrenchment or wages in lieu of such notice and the retrenchment compensation which shall be equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months with an intimation to the appropriate Government in the manner specified. However, under Section 25N of Chapter VB, the employer can dispense the services of a workman only after obtaining the prior permission of the appropriate Government as prescribed there under.

16 The first being in NDA regime in 2001 and next in UPA regime in 2003 by appointing the Task Force, which in its report recommended drastic changes in the Trade Unions Act, 1926, the Industrial Disputes Act, 1947 and the Contract Labour (Regulation and Abolition) Act, 1970. However, these attempts were strongly resisted by the Central Trade Union Organizations.

17 (2007) I SCC 408

regular employee. If an employee is not appointed against a sanctioned post he is not entitled to any scale of pay. Regularization cannot be a mode of appointment. Regularization can only be done in accordance with the rules and not in the absence of rules, nor a court can direct continuation of service of a temporary employee or payment of regular salaries to them. Orders for creation of posts, appointment on these posts, regularization, fixing pay scales, continuation in service, promotions, etc. are all executive or legislative functions, and it is highly improper for Judges to step into this sphere, except in a rare and exceptional case. The courts must exercise judicial restraint in this connection, and not encroach into the executive or legislative domain. The tendency in some courts/ tribunals to legislate or perform executive situations can be justified, but resorting to it readily and frequently, as has lately been happening, is not only unconstitutional, it is also fraught with grave peril for the judiciary. Creation and abolition of posts and regularization are purely executive functions. Hence, the court cannot create a post where none exists. Also the Supreme Court cannot issue directions to absorb the respondents or continue them in service, or pay them salaries of regular employees, as these are purely executive functions. The Supreme Court cannot arrogate to itself the powers of the executive or legislature. The Labour Court and the High Court have passed their orders on the basis of emotions and sympathies, but cases in court have to be decided on legal principles and not on the basis of emotions and sympathies. No doubt, in some decisions the Supreme Court has directed regularization of temporary or ad hoc employees but it is well settled that a mere direction of the apex court without laying down any principle of law is not a precedent. Such directions are to be treated as having been given under Article 142 of the Constitution. This is often done on humanitarian considerations, but this will not operate as a precedent binding on the High Court. For instance, if the Court directs regularization of service of an employee who had put in 3 years service, this does not mean that all employees who had put in 3 years service must be regularized. Hence, such a direction is not a precedent[18].

Over the years the industrial adjudication system in India under the ID Act, 1947 provided appropriate relief to the aggrieved workmen who were mercilessly thrown out by the employer from the employment after keeping them in service for certain period. In cases where the workmen are employed under exploitative service conditions by the employer, the tribunal in the course of adjudication of such industrial dispute by award regulated the service conditions of such workmen within the frame work of said Act. The industrial tribunals of India, in areas unoccupied by precise block letter law, go by the Constitutional mandate of social justice on the claims of the 'little people'. A 'tribunal' literally means a seat of justice. The Supreme Court, when sitting on appeal, as a rule of practice is loath to interfere with a finding of fact recorded by the trial court

18 The ratio as laid down in *State of Karnataka v Umadevi*, (2006) 4 SCC 1 was further emphasized in the case.

basing on proper evidence unless otherwise. The ID Act, 1947 under Section 11-A empowers the labour court to give appropriate relief to the discharged workmen including the relief of reinstatement with or without back wages. Section 25-N of the same Act provides that any retrenchment without complying with sub section (1) shall be illegal and such workmen shall be entitled to all the benefits under the law.

IV. Laws Dealing with Regulation of Payment of Wages:

In India the Payment of Wages Act, 1936 and the Minimum Wages Act, 1948 are the only two primary legislations that deal with regulation of payment of wages. The Minimum Wages Act, 1948 is more relevant in the context. Even though there is no uniform and comprehensive wage policy for all sectors of the economy in India, a mechanism exists for determination of wages in the organized and unorganized sectors and their enforcement. Wages in the organized sector are determined through negotiations and settlements between employer and employees. In the unorganized sector, where labour is vulnerable to exploitation due to illiteracy and lack of effective bargaining power, minimum rates of wages are fixed both by Central and State Governments in the scheduled employments falling within their respective jurisdictions under the provisions of the Minimum Wages Act, 1948. The Act binds the employers to pay to the workers the minimum wages so fixed from time to time. The basic idea behind the formulation of the Act was to prevent the exploitation of labour from the payment of unduly low wages in order to provide the worker and his family a wage at sustenance level and also to preserve his efficiency as worker[19]. The Act which covers a number of employments, both industrial and agricultural, applies not only to regular employees but also to casual labour[20]. The intention of the Act obviously was to protect the sweated labour from being deprived of minimum means required for maintenance of life and efficiency in a reasonable condition. As per the survey carried out by the National Sample Survey Organization in the year 2004-05 the total employment in both organized and unorganized sector in the country was of the order of 45.9 Crores. Out of this about 2.6 crores were in the organized sector and the balance of 43.3 crores in the unorganized sector. Out of this, 26.9 crore workers were employed in agriculture sector, 2.6 crores in construction, and remaining were in manufacturing sector, trade and transport, communication and services[21].

It is quite likely that in an under developed country, where unemployment prevails on a very large scale, unorganized labour may be available on starvation wages, but the employment of labour on starvation wages cannot be encouraged in a modern democratic welfare State… No wage structure can or should be

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19 See *Unichoy Vs State of Kerala,* AIR 1962 SC 12

20 See Section 2 (i) of the Minimum Wages Act, 1948

21 Ministry of Labour, Government of India Annual Report 2008-09, Chapter VIII at 1.

revised to the prejudice of workmen if the structure in question falls in the category of the bare subsistence or the minimum wage[22]. Undoubtedly the Minimum Wages Act, 1948 is a progressive piece of legislation to enable the poor and exploited workers and their families in the unorganized sector to live at sustenance level.

If any one wants to study the capacity of India's policymakers to turn a progressive piece of legislation upside down, the wage policy pursued by the Ministry of Rural Development, Government of India under the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 is a classic example. Every one is familiar with the basic object of this much awaited welfare legislation. This Act proved its critics wrong in important ways. It had raised the earning capacity of the rural workforce. This happened without a budgetary emergency of fiscal collapse, as many economists had wildly predicted. In fact, the Act was seen as being responsible for shielding large parts of rural India from the ill-effects of the economic downturn. Even in places where the Act was not implemented very well, it had facilitated the capacity of workers to demand minimum wages from all employers, including feudal landlords and contractors. People asserted their right to work on work sites targeted under it rather than accept a lower wage[23].

On January 1, 2009, the Union Ministry of Rural Development issued a notification under Section 6(1) of the MGNREG Act delinking MGNREG wages from the purview of the Minimum Wages Act, 1948, and freezing the former at Rs. 100. Under the Minimum Wages Act, 1948 an unskilled worker's minimum wages in a construction activity stands above Rs. 120 at the lowest level. This was done by the Ministry in pursuance of the power in the enabling clause of the MGNREG Act which provides that "Notwithstanding anything contained in the Minimum Wages Act, 1948, the Central Government may, by notification specify the wage rate for the purposes of this Act[24]. This led to a situation where MGNREGS workers in a number of States were paid less than the prevailing minimum rates of wages[25]. Aggrieved labour groups took the matter before the High Court in Andhra Pradesh, and the Court suspended the January 1, 2009 notification of the MORD. The Government was ordered to pay the notified minimum wage under the Minimum Wages Act, 1948. Subsequently the Central Government reviewed the matter in a meeting and decided to pass the burden on to the States. The States say they do not have the money to pay, and assert that they should be provided cent per cent of the wage component by the Central

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22 *Crown Aluminium Works v Their Workmen*, AIR 1958, SC at 35

23 The Author with deep sense of appreciation cites this from the Article of Aruna Roy and Nikhil Dey: 'The Wages of discontent', The Hindu October 23, 2010.

24 See 6 (1) of the MGNREG Act, 2005

25 The States are Andhra Pradesh, Kerala, Bihar, Himachal Pradesh, Karnataka, Jharkhand, Chhattisgrah and Rajastian.

Government in view of Section 22 (1) of the MGNREG Act[26]. Since the Central Government refused to pay beyond the notified wage rate, the States have passed the burden on to the workers. In fact the Andhra Pradesh Government wrote to the MORD on August 12, 2009 pointing out that the State and Central Governments face the risk of contempt of court, but this fell on deaf ears.

In fact this provision goes against the law of the land as laid down by the apex Court[27]. In *Peoples Union for Democratic Rights* case[28] the Supreme Court held that it is obvious that ordinarily no one would willingly supply labour or service to another for less than the minimum wage, when he knows that under the law he is entitled to get minimum for the labour or service provided by him. It may therefore be legitimately presumed that when a person provides labour or service to another against receipt of remuneration which is less than the minimum wage, he is acting under the force of some compulsion which drives him to work though he is paid less than what he is entitled under the law to receive. What Article 23 prohibits is 'forced labour' that is labour or service which a person is forced to provide and 'force' which would make such labour or service 'forced labour'… Further the Court held that where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words 'forced labour' under Article 23. Such a person would be entitled to come to the Court for enforcement of his fundamental right under Article 23 by asking the Court to direct payment of the minimum wage to him so that the labour or service provided by him ceases to be 'forced labour' and the breach of Article 23 is remedied.

In *Sanjit Roy*[29] the Court held that the Rajastian Famine Relief Works Employees (Exemption from Labour Laws) Act, 1964 in so far as it excludes the applicability of the Minimum Wages Act, 1948 to workmen employed on famine relief work and permits payment of less than the minimum wage to such workmen, is invalid as offending the provisions of Article 23 of the Constitution. It cannot be contended that when the State undertakes famine relief work with a view to providing help to the persons affected by drought and scarcity conditions, it would be difficult for the State to comply with the labour laws, because if the State were required to observe the labour laws, the potential of the State to provide employment to the affected persons would be crippled and the State would not be able to render help to the maximum number of affected persons and it was

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26 Section 22(1) of the Act provides that the Central Government shall meet the cost of … (a) the amount required for payment of wages for unskilled manual work under the Scheme.

27 See *Peoples Union for Democratic Right v Union of India,* AIR 1982 SC 1473: *Sanjet Roy Vs State of Rajastian,* AIR 1983 SC 328

28 *Id*

29 *Supra*

for this reason that the applicability of the Minimum Wages Act, 1948 was excluded in relation to workmen employed in famine relief work. Rejecting the contention, it was held that the State cannot be permitted to take advantage of the helpless condition of the affected persons and exact labour or service from them on payment of less than the minimum wage. No work of utility and value can be allowed to be constructed on the blood and sweat of persons who are reduced to a state of helplessness on account of drought and scarcity conditions.

Thus the irony is that the Minimum Wages Act is being snuffed out by a show piece legislation that is purportedly designed to liberate people from poverty and exploitation… Keeping a drowning population's nose just above the water might be the government's concept of economic growth with a human(e) face. While the poor have to be subsumed by the financial crunch, the ineffective 'steel frame' continues to get its dearness allowance of 10 per cent for six months, without batting an eyelid[30].

Secondly the general observation pertaining to the very extent of coverage of the Minimum Wages in respect of the Schedule Employments is also highly concerning and far from satisfaction. The same is evident from the Annual Returns submitted by the employers for the year 2005-06. More incidence of payment of lower wages than the prescribed minimum is prevailing in practice in many employments.

V. Contract Labour System:

Labour flexibility as visualized by the reform process emphasizes capacity of labour to transform and adapt to new and emerging technologies introduced as part of structural reforms, and to face challenges of highly competitive structure—domestic as well as external through improving productivity and quality of output. Labour employed on contract has been one of the most common forms of non-regular employment. Contract labour refers to labour assigned to perform tasks by an employer without any formal and direct employer-employee relationship. The relationship is mediated by individuals or agencies termed as contractors who employ workers and hire them out. Contract labour is an age old phenomenon visualized, originally, as a help to the growth of services of seasonal and temporary nature[31]. Employment of contract labour expanded and diversified substantially during last one and half decade with the initiation of the reform process and culminated to new heights presently. Today contract labour are employed in every sphere of industrial activity irrespective of the nature of work.

The Contract Labour (Regulation and Abolition) Act, 1970 (herein after

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30 *Supra n.14*

31 M.S. Ramanujam and J.S. Sodhi – *Management of Contract Labour in India*, in *Preface Note* - (2004) SHRI RAM CENTRE for Industrial Relations and Human Resources, New Delhi.

referred to as the Act) is a legislation to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matters connected therewith[32]. Under this Act a workman shall be deemed to be employed as "contract labour" in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer[33]. It is difficult to comprehend as to why the law chose to use the words ' … or without the knowledge of the principal employer[34]'. "Workman" means any person employed in or in connection with the work of any establishment to do any skilled, semi-skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, but does not include[35]… Undoubtedly the contract labour are referred to as the workmen under the Act and explicitly perform all types of work to that of the regular employees of the principal employer in the establishment. The Act though it speaks about a module of concept of regulation of employment is silent about the definition of 'trade union' in the Act[36].

The next principal question that stands for clarity in the context is whether the Trade Unions Act, 1926 enables the contract labour to form a trade union and register it. The amendment Act, 2001 to Section 4 of this Act perhaps changed the very concept of trade unionism as perceived originally by the law itself[37]. It may be pointed out here that Indian trade unions, from the very beginning, had been considered not only as wage-welfare organizations of labour, but also as

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32 The Act applies at the first instance to every establishment in which twenty or more workmen are employed or were employed on any day of the preceding twelve months as contract labour and to every contractor who employs or who employed on any day of the preceding twelve months twenty or more workmen.

33 See Section 2 (1) (b) of the Act.

34 A perusal of the Rule 73 of the Contract Labour (R&A) Central Rules, 1971 indicates a contra as to the phrase '… or without the knowledge of the principal employer'.

35 See Section 2 (1) (i) of the Act.

36 The principal labour legislations namely, the Industrial Employment (Standing Orders) Act, 1946 and the Industrial Disputes Act, 1947 which speak about the concept of regulation of employment do define a 'trade union' in the definition clause.

37 Section 4 of the TU Act, 1926 provides that any seven or more members of a Trade Union may, by subscribing their names to the rules of the Trade Union and by otherwise complying with the provisions of the Act with respect to registration, apply or registration of the Trade Union under the Act. (Provided further that no Trade Union of Workmen shall be registered unless at least ten per cent, or one hundred of the workmen, whichever is less, engaged or employed in the establishment or industry with which it is connected are the members of such Trade Union on the date of making of application for registration; Provided further that no Trade Union of workmen shall be registered unless it has on the date of making application not less than seven persons as its members, who are workmen engaged or employed in the establishment or industry with which it is connected.)

instruments of social and economic change. On the whole the present text of the Trade Unions Act, 1926 encourages the establishment or industry wise trade unions as opposed to general trade unions of workers. It is quite clear from combined reading of both legislations and the relevant provisions there under the contract labour employed in any establishment can form a trade union and register it[38]. However, majority of the employers are harsh to contract labour for organizing themselves into unions under the Act[39]. And in respect of the unorganized workers, the law makes it extremely difficult for them to register of a trade union under the Act.

The Act aims at the abolition of contract labour in respect of such categories as may be notified by the appropriate Government in the light of certain criteria that have been laid down there under, and at regulating the service conditions of contract labour where abolition is not possible. In this regard, the Act provides ample freedom to the principal employer to employ the labour on contract basis through an intermediary namely, the contractor in respect of any process, work or operations of the establishment and leaves the matter subsequently for the appropriate Government to abolish the system basing on certain criteria as laid down under the Act. Before abolishing the system in any establishment, the appropriate Government shall have due regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors. In the light prevailing political economy the concept of flexible labour has assumed more prominence and the practice of employment of labour on contract basis has strictly remained as the order of the day. The contract labour system has spread into every sphere of state activity including sovereign functions, semi-governmental corporations and private sector rampantly. In the given situation the 'regulation of the contract labour system' assumes more importance, since the question of abolition of the system is the least concern of the State in any given situation. A strict compliance of regulation mechanism as contained in the legislation leaves no option for the employer but to go for regularization of the services of the contract labour. The author sincerely places on record that the trade union movement in the country needs to realize this factor in order to save the exploited labour employer under this system. A clear perusal of the Act and the rules made there under pertaining to the mechanism

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38 The Labour Department, Government of Karnataka despite the objections raised by the principal employer, had registered the contract labour trade unions under the Trade Unions Act, 1926.

39 A Telco Unit (a concern of Tatas) in Dharwad in collaboration with Marcopolo (Brazil) involved in manufacturing and assembling of the Buses. A Union consisting of local persons employed in the unit on contract basis formed a union and claimed for regularization of their service conditions by striking the work. However, the management managed the situation and regularized few workers and arbitrarily served marching orders to those workers who had played an active role in the strike.

of regulation of the system virtually impose hard realities on the employer. Hence the aspect of compliance of the law to the letter and spirit is very much vital.

The purpose of compliance aspect as required under various labour legislations is not a mere theoretical postulation but expects from an employer the strict adherence to the values set forth by the law. The compliance requirement as envisaged under labour legislations fundamentally consists of two major categories. The first one deals with the compliance requirement by the management with in the four corners of the establishment or industry. This is basically aimed to promote the interests of both the employer and the labour. This type of compliance is mandatory under majority of labour legislations in India. The same can be called as substantive compliance. The second type of compliance is known as procedural compliance, which may not be mandatory in case of all labour legislations in the country. Under 'procedural compliance' the employer is required to furnish the returns to the 'authority' as required by the law. The aspect of 'procedural compliance' is mandatory only in respect of some welfare labour legislations. But the valid point to be understood in the context is the basis for 'procedural compliance' is 'substantive compliance'.

The Contract Labour (Regulation and Abolition) Act, 1970 imposes on employer certain privileges, liabilities, duties and obligations. The liabilities, duties and obligations imposed under the legislation precisely confer certain privileges and benefits for the contract labour employed by the principal employer through the intermediary namely, contractor. The concept of liabilities and obligations imposed by the legislation is of vicarious in the strict sense of the legislation. By implication the principal employer under the legislation entrusts these liabilities and obligations to the contractor under the terms of a formal contract which purely fall outside the realm of the legislation. The entire cost of meeting these liabilities and obligations has to be borne by the principal employer. But apparently for the purpose of the legislation these liabilities and obligations prima facie have to be discharged by the contractor who supplies the workmen to the establishment.

The substantive compliance under the provisions refers to the strict adherence to the values consisting of the liabilities, duties and obligations as set forth by the legislation, which has to be authenticated by the active intervention of the State machinery namely, the Inspectorate. The failure of which will be met with penal consequences. It amounts to compliance in strict spirit with the provisions in substance namely, material compliance in a factual manner. This is always coupled with twin fold obligation namely, (i) materially complying with the provisions and (ii) entering or recording the same in a register maintained as a documentary proof for the purpose of such compliance. The procedural compliance refers to the situations of reflection of the substantive compliance through the paper document which may have to be filed with the enforcement authority or in some situations to be maintained in the establishment in the manner specified. The violation of which would also be met with the penal consequences of same quantum. However, the incidences of violations are more dominant in

case State and its instrumentalities and private sector.

The next controversial area under the law is the aspect of absorption and regularization of the service conditions of the erstwhile contract labour when once the system of contract labour is duly abolished by the appropriate Government. The appropriate Government following the due criteria as provided under Section 10 of the Act by notification can abolish the contract labour system in an industry or establishment as the case may be[40].

It is pertinent in this context to have clarity on certain key issues that were addressed by the judiciary while deciding the claims of the contract labour against the principal employer in respect of contract labour disputes. In terms of judicial verdicts the usage of the phrase 'genuine contract' is referred to the situations wherein the principal employer carrying the system of employment of contract labour validly within the frame work of the Contract Labour (Regulation and Abolition) Act, 1970. Carrying the system of contract labour validly within the frame work of the legislation in the sense means, the principal employer has duly employed the contract labour by clearly complying with all the provisions of the Act as well as the Rules framed thereunder in respect of such employment[41]

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40 Section 10 of the Act provides that (1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation 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.

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as—

(a) whether the process, operation or other work is incidental to , or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment;

(b) whether it is of perennial nature, that it is to say, it is of sufficient duration having regard the nature of industry, trade, business, manufacture or occupation carried on in that establishment;

(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto;

(d) whether it is sufficient to employ considerable number of whole-time workmen.

Explanation : If a question arises whether any process or operation or other work is of perennial nature, the decision of the appropriate government thereon shall be final.

41 A perusal of the provisions of the Act as well as the Rules framed thereunder would clearly require the employer to provide the detailed particulars of the contract labour system such as nature of work in which contract labour is employed or is to be employed, nature of work carried on in the establishment, the maximum number of contract labour to be employed on any day, probable duration of employment of contract labour, estimated date of commencement of each contract work under each contractor and estimated date of termination of employment of contract labour under each contractor.

The terms like a system of camouflage or sham contract or a system of smoke screen or a system of subterfuge as referred to by the judiciary cover the situations wherein the system employment of contract labour is being carried on by the principal employer by clearly defeating the provisions of the Act as well as the Rules framed thereunder governing the employment of such labour.

The apex Court in *Gujarat Electricity Board v. Hind Mazdoor Sabha*[42] held that in view of the provisions of Section 10 of the Act, it is only the appropriate Government which has the authority to abolish genuine labour contract in accordance with the provisions of the said Section. No Court including the industrial adjudicator has the jurisdiction to do so. If the contract is sham or not genuine the workmen of the so called contractor can raise an industrial dispute for declaring that they were always the employees of the principal employer and claiming the appropriate service conditions. When such disputes are raised, it is not a dispute for abolition of the labour contract and hence the provisions of Section 10 of the Act will not bar either the raising or the adjudication of the dispute. When such dispute is raised, the industrial adjudicator has to decide whether the contract is sham or genuine. It is only if the adjudicator comes to the conclusion that the contract is sham, then he will have jurisdiction to adjudicate the dispute. If, however, he comes to the conclusion that the contract is genuine he may refer the workmen to the appropriate Government for abolition of the contract labour under Section 10 of the Act and keep the dispute pending. However, he can do so only if the dispute is espoused by the direct workmen of the principal employer. If the regular workmen of the principle employer have not espoused the dispute, the adjudicator, after coming to the conclusion that the contract is genuine, has to reject the reference, the dispute being not an industrial dispute within the meaning of Section 2(k) of the ID Act. He will not be competent to give relief to the workmen of the erstwhile contractor even if the labour contract is abolished by the appropriate Government under Section 10 of the Act. If the labour contract is genuine a composite industrial dispute can still be raised for abolition of the contract labour and for their absorption. However, the dispute will have to be raised by the direct employees of the principal employer. The industrial adjudicator, after receipt of the reference of such dispute will have to first direct the workmen to approach the appropriate Government for abolition of the contract labour system under Section 10 and keep the reference pending. If pursuant to such reference, the contract labour system is abolished by the appropriate Government the industrial adjudicator will have to give an opportunity to the parties to place the necessary evidence before him to decide whether the workmen of the contractor should be absorbed by the principal employer, how many of them and on what terms. If, however, the contract labour is not abolished, the industrial adjudicator has to reject the reference. Even after the contract labour system is abolished, the direct employees of the principal employer can

42 AIR 1995 SC 1893.

raise an industrial dispute for absorption of the ex-contractor's workmen and the adjudicator on the material placed before him can direct the workmen to be absorbed and on what terms.

Indeed the apex Court in this case has laid down certain invaluable propositions to mitigate the hardships confronted by the contract labour as such. But at the same time inestimable thrust has been imposed on the equally luke-warm regular employees of the principal employer to espouse the cause of contract labour. To what extent this would be a reality?

Later in the history, country witnessed two land mark judgments from the apex Court in the context. One being short lived *Air India Statutory Corporation v United Labour Union*[43] decided by a three Judge Bench, which was immediately reversed in *Steel Authority of India Ltd and Others v National Union Waterfront Workers*[44] by the Constitutional Bench consisting of five Judges. In *Air India Ltd*[45], it was held that the Act does not provide total abolition of the contract labour system under the Act. The Act regulates contract labour system to prevent exploitation of the contract labour. The phrase "matters connected therewith" in the Preamble would furnish the consequence of abolition of contract labour. The moment the contract labour system stands prohibited under Section 10 (1) of the Act, the embargo to continue as a contract labour is put an end to and direct relationship has been provided between the workmen and the principal employer. Thereby, the principal employer directly becomes responsible for taking the services of the workmen hitherto regulated through the contractor. The Act is a socio-economic welfare legislation. Right to socio-economic justice and empowerment are Constitutional rights. Right to means of livelihood is also a Constitutional right. Without employment or appointment, the workmen will be denuded of their means of livelihood and resultant right to life, leaving them in the lurch since prior to abolition, they had the work and thereby earned livelihood[46]. Though there is no express provision in the Act for absorption of the employees whose contract labour system stood abolished by publication of notification under Section 10(1) of the Act, in a proper case, the Court as *sentinel on the qui vive* is required to direct the appropriate authority to act in accordance with law and submit a report to the Court and based thereon proper relief should be granted. The arm of the High Court under Article 226 of the Constitution is long enough to reach injustice wherever it is found. It would, therefore, be necessary that instead of leaving the workmen in the lurch, the Court properly moulds the relief and grants the same in accordance with law[47]. Further it was held that the award proceedings as suggested in *Gujarat Electricity*

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43 (1997) 9 SCC 377
44 (2001) 7 SCC 1
45 *Supra*
46 *Id at* 432-433
47 *Id at* 435

Board[48] case are beset with several incongruities and obstacles in the way of the contract labour for immediate absorption. Since, the contract labour gets into the service of the principal employer, the Union of the existing employees may not espouse their cause for reference under Section 10 of the ID Act. Moreover, the workmen immediately are kept out of job to endlessly keep waiting for award and thereafter resulting in further litigation and delay in enforcement. The management would always keep them at bay for absorption. Moreover, it is tardy and time- consuming process and years would roll by. Without wages, they cannot keep fighting the litigation endlessly. The right and remedy would be a teasing illusion and would be rendered otiose and practically compel the workmen to remain at the mercy of the principal employer[49].

In *Steel Authority of India*[50] the Court *inter alia* considered the vital issue that was already resolved by it in *Air India Ltd*[51] case namely, the automatic absorption of contract labour, working in the establishment of the principal employer as regular employees, following the issuance of a valid notification under Section 10 of the Act, duly prohibiting the contract labour system in the establishment. It was held that it is not possible to perceive in Section 10 any implicit requirement of automatic absorption of contract labour by the principal employer on issuance of notification by the appropriate Government under Section 10(1) prohibiting employment of contract labour. Consequently the principal employer cannot be required to order absorption of the contract labour working in the establishment concerned. The principle that a beneficial legislation needs to be construed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The Act regulates the conditions of service of the contract labour and authorizes in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in Section 10(2) of the Act among other relevant factors. But, the presence of some or all those factors provides no ground for absorption of contract labour on issuing notification under Section 10(1). Admittedly, when the concept of automatic absorption of contract labour as a consequence of issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the Act is explicitly provided in Sections 23 and 25 of the Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel, be it absorption of contract labour in the establishment

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48 *Supra n* 18

49 *Supra n.* 18 at 440

50 *Id*

51 *Supra*

of principal employer or a lesser or a harsher punishment[52]. The Court expressly overruled its own previous ratio as laid down in *Air India Case*[53] prospectively by declaring that any direction issued by any industrial adjudicator or any court including the High Courts, for absorption of contract labour following the judgment in *Air India case*[54] shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.

Further it was held that on issuance of prohibition notification under Section 10(1) of the Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the Industrial Tribunal will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of the following para herein. If the contract is found to be genuine and prohibition notification under Section 10(1) of the Act in respect of the establishment concerned has been issued by the appropriate Government, prohibition employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment and if the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications[55].

The Court also spelt the consequences that follow upon the issuance of notification under Section 10(1) of the Act by the appropriate Government on its own motion or otherwise where such exercise of power was in the absence of any pending industrial dispute relating to absorption of the contract labour[56].

1. The contract labour working in the establishment concerned at the time of issue of notification will cease to function.
2. The contract of principal employer with the contractor in regard to the

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52 *Id* at 55
53 *Supra*
54 *Id*
55 *Supra*
56 *Id* at para 68

contract labour comes to an end.

3. No contract labour can be employed by the principal employer in any process, operation or other work in the establishment to which the notification relates at any time thereafter.
4. The contract labour is not rendered unemployed but continues in the employment of the contractor as the notification does not sever the relationship of master and servant between the contractor and the contract labour.
5. The contractor can utilize the services of the contract labour in any other establishment in respect of which no notification under Section 10(1) has been issued where all the benefits under the Act which were being enjoyed by it, will be available.
6. If a contractor intends to retrench his contract labour, he can do so only in conformity with the provisions of the Industrial Disputes Act, 1947.

The judicature, like other constitutional instrumentalities, has a culture of national accountability[57]. The views of the nation on certain matter may definitely change and, unconsciously, the Judges interpret the law to correspond with the changes in the national views, circumstances, and progress. The most precious rights in any State are those of justice and equality. It is quite possible that gradually inroads may be made on these by the force of circumstances following the evolution of new national ideas which the yawning void of the future conceals from us. Yet the highest Judiciary must lead the way with circumspection keeping in view the social realities of our society. It should not yield to the say that political philosophy and economic necessity of the dominant class animate legal theory[58].

VI. Claims of Unorganized Sector Workers in a Welfare State and the State Response:

In India there are five prominent legislations that deal with providing a measure of social security protection for the industrial workers[59]. The interesting aspect of these legislations is that they apply only in situations where there is a clear and regular employer and employee relationship exists. In the sense these legislations require a definite or constant period of employer-employee relationship. The difficulty in extending the benefits under these legislations arises in cases of causal, temporary, terminal also in case of contract labour. Of late, with the

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57 See *L.I.C. of India v D.J. Bahadur,* AIR 1980 SC 2181

58 Dr. I. Sharath Babu and Rashmi Shetty, *"Social Justice and Labour Jurisprudence – Justice V.R. Krishna Iyer's Contributions"* (2007) Sage India, New Delhi at 47.

59 The Workmen's Compensation Act, 1923, the Employees' State Insurance Act, 1948, the Employees Provident Fund (Mis. Provisions) Act, 1952, the Maternity Benefit Act, 1962 and the Payment of Gratuity Act, 1971.

increased phase of globalization process there is tremendous change in the very pattern of employment in the establishments. There is sea change in the nomenclature of the categories of employment in the multinational establishments. Absolutely there is no employer-employee relationship in respect of the jobs at lower rung of the establishment. The high incidence of contracting, sub-contract, out-sourcing and causualization of labour services at the core and non-core level is the order of the day. The State services are not exceptional[60]. In all these situations the labour are employed under highly exploitative terms and conditions employment. The practice of hire and fire is the order of the system. Under these circumstances it is highly improbable for these workers in proving the employer-employee relationship. The net result is non implementation of fundamental legislations that ensure social security benefits. Also the parallel phenomenal development is the increase in percentage of the unorganized work force in the country. According to the latest reports the unorganized sector workforce constitutes more than 93% of the total work force in the country. This vast segment of workforce engaged in variegated types of avocations that include self employed work force also.

After a lapse of nearly six decades, the present UPA Government has stepped into the regime of introducing a legislation for the unorganized workers apparently to ensure a measure of social security protection, which is a fundamental human right for this unprotected working class population in the country. The Act in the interpretation clause reads the definitions of 'employer', 'unorganized sector', 'unorganized sector worker', 'wage worker', 'self-employed worker' and 'home-based worker'. The proposed mechanism under the Act seeks to baptize the existing target oriented social welfare schemes initiated by the Central Government from time to time as a popular measure. At the outset the Act limits the provision of entire welfare schemes proposed in the Act only to the employment specific Schemes, which are already in existence as specified in the Schedule I[61]. The entire Schedule I of the Act contains ten Schemes[62].

VII. Mechanism under the Act:

Section 5 of the Act provides for the setting up of a National Board to be

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60 The outsourcing and contracting is a common incidence in State services even in respect of sovereign and regal functions.

61 See Section 3 (1) read with sub section (2) of the same Section of the Act.

62 Schedule I of the Act provides for ten Schemes namely, (1) Indira Gandhi National Old Age Pension Scheme. (2) National Family Benefit Scheme. (3) Janani Suraksha Yojana. (4) Handloom weavers' Comprehensive Welfare Scheme. (5) Handicraft Artisans' Comprehensive Welfare Scheme. (6) Pension to Master Craft Persons. (7) Nationa Scheme for Welfare of Fishermen and Training and Extention. (8) Janshree Bima Yojana. (9) Aam Admi Bima Yojana and (10) Rashtriya Swasthya Bima Yojana.

known as the National Social Security Board with a multipartite composition with the following main functions namely:

(i) to recommend to the Central Government suitable schemes for different sections of unorganized workers;
(ii) to advice the Central Government on matters arising out of the administration of the Act;
(iii) to monitor social welfare schemes for the unorganized workers;
(iv) to review the progress of registration and issue of identity cards to the unorganized workers and
(v) to review the record keeping functions performed at the State level.

Section 6 of the Act provides for the constitution of the State Social Security Board with the same composition to that of the Central Board with similar functions. Section 8 of the Act assigns the record keeping functions relating to the legislation to the District Administration namely, the Urban Local bodies in urban areas and the District Panchayat in rural areas. These bodies are vested with the functions of registration and issuing of identity card to the unorganized worker[63]. There is a provision for the constitution of Workers Facilitation Centers as and when necessary by the State Government with the assigned functions under Section 9 of the Act without specifying the hierarchy or level where they will be set up. The assigned functions are namely-—

(i) Dissemination of information on available social security schemes for the unorganized workers;
(ii) Facilitation of the filling, processing and forwarding of applications forms for registration;
(iii) Assisting unorganized workers to obtain registration from the District Administration; and
(iv) Facilitation of the enrollment of the registered unorganized workers in social security schemes.

Section 3 (1) of the Act provides for the framing of welfare schemes from time to time by the Central Government. They include: (a) life and disability cover; (b) health and maternity benefits; (c) old age protection; and (d) any other benefit as may be determined by the Central Government. Further sub section (2) provides that the schemes included in the Schedule 1 of the Act shall be deemed to be the welfare schemes under sub-section (1). Sub section (3) enables the Central Government to amend the Schedules annexed to the Act. Any scheme notified by the Central Government may be wholly funded by the Central Government or partly funded by the Central Government and partly funded by the State Government, or partly by the Central and State Government and partly through contributions collected from the beneficiaries of the scheme or the employers as may be prescribed in the scheme by the Central Government[64].

63 See Section 10 (3) of the Act.
64 See Section 4 (1) of the Act.

Further every scheme notified by the Central Government shall provide for such matters that are necessary for the efficient implementation of the scheme such as scope of the scheme, beneficiaries of the scheme, resources of the scheme, agencies for implementation of the scheme, redressal of grievances etc[65]. The State Government Schemes may be wholly funded by the State or partly by the State and partly by the beneficiaries of the scheme or the employers as may be prescribed in the scheme by the State. Further the State Governments may also seek financial assistance from the Central Government for the schemes formulated by the State and the Central Government may provide such financial assistance for such period and on such terms and conditions as the case may be[66].

The eligibility criteria for registration and social security benefits for the unorganized worker would depend upon the terms and conditions relating to the eligibility and contributions by the worker and the Central or State Government as the case may be as prescribed in the scheme formulated from time to time by the Central or State Government. Depending upon the eligibility the worker shall be registered and issued an identity card by the District Administration, which is unique and portable[67].

At out set the entire frame work of the legislation in providing social security benefits to the unorganized worker is not certain or definite but contingent. Prima facie the Act limits the provision of entire social security benefits only to the schemes mentioned in the Schedule 1 of the Act, which are by and large are applicable to target oriented Below Poverty Line (BPL) population and employment specific welfare schemes formulated under the political pronouncements made by the Government from time to time in contrast to formulation of universal social security schemes for the entire unorganized workers in the country. The very implementation of the welfare and social security benefits for the millions of exploited working class would depend on the sweet will of the Central and State Governments. There is no time bound frame work for the Central and State Governments to formulate various social security schemes as specified in the Act. The mechanism pertaining to the registration of a worker and entitlement to the benefits would depend upon the formulation of a specific social security scheme which is a contingent aspect under the legislation. One of the basic issues namely, the delivery of the social security benefits to the deserving worker is vaguely designed. The creation of 'social security fund' as such lacks the structured arrangement, which is crucial for providing the social security benefits for the unorganized workers.

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65 See Section 4 (2) of the Act.

66 See Section 7 of the Act.

67 Section 10 of the Act provides that the unorganized workers must have completed the age of fourteen years and have to make a self declaration confirming that he or she is an unorganized worker.

The Ministry of Labour and Employment have notified the Unorganized Workers Social Security Rules, 2009 on 24th February, 2009[68]. The Rules broadly provide for term of office of members of Board, resignation, manner of filling of vacancies, allowances of members, disposal of business, meetings quorum with one single Form containing five particulars for making application for registration of unorganized worker. The Form does not require the age, the name of the wife and other occupational details of the unorganized worker such wage worker, self-employed or home based worker.

The proposed legal regime pertaining to social security protection for unorganized workers in the country must contain the following in order to ensure the Constitutional mandate of social justice to the exploited workers:

1. There must not be any attempt to define jurisdictionally the term 'unorganized worker' rather it must be by way of inclusive of all workers employed/engaged in the Schedule Employments.
2. The social security benefits and welfare benefits need a clear and separate identification in the legislation.
3. Specification of employments pertaining to unorganized workers in the manner dealt by the Second National Commission on Labour (2002) in the Schedule of the Act and creation of Employment and Occupational related Welfare Boards at the State level to devise schemes, registration of a worker, contributions, delivery of benefits and the role of the Workers Facilitation Centers in this regard.
4. The creation of social security fund at the Central as well as at the State level need a structured arrangement with a clear mention in the definite manner about the sources of constituting such fund.
5. Provision for enforcement mechanism with a tripartite module having representation from State, employers and workers with penal provision for violations under the legislation.

The approach of this protective legal regime providing social security protection for the millions of unorganized workers population in the country must be from the point of view of pragmatic rather a paper approach as is seen in the present law.

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68 Section 1 (2) of the Rules provides that they shall come into force on the date of their publication in the Official Gazette.