CHAPTER-III

SOCIAL SECURITY: MEANING, CONCEPT, AND LEGAL DIMENSIONS

3.1 Introductory

The concept of social security is of utmost concern for the workers and unorganized workers are not an exception to it. It is the bounden duty of the welfare State to provide social security to its workers. The present chapter is dedicated to deal with the meaning, concept of social security in the light of various national and international developments and its legal dimensions.

3.2 Social Security: Its Meaning

In general sense, social security means a protection provided by the society to its members against providential mishaps over which a person has no control or in a legal sense it can convey the meaning that any of the measures established by legislation to maintain individual or family income or to provide income when some or all sources of income are disrupted or terminated. Social security may be provide by giving cash supports to a person faced with sickness and disability, unemployment, crop failure, loss of the maternity, responsibility for the care of young children, or retirement from work or it may be provided in kind of medical care, rehabilitation, legal aid, or funeral expenses. Thus social security is both a concept as well as a system. It represents basically a system of protection to individuals who are in need of such protection by the State as an agent of the society. Such
protection is relevant in contingencies such as retirement, resignation, retrenchment, death, disablement which are beyond the control of the individual members of the Society. Men are born differently; they think differently and act differently. State as an agent of the society has an important mandate to harmonize such differences through a protective cover to the poor, the weak, the deprived and the disadvantaged.

The United Nations General Assembly adopted the ‘Universal Declaration of Human Rights’ which states “every member of a society has a right to social security and is entitled to realization, national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality”1.

Everyone has a right to a standard of living adequate for health and well being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control2.

International Labour Organisation considers that the social security is an instrument for social transformation and progress”. According to a definition given in the International Labour Organisation publication, “Social security is the security that society furnishes through appropriate

1 Article 22, Universal Declaration of Human Rights 1948.
organization against certain risks to which its members are exposed. These risks are essentially contingencies of life which the individual of small means cannot effectively provide by his own ability, or foresight alone or even in private combination with his fellows”.

William Beveridge has defined social security as “a means of securing an income to take the place of earnings when they are interrupted by unemployment, sickness or accident to provide for the retirement through old age, to provide against loss of support by death of another person or to meet exceptional expenditure connected with birth, death, or marriage. The purpose of social security is to provide an income up to a minimum and also medical treatment to bring the interruption of earnings to an end as soon as possible3.”

“Social Security” has been recognized as an instrument for social transformation and progress and must be preserved, supported and developed as such. Furthermore, far from being an obstacle to economic progress as is often said, social security organized on a firm and sound basis will promote progress, since once men and women benefit from increased security and are free from anxiety, will become more productive4.

3 William Henry Beveridge was an economist who shaped Britain's post-World War II Welfare State Policies and Institutions through his Social Insurance and Allied Services (1942). He was considered an authority on unemployment insurance. He was born on March 5, 1879, in Rangpur (India) now in Bangladesh and died on March 16, 1963 in England. www.encyclopedia.britannica.com/topic/labour/law.

3.3 Social security: Concept

The very nature of man is to strive continually for material security of all types for himself, his family, his community and his nation\(^5\). From the first dawning of history man faced serious physical danger from wild animal, from the cold, from the famine and drought and from his fellow man. Over the many centuries, the frequency and severity of these threats to physical security have been lessened, and in some instances virtually eliminated, as man has developed mentally and spiritually. Despite this, even today, in many countries of the world, most of the people have very little real security as to basic human needs for food, shelter, and medical care. In the economically more developed countries, material conditions are at a quite favorable level, so that most of the population, especially those in families containing workers, are reasonably well off, at least as long as the worker is employed. The phrase “social security” when considered as to its basic composition, as broad as to be virtually meaningless. The “security of the whole society” would encompass all activities of mankind not only physical and mental, but even spiritual. As “social security” is commonly used, it connotes measures for economic security under governmental auspices\(^6\). Thus the concept of social security is very old one. It was coined for first time when in the United State, Social Security Act 1935 was enacted. The New Zealand adopted this Act in the year 1938. Later, several countries including India implemented the social

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security measures. The concept of social security has a wide range of welfare programs as public education, vacation with pay, community organization, planning and counseling services, school lunch programs, research in health problems and so forth. Thus, the concept of social security is multi-dimensional in its contents and in the present day society it includes within its ambit the aspects of socio-economic justice to be done for members of the society. To achieve the objectives of social security, minimum standards of living are guaranteed to the members of the society against certain economic hazards or adversities to which they are exposed. The concept of social security in its broadest framework includes within its purview statutory enactments of national and the state level, which are enacted to render financial assistance to the workers if they are exposed to economic hardships. Social security contains the provisions (1) those providing cash payments to persons and families whose income from earning has ceased or diminished either temporary or permanently; (2) those furnishing medical care to persons and families receiving benefits under item 1 or, under certain circumstances to all persons of a given category; and (3) those providing cash payments in respect to all children of a given category, regardless of the pursuance or absence of parents who could support such children, and regardless of whether such support is being given or in what quantity. It can be said that the quest for social security and freedom from

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7 Dr. U.N. Shukla and Dr. Sanjay Tiwari: Social Security Schemes in India, p.2 (ed. 2012).
want and distress has been the consistent urge of man through the ages. This urge has assumed several forms. According to the needs of the people and their level of social consciousness, the advancement of technology and the pace of economic development from its modest beginnings in a few countries in the early decades of the present century, social security has now become a fact of life for millions of people throughout the World. Social security measures have introduced an element of stability and protection in the midst of the stresses and strains of modern life. It is a major aspect of public policy today and the extent of its prevalence is a measure of the progress made by a country towards the ideal of Welfare State. The aims of social security is that the State shall make itself, responsible for ensuring a minimum standard of material welfare to all its citizen on a basis, wide enough to cover all the main contingencies of life. In the life of a man there are two stages of dependency, childhood and old age, and in the intervening years of adult life these are likely to occur spells during which he cannot earn a living. The social security system aims to help individuals in such times of dependency. It will be significant to consider as to what are those main risks of insecurity to which human life is liable and in relation to which organized society can afford relief to the helpless individual. These are incidents of life securing right from childhood up to old age and death and include mainly sickness, maternity, invalidity, accident and industrial disease, unemployment, old age, death of the bread winner and other

such emergency\textsuperscript{11}. In fact social security is very wide term and
today it has acquired a global character\textsuperscript{12}. The concept is
usually employed to constitute specific Government Programs
designated primarily to prevent want by assuming the families
the basic measure of subsistence\textsuperscript{13}. The British interpretation
of the term ‘social security’ is that ‘the main purpose of any
plan for social security is insurance against interruption and
destruction of earning power and for special expenditure
arising at birth, marriage or death\textsuperscript{14}. Social security is a
programme of the protection provided by society against the
contingencies of modern life- sickness, unemployment, old age
dependency, industrial accidents and invalidism. Against
which the individual cannot be expected to protect him and his
family by his own ability or foresight\textsuperscript{15}. Social security
envisages that the members of a community shall be protected
by collective action against social risk, causing undue
hardship and privation to individuals, whose private resources
can seldom be adequate to meet them. The first National
Commission on Labour interprets that the concept of social
security is based on ideals of human dignity and social justice.
The underline idea behind social security measures is that a
citizen who has contributed or is likely to contribute his
country’s welfare should be given protection against certain

\textsuperscript{11} ILO Publication, \textit{Approaches to Social Security}, p.1, (International Labour
\textsuperscript{12} U.N.Sukla and Dr.SanjayTiwari, \textit{Social security scheme in India}, p.3,
(ed.2012).
\textsuperscript{13} \textit{Encyclopedia Americana}, vol.25, p.86.
\textsuperscript{14} \textit{Encyclopedia Britanica},vol.20, p.839.
hazards.\textsuperscript{16} Although social security system is related to policies of the development and the main constraint on its evolution is limited financial resources, the economic content of social security measures is being increasingly recognized. Some elements of it contribute to the raising of the standard of living large masses of the population. According to International Labour Organization, Social security is one which the society furnishes through appropriate organization, against certain risks to which its members are exposed. These risks are essentially contingencies against which an individual of small means and measure resources cannot effectively provide by his own ability or foresight alone or even with private combination with his colleagues\textsuperscript{17}. International Labour Organization considers social security is a basic human right and acknowledge that the right to social security is along with promoting employment in economic and social necessity for the development and progress of the nation and also recognizes that it is an instrument to prevent and to reduce poverty, inequality, social exclusion and social insecurity, to promote equal opportunity, gender and racial equality, and to support the transition to informal to formal employment and also recognized that social security is a investment in people that empower them to adjust the changes in the economy and labour market and that act as automatic social and economic stabilizer which helps stimulate aggregate demand in time of crisis’s and beyond, and help support a transition to a more


\textsuperscript{17} ILO: \textit{Approaches to Social Security}, p.80 (1942).
sustainable economy. ILO also recommends that Members States should maintain, (in accordance with national circumstance, as quickly as possible) their social protection floor, comprising basic social security guarantees. These guarantees should ensure essential health care, basic income security, with effective access to goods and services defined as accessories at the national level.

3.4 Legislative Measures Providing Social Security to Workers in India

In addition to the Constitutional provision, the principal social security laws enacted in India from time to time have been discussed in the following pages.

3.4.1 The Employee’s Compensation Act, 1923

The Employee’s Compensation Act is a social security legislation which came into force on 5th March 1923. This Act has been considered as the first piece of social security legislation. This Act has been renamed as The Employee’s Compensation Act 1923, by section 4 of the Workmen’s Compensation (Amendment) Act, 2009. The main objective of the Act is to impose an obligation upon the employers to pay compensation to workers for accidents arising out of and in the course of employment. The Act applies to any person who is employed in railways factories, mines, plantations,

mechanically propelled vehicles, loading and unloading work on a ship, construction, maintenance, repairs of roads and bridges, electricity generation, cinemas, circus and other hazardous occupations and other employments specified in Schedule II of the Act. The Act exempts the employees covered under Employees State Insurance Act, as disablement and dependant’s benefits are available under that Act and also members serving in Armed Forces. The “workman” under the Act is a person employed but, not a casual employee, for the purpose of employer’s trade and business and according to Schedule II of the Act. In C. Arumagham@ Raj v. Revathi and Others\(^\text{21}\) Court held that as per 2(l) of the Workmen’s Compensation Act’ 1923, the person involved in the painting work of a house will not come within the meaning of ‘workman’ but after omission of this section by Act 45, 2009 w.e.f 18.01.2010, the person employed in a construction of any building will come within the meaning of the ‘employee’ as defined under section 2(i) (dd) of the Employees’ Compensation Act 1923, as per the list of the employees given in clause (viii) of Schedule II. This Court is of the opinion that even a person who works in the house of individual, if sustain injuries during the course of said employment he is entitled for compensation under Employee’s Compensation Act 1923. The compensation has to be paid by the employer to a workman for any personal injury caused by an accident arising out of and in the course of his employment \(^\text{22}\) if the disablement continues more than 3 days. A claim application under section 10 of the Employee’s

\(^{21}\) 2015 I LLJ 123 (Mad)  
\(^{22}\) Section 3, The Employees’ Compensation Act, 1923.
Compensation Act cannot be barred by Limitation Act\textsuperscript{23}. The word ‘accident’ should be understood in its popular and ordinary sense\textsuperscript{24}. It means unlooked for mishap or untoward event which is not expected or designed\textsuperscript{25}. In \textit{Laxmidhar Kumbhar v. divisional Manager Orrisa, forest development corporation Ltd, at Budharaja Dist. Sambalpur}\textsuperscript{26} The Court held unless it is proved that the accident has a casual connection with the employment and it was suffered in course of employment the claimant is not entitled to get any compensation. In \textit{Binddadin Ramasray Verma (Pasi) Bandra (W) Mumbai v. Ram Sajivan Singh, B. Singh. Bandra (W) Mumbai and another}\textsuperscript{27}, Bombay High Court in a question whether interest should be awarded from the date of accident or from the date of award held that commissioner was required to grant prayer for interest after expire of 30 days from the date of accident and not from the date of adjudication. Appellant is entitled to interest after the expiry of 30 days from the date of accident till realization. Impugned direction of commissioner awarding rate of interest from the date of adjudication contrary to judgment of Supreme Court in \textit{Oriental Insurance Co. Ltd. v. Siby George}\textsuperscript{28} and same is set aside. The amount of compensation in case of death is an amount equal to fifty percent of the monthly wages of the deceased workman multiplied by the relevant factor or fifty

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\item \textsuperscript{23} National Insurance Co. Ltd. vs. Abhy Ram and Others, 2015 IV LLJ 364 (P&H).
\item \textsuperscript{24} Dr. Sunil Yadav, \textit{Labour and industrial laws}, p.228, (ed. 2014).
\item \textsuperscript{25} \textit{Shanti Rani v Anil Chandra Saha}, 2013 III LLJ 202 (Guj).
\item \textsuperscript{26} 2015 I LLJ 131 (Ori)
\item \textsuperscript{27} 2015 I LLJ 199 (Bom).
\item \textsuperscript{28} 2012 III LLJ 609 (SC).
\end{itemize}
thousand rupees whichever is more. In case of permanent total disablement results from injury, sixty percent of the monthly wages multiplied by relevant factor or sixty thousand whichever is higher. If the monthly wages of the workman exceeds two thousand rupees, then his monthly wages for the above purpose will be deemed to be two thousand rupees only. In United India Insurance Company Limited Gulbarga v. Vijay Nath and another, the Karnataka High Court held that when there is no established employee-employer relationship between injured and owner, injured is not is entitled to payment of compensation under the Act.29

3.4.2 The Employees State Insurance Act, 1948

The health and welfare of the workers has always been the concern of various Commissions and Committees appointed by Government from time to time. In 1928 the Government of India sympathetically considered the issue of providing sickness insurance to the workers. Royal Commission on Labour had also recognized this issue in 1929. But it was materialized in the year 1944 after submission of Professor Adarkar’s30 report. This scheme of health insurance was for workers below a certain wage-ceiling in textile, engineering and minerals and metals which comprised major

29 2016 LAB. I.C.(NOC) 306 (KAR)
30 The first document on social insurance was “Report on Health Insurance” submitted to the Tripartite Labour Conference, headed by Prof. B.P.Adarkar, an eminent scholar and visionary. The Report was acclaimed as a worthy document and forerunner of the social security scheme in India and Prof. Adarkar was acknowledged as “Chhota Beveridge” by none other than Sardar Vallabhbhai Patel. Sir William Beveridge, was one of the high priests of social insurance. The report was accepted and Prof. Adarkar continued to be actively associated with it till 1946. On his disassociation he strongly advocated management of the Scheme by an expert from ILO.
group of industries. The scheme was intended to provide medical care and the sickness benefit for the insured person\textsuperscript{31}. Professor Adarkar’s Scheme and suggestions made by ILO experts were incorporated in to the Workmen’s State Insurance Bill, 1946, which was passed by Legislative Assembly in April, 1948 as Employees’ State Insurance Act. This was the first social security legislation adopted by the country after independence\textsuperscript{32}. The Employees State Insurance Act was enacted with the object of introducing a scheme of health insurance for industrial workers. The scheme envisaged by it is one of compulsory State Insurance providing for certain benefits in the event of sickness, maternity and employment injury to workmen employed in or in connection with the work in factories other than seasonal factories. The Employees State Insurance Act, 1948 presently applies to the factories using power in the manufacturing process and employing ten or more persons and non power using factories, shops, hotels, and restaurants, cinema, pre-view theatres, road motor, transport undertakings and news paper establishments employing twenty or more persons. The employees of factories and establishments drawing wages up to rupees seven thousand five hundred, per month \textsuperscript{33} are covered under the scheme. In a case Kerala high court held that person / workers

\textsuperscript{31} ESI Review Committee appointed in 1966 by Government of India.


\textsuperscript{33} Initially the scheme was introduced to employees who are drawing wages up to Rs.four hundred. It is increased to Rs.Five hundred in 1966, Rs.One thousand in 1975, Rs.Sixteen hundred in 1985, Rs.Three thousand in 1992, Rs. Six thousand five hundred in 1997 and Rs. Seven thousand five hundred from 1.2004. On 15.06.06 the meeting of the corporation approved enhancement in the wage ceiling from Rs. Seven thousand five hundred to Ten thousand per month.
employed by contractors or home worker collecting material for making umbrellas from various sources and doing assembling work of umbrellas outside factory premises fall out the preview of ‘employees’ as defined under Section 2(9) and payment made to them cannot be treated as wages under Section 2(22) of the Act.\textsuperscript{34} The scheme is administered by a separate body called the Employees’ State Insurance Corporation\textsuperscript{35} which includes representatives of employer, employers, Central and State Governments, medical profession and the Parliament. A Standing Committee constituted from among the members of the corporation acts as the Executive body for administering the scheme. There is a Medical Benefit Council\textsuperscript{36} to advise the corporation in matters connected with provisions of medical care. The Scheme is financed mainly by contributions from employers and employees\textsuperscript{37}. The employer’s share is 4.75 % of the wages payable to employees and the employees’ share of contribution is 1.75% of their wages Employees who are earning less than Rs. Fifty per day are exempted to contribute but their employers are required to pay their share of contribution. The State Government’s share of expenditure on provision of medical care is to the extent of 12.5% of the total expenditure on medical care on their respective states subject to a per capita ceiling prescribed by the corporation from time to time\textsuperscript{38}. The benefits under the Act include both cash benefits and benefits in kind like medical benefits. The cash benefits

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\item\textsuperscript{34} Regional Director ESI Corporation, \textit{Thrissure v. Thankamma Baby}, Alappuzha, 2016,LAB.I.C 3247 (KER).
\item\textsuperscript{35} Section 3, The Employees’ State Insurance Act, 1948.
\item\textsuperscript{36} Section 10, The Employees’ State Insurance Act, 1948.
\item\textsuperscript{37} \textit{Id. at} Section 39.
\item\textsuperscript{38} \textit{Ibid.} Section 26.
\end{itemize}
are: (a) Sickness benefit payable in cash at the rate of about fifty percent of wages for a maximum of ninety one days in a year extendable up to two years in cases of specified long term diseases at a higher rate of about seventy percent of wages; (b) Maternity benefit payable for twelve weeks for confinement, six weeks for miscarriage and additional one month for sickness arising out of pregnancy at the rate of about full wage; (c) Temporary disablement benefit payable at the rate about seventy percent of wages till the disability is there; (d) Permanent disablement benefit, payable in the form of periodical payment for life depending upon the extent of loss of earning capacity determined by a duly constituted Medical Board. Full rate of benefit is about seventy percent of the wages; (e) Dependant’s benefit, which is payable to the dependants in the contingency of death of insured person due to employment injury at the rate of about seventy percent of wages; (f) Funeral Expenses, actual expenditure on the funeral of a deceased insured person up to Rs. Two thousand five hundred which is reimbursable to any person incurring the same; (g) Rehabilitation allowance/ vocational rehabilitation allowance, payable at full wage during the period of an insured person remains admitted for fixation or replacement of artificial limbs. Further cash benefit one hundred and twenty three rupees per day or the amount

39 Id. at Section 49.
40 So far 34 diseases are specified.
42 Id. at Section 51 (a).
43 Id. at Section 51 (b).
44 Id. at Section 52.
45 Id. at Section 46 (f).
charged by Vocational Rehabilitation Centre is also payable;(h) Unemployment allowance payable for a maximum of six months to insured persons losing employment due to closure of factory or retrenchment or permanent invalidity at the rate of fifty percent of the wages. The medical care services under ESI Scheme are provided by respective State Governments. The medical care services to the beneficiaries are provided in two ways: (1) direct provision through ESI schemes own network dispensaries and hospitals; (2) indirect provision by contracting with private clinics and hospitals. The Employees State Insurance scheme is providing full medical care to its beneficiaries which include preventive, promotive, curative and rehabilitative services. The expenditure on medical care is shared between Employees State Insurance Corporation and the State Government in the ratio of 7:1 within the prescribed ceiling which is revised from time to time. There is no limit on the per capita expenditure on individual medical care. A scheme for model hospitals has been implemented in 2001 as per the decision of the Employees State Insurance Corporation. As per the scheme one hospital of the State is to be taken over from the State Government and run by Employees State Insurance Corporation directly.

46 Except in Delhi and Noida where these are provided directly by ESI Corporation.
47 When the scheme was initially introduced medical care under the scheme was provided only to the insured worker, but in 1977, the medical care was extended to families of insured persons also.
3.4.3 The Industrial Disputes Act, 1947

This Act came into force on 1\textsuperscript{st} April 1947. Prior to this legislation the Employers and Workmen (Disputes) Act, 1860 was available for settling the disputes between the labour and employers. This Act was applicable to railways, canals and other public works. The disposal of dispute under this Act was confined to the wages only. The next legislation in this order was the Trade Disputes Act, 1929\textsuperscript{49}. The objective of the Industrial Disputes Act is to secure industrial peace and harmony by providing machinery and procedure for the investigation and settlement of industrial disputes by negotiations. The laws apply only to the organized sector. The provisions of the Act under chapter V-A deal with those industrial establishments which are not seasonal in character and in which at least fifty workmen on an average are employed for a continuous period of at least one year. In case an employee is laid-off, the employer shall pay compensation for the days laid off at the rate of fifty percent of the basic salary plus D.A. subject to the maximum of forty five days. If the lay-off continues beyond forty five days the employer can retrench such employees after paying retrenchment compensation. The employer cannot retrench the employee unless (a) one month’s notice is served or payment in lieu of notice (b) compensation at the rate of fifteen days salary multiplied by number of years of continuous service and (c)

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\item \textsuperscript{49} Dr. Sunil Yadav, Labour and industrial laws, p.1, (ed. 2014).
\item \textsuperscript{50} The definition of Industry under the Act is taken from the Supreme Court’s judgment in Bangalore water Supply and Sewerage Board v. A. Rajappa AIR 1978 SC 548.
\end{itemize}
notice to appropriate Government stating reasons for retrenchment. The Act also secure the right of workman to claim the wages for employment. In *Jharkhand State Food and Civil Supplies Corporation Ltd. through District Manager, Dhanbad v. Devendra Parsad Yadav,* the Jharkhand High Court held that there is no dispute that the award has attained finality. In so far as the reinstatement of the respondent in service is concerned, the employment of the respondent workman with petitioner corporation confers a pre existing right in the respondent to claim wages from the petitioner corporation. In case of closure, the employees are entitled to notice of sixty days before closure and compensation as in the case of retrenchment subject to a maximum of three month’s salary, if the closure is due to unavoidable circumstances. Chapter V-B, introduced by an amendment in 1976, requires firms employing three hundred or more workers to obtain government permission for layoffs, retrenchments and closures. A further amendment in 1982, which took effect in 1984, expanded its ambit by reducing the threshold to hundred workers. The Act also lays down the provisions for (a) the payment of compensation to the workman on account of closure or lay off or retrenchment, (b) the procedure for prior permission of appropriate Government for laying off or retrenching the workers or closing down industrial establishments, (c) Unfair labour practices on part of an employer or a trade union or workers. Unfair labour practice
proved against the management is a punishable offence.\textsuperscript{52} On other hand repetition of contractual appointments will amount to an unfair labour practice.\textsuperscript{53} These provisions are dealing with lay off, retrenchment and closure of any industrial unit. Lay off, retrenchment and closures are termination of employment either temporarily or permanently. In \textit{Bhav Nagar Municipal Corporation etc v. Jadeja Govubha Chhanubha and Another}\textsuperscript{54}, the Supreme Court held that it is fairly well settled that for an order of termination of the services of a workman to be held illegal on account of non payment of retrenchment compensation. It is essential for the workman to establish that he was in continuous Service of the employer within the meaning of Section 25 B of the Industrial Dispute Act 1947. The Court further held that the illegality in an order of termination on account of non-payment of retrenchment compensation does not necessarily result in the reinstatement of the workman in service. In such situation the reinstatement must give way to award of compensation. In \textit{Project Officer, Dhansar Collieries under Kusanda Area of Bharat Coking Coal Ltd. Dhanbad v. Ajay Kumar Pandey}\textsuperscript{55} the court held that Settlement entered into between respondent workmen and management under which he agreed not to claim wages for idle period on his joining duty labour court cannot adjudicate validity of settlement order allowing application file by respondent workmen and holding that the agreement was signed by respondent workmen under duress is liable to be set aside. In \textit{Smt. Asha Pandey v. Coal India Ltd. and another},

\textsuperscript{52} Prafulla Kumar Nayak vs State of Orissa, 2013 LLR 671(Ori).
\textsuperscript{53} Delhi Financial Corpn. vs P.O. Labour Court,2013 LLR 420(Del).
\textsuperscript{54} 2015 I LLJ 1 (SC).
\textsuperscript{55} 2016 LAB.I.C (NOC) 309 (JHAR).
the Chhattisgarh high court held that National Coal Wages Agreement is binding settlement. Its terms should be reasonable and fair and consistent with Article 14 and 15 of Constitution. Clause in National Coal Wages Agreement excluding consideration of a married daughter for dependent employment is gender biased and discriminating and there for void and inoperative.56.

3.4.4 The Factories Act, 1948

The main objectives of the Act are not only to ensure adequate safety measures but also to promote health and welfare of the workers employed in factories as well as to prevent haphazard growth of factories. The Factories Act, 1948 contains the provisions to regulate the working conditions in factories,57 to regulate health58, safety, welfare59, and annual leave with wages 60 and enacts special provision in respect of young persons, women and children who work in the factories. According to the provision of working hours of adults, no adult worker shall be required or allowed to work in a factory for

56 2016 LAB I.C. 2999 (Chh).
57 Section 2 (m) Factory means any premises including the precincts thereof; (i) Wherein ten or more workers are working, or were working on any day of the preceding twelve months and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or (ii) Wherein twenty or more workers are working or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on.
58 Chapter (III), The Factories Act having Section 11to Section 20 deals with the provisions relating to the health of workers working in a factory.
59 Chapter V, The Factories Act, under Sections 42 to 50, contains the provisions of washing facilities, facilities for storing and drying clothing, for sitting, first aid appliances, canteens, shelters, rest rooms, lunch rooms, and crèches.
60 Chapter VIII (Sections 78 to 84) deals with the annual leaves with wages. These provisions are mandatory and employer has no discretion to withhold the benefits conferred upon the workers under the Act.
more than 48 hours in a week\textsuperscript{61}. There should be a weekly holiday\textsuperscript{62}. Compensatory holidays should be given to employees who work on holidays, i.e., compensatory holidays of equal number to the holidays so lost should be given to the workers. No adult worker shall be required or allowed to work in a factory for more than nine hours in any day. According to this Act, the working hours each day shall be so fixed that no period shall exceed five hours. He should be given half an hour rest after every five hours of work. Extra wages for the overtime done by the worker should be paid. In \textit{Hement Madhusudan Nirurkar v. State of Jharkhand and another}, the Jharkhand high court imposed a penalty of Rs. 50000 on M/s Tata Steel Ltd. for non compliance of the provision of the Act as the contract labour engaged were being forced to do overtime without giving overtime slip which was the violation of the Rule 103 A of Factory Rules 1950.\textsuperscript{63} In \textit{Director General of Works, C.P.W.D. and Others v. Sushil Kumar and Others},\textsuperscript{64} Delhi High Court held that Section 14 of the Minimum Wage Act 1948 would not be applicable where wages being paid to workman are in excess of minimum wages fixed under Act (Including overtime allowance). The decision of the Supreme Court proceeded on the bases that even if wages higher than the minimum wage are being paid to employee in a schedule employment the employees would be entitled to overtime in accordance with rule 25 of the Minimum Wages (Central) Rule 1950.\textsuperscript{65} A worker who completes work for a

\textsuperscript{61} Section 51, The Factories Act, 1948.

\textsuperscript{62} Section 52, The Factories Act, 1948.

\textsuperscript{63} 2016,LAB I.C. 2801 (SC)

\textsuperscript{64} 2015 II LLJ 556 (Del).

\textsuperscript{65} Y.A Mamarde v Authority under Minimum Wages Act. 1972 II LLJ 136 (SC)
period of 240 days or more during a year will be granted annual leave with wages. A child worker should not be allowed to work for more than 4½ hours a day. Women and child workers should not be asked to work or allowed to work between 7 P.M. and 6 A.M. and in no case between 10 P.M. and 5 A.M. The manager of every factory is required to maintain a separate register for child workers (i.e., workers below the age of 18). No child below the age of 14 will be employed. For protecting the health of workers, the Act lays down that every factory shall be kept clean and all necessary precautions shall be taken in this regard. The factories should have proper drainage system, adequate lighting, ventilation, temperature etc. Adequate arrangements for drinking water should be made. Sufficient latrine and urinals should be provided at convenient places. These should be easily accessible to workers and must be kept cleaned. In order to provide safety to the workers, the Act provides that the machinery should be fenced, no young person shall work at any dangerous machine, in confined spaces, there should be provision for manholes of adequate size so that in case of emergency the workers can escape. Wherever there are chances of fire, fire extinguishers should be available at convenient places. Efforts should be made to give training to the workers to save themselves in case of fire. Under this Act, the State Government may appoint inspector for undertaking checking of factories to ensure that safety measures are taken by them. If the provisions of The Factories Act, 1948, or any

66 Chapter IV of The Factories Act contains the provisions (section 21 to 40) for safety of workers in a factory.
rules made under the Act, or any order given in writing under the Act is violated, it is treated as an offence. The following penalties can be imposed: (a) Imprisonment for a term which may extend to three months; (b) Fine which may extend to one lac rupees; or (c) Both fine and imprisonment. If a worker misuses an appliance related to welfare, safety and health of workers, or in relation to discharge of his duties, he can be imposed a penalty of Rs. Five hundred.

3.4.5 The Minimum Wages Act, 1948

This Act primarily aims at safeguarding the interests of the workers engaged in unorganized sector who are vulnerable to the exploitation due to illiteracy and lack of bargaining power. The Act binds employers to pay the minimum wages to the workers as fixed under the statute by the State and Central Governments from time to time under their respective jurisdictions. In a decision in Sericulture Extension Officer Technical Service Centre, Hanur Kolligalla, Taluk and Other v. Shri Nagendera Gowda and another, Karnataka High Court held that authority under the Act can entertain dispute with regard to rate of minimum wages hence plea that workmen ought to have approached labour court under section 33 (2) (b) of I.D. Act is not tenable. In Suja Issac w/o Issac George, Fort Cochin, Kochi-I v. Deputy Labour Commissioner, Ernakulam (Authority under the Minimum Wages Act), Civil Station, Kakkanad Cochin- 30 and Another, the Kerla High Court held that Section 20(3) of the Act empowers

67 There are 51 scheduled employments in the, Central sphere.
68 2016 LAB. I.C. 1178 (Kar.).
69 2015 I LLJ 73 (Ker).
the authority in the case of a claim arising out of payment of less than minimum rates of wages, to direct payment to the employee of the amount by which the minimum wages payable to him exceeded the amount actually paid to gather with the payment of such compensation as the authority may think fit, not exceeding ten times the amount of such excess this discretion has to be exercised judicially. The purpose of making this provision is to see that an employer did not contumaciously refuse to implement the provision of Minimum Wages Act as non-payment of wages notified under the Act will result in forced labour which is prohibited under Article 23 of the Constitution of India. This Act prohibits discrimination between male and female workers on the issue of wages. However no parameters have laid down by the Act for fixing the minimum wage. Delhi High Court in Director General of Works, C.P.W.D. and Others v. Sushil Kumar and Others, held that section 14 of the Minimum Wage Act 1948 would not be applicable where wages being paid to workman are in excess of minimum wages fixed under Act (Including overtime allowance). In Workmen v. Orient Paper Mills Ltd., the Supreme Court has held that in considering the revision of minimum wages the total wage packet including basic wages, dearness allowance and production bonus are to be taken into account. Another guidelines were issued by the Supreme Court in The Workmen v. Reptakose Brett and Co. Ltd. and another, that the children’s education, medical requirement, minimum

70 2015 II LLJ 556 (Del).
71 AIR1969 SC 976.
72 AIR 1992 SC 504.
recreation, provision for old age, marriage etc. should be further constitute twenty five percent of the minimum wage and used as a guide in fixation of minimum wages. Section 12 of the Act prevents employers from paying less than minimum wages. Recently in a case, Management Vaish Technical Institute, Rohtak and Another v. State of Haryana and Others,\(^73\) the Punjab and Haryana High Court, on a dispute arose regarding liability of petitioner management to pay minimum wages to workers employed in the hostel run by it, held that the Government Labour Department notification inserted entry 43 in the schedule 2 of the Minimum Wages Act which covers private coaching classes, school including nursery school and technical institution are scheduled employment. Doubtlessly the petitioner institution is covered by the Minimum Wages Act and is statutorily liable to pay minimum wage to the worker in the hostel own by the management even though the source of income to run the hostel mess facility is derived from student fees. The petitioner becomes statutorily and vicariously liable under the statute and cannot contract out of the law and disclaim its liability towards the workman and other workers running mess facilities and shying from paying them the minimum rate of wages fixed from time to time mechanism provided by the Minimum Wages Act. Further the provisions of the Act protect workers from exploitation by fixing the number of hours in a working day\(^74\). In order to have a uniform structure all across the country in wage structure, concept of National Floor Level Minimum Wage was mooted on the basis

\(^73\) 2015 IV LLJ 341 (P&H).
\(^74\) Section 13, Minimum Wages Act, 1948.
of recommendations of National Commission on Rural Labour in 1991. The Central Government revised the National Minimum Wages according to the recommendations of different working groups from time to time. Apart from this Act, the social security cover to the unorganized sector workers is available through some central legislation having welfare funds\textsuperscript{75}. These funds are financed out of cess levied on manufactured products. The welfare funds are utilized for implementing welfare schemes for these workers coming under specific legislations.

3.4.6 The Employees’ Provident Funds & Miscellaneous Provisions Act, 1952

This is another welfare legislation enacted for the purpose of constituting a Provident Fund for employees working in factories and other establishments. The objective of this Act is to provide monitory assistance to industrial employees and their families when they are in distress or unable to meet family and social obligations and to protect them in old age, disablement, early death of bread winner and such other contingencies. It applies (a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed and (b) to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, 

specify, in this behalf. Provided that the Central Government may, after giving not less than two months notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than twenty as may be specified in the notification\textsuperscript{76}. The Act does not apply to employees of co-operative societies employing less than 50 persons and working without power and those belonging to Central, State Governments and Local Authorities. In \textit{Polythene Bag Factory v. Assistant P. F. Commissioner}\textsuperscript{77}, the Court held that section 16 of the Employee’s Provident Fund and Miscellaneous Provision Act, 1952 prescribe the category of establishment that is excluded from the preview of the Act. It was held that it is not dispute that till particular year, the number of employees was less than 20, but in specific year the number of employees has been reached 20. Therefore the Act becomes applicable to the establishment. An establishment which is not otherwise coverable under the Act can be covered voluntarily with mutual consent of the employers and majority of the employees.\textsuperscript{78} The Act is currently applicable to factories and other establishments engaged in about 180 specified industries\textsuperscript{79}. The Central Government has power to frame Employees’ Provident Fund Scheme, for any class of

\begin{itemize}
\item \textsuperscript{76} Section 1(3), The Employees’ Provident Funds & Miscellaneous Provisions Act, 1952.
\item \textsuperscript{77} 2015 I LLJ 301(Del).
\item \textsuperscript{78} Section 1(4) The Employees’ Provident Funds & Miscellaneous Provisions Act, 1952.
\item \textsuperscript{79} Industries covered by the Act are specified in Schedule I of the Act.
\end{itemize}
employees\textsuperscript{80}. The Fund is constituted on the basis of equal contribution from employers and employees\textsuperscript{81}. The normal rate of contribution is 12\% of the pay \textsuperscript{82} of the employees. Under this scheme the contributor can withdraw the amount from his account at the time of retirement from service, after attaining the age of superannuation or due to permanent or total incapacity, migration from India, retrenchment, or at the time of voluntary retirement. In \textit{Rajamma K.T. aged 66 years w/o Late V. K. Chachochan, Thrissur Dist., v.. Assistant Provident Fund Commissioner (Pension) Employees Provident Fund Organization, Sub regional office Kochi-17, Ernakulam District and Another}\textsuperscript{83} the Kerala High Court held that in the case of dependent parents if there is no nomination given by the employees the pension would have to be first granted to the father and upon the father’s death to the mother, till the latter’s life time. Merely the reason that the employee had nominated his father, the benefit conferred under Clause (aa) cannot be taken away for reason only of the employee having made a nomination. Provision of the beneficial scheme has to be interpreted broadly and liberally and in favor of the dependants of the deceased employee.

\textsuperscript{80} Section 5, The Employees’ Provident Funds & Miscellaneous Provisions Act, 1952.
\textsuperscript{81} Section 6, The Employees’ Provident Funds & Miscellaneous Provisions Act, 1952
\textsuperscript{82} The ‘wages’ includes basic wage, dearness allowance, including cash value of food concession and retaining allowance.
\textsuperscript{83} 2015 I LLJ 121 (Ker).
3.4.7 The Maternity Benefit Act, 1961

The Maternity benefit Act came into force on 12th December, 1961. This Act is enacted to regulate the employment of women in certain establishment for certain period before and after child-birth and to provide for maternity benefit and certain other benefits. The philosophy behind this legislation is that raising a family is a cherished goal for many working people, pregnancy and maternity are an especially vulnerable time for working women and their families. Expectant and nursing mothers require special protection to prevent harm to their or their infants' health, and they need adequate time to give birth, to recover, and to nurse their children. At the same time, they also require protection to ensure that they will not lose their job simply because of pregnancy or maternity leave. Such protection not only ensures a woman's equal access to employment, it also ensures the continuation of often vital income which is necessary for the well-being of her entire family. Safeguarding the health of expectant and nursing mothers and protecting them from job discrimination is a precondition for achieving genuine equality of opportunity and treatment for men and women at work and enabling workers to raise families in conditions of security. International Labour Organization Convention\(^{84}\) provides for 14 weeks of maternity benefit to women to whom the instrument applies. Women who are absent from work on maternity leave shall be entitled to a cash

benefit which ensures that they can maintain themselves and their child in proper conditions of health and with a suitable standard of living and which shall be no less than two-thirds of her previous earnings or a comparable amount. The convention also requires ratifying states to take measures to ensure that a pregnant woman or nursing mother is not obliged to perform work which has been determined to be harmful to her health or that of her child, and provides for protection from discrimination based on maternity. The standards also prohibit employers to terminate the employment of a woman during pregnancy or absence on maternity leave, or during a period following her return to work, except on grounds unrelated to pregnancy, childbirth and its consequences, or nursing. Women returning to work must be returned to the same position or an equivalent position paid at the same rate. Also provides a woman the right to one or more daily breaks or a daily reduction of hours of work to breastfeed her child. This is a social legislation enacted for the welfare of the working women. The Act prohibits working of the pregnant women for a specified period before and after delivery. It also provides for maternity leave and payment of monitory benefits for women workers during the period when they are out of employment due to pregnancy. The services of women worker cannot be terminated during this period in her absence except in case of gross misconduct. The maximum period for maternity benefit

is fixed as 12 weeks, six weeks before delivery and 6 weeks immediately after delivery. The judicial approach is also protective on this matter. In a recent decision *Jyoti Suhag v. State of Haryana and others*, Punjab and Haryana high court held that Act does not restrict maternity benefit to birth of only two children relevant rules restricting benefits to two children is not inconsonance with the provision of the Act. 88 In *Tata Tea Ltd. v. Inspector of Plantation*89, Kerala High Court has held that the employer con not compel the woman under maternity leave to work on the holiday under the National and Holiday Act,1958. In *Kiran v. State of Haryana*90, Punjab and Haryana High Court allowed the six month maternity leave to the contractual employee which is only admissible to the regular employees of the State Government. In this case Punjab and Haryana High Court followed the ratio given by the Supreme Court in *Secretary, State of Karnataka and Ors. v. Umadevi and Ors.*,91 and held that giving different treatment to the adhoc/contractual employees than what is given to the regular employees does not offend article 14 and 16 of the Constitution. In *Smt. Kavita Pant v. State of Uttarakhand and others*, Uttarakhand High Court held that the contractual employee working as data entry operator with State Power Corporation through outsourcing agency is an ‘employee’ through a contractual agency and is covered under the benefit of the Act hence cannot be denied maternity benefit. But in given contingencies where there benefits are not being given by agent or contractual agency same are also liable to be paid by the principal

89 1992 I LLJ 603.
90 2013 III LLJ 65 (P&H).
91 2006 II LLJ 722(SC).
employer.92 The Union Government is also positive on this matter and is ready to set the increase of the maternity leave for women employed in private firms from the existing 12 weeks to 26 weeks. Recently some amendment have been made in the Act introducing the Maternity Benefit (Amendment) Bill, 2016 in Parliament which regulates the employment of women in factories, mines, the circus industry, plantations and shops or establishments employing ten or more persons, except the employees who are covered under the Employees' State Insurance Act, 1948, for certain periods before and after child-birth and provides for maternity and other benefits. This amendment has been made on the recommendations of 44th Session of Indian Labour Conference (ILC), which recommended enhancing maternity leave under Maternity Benefit Act, 1961 from existing twelve weeks to twenty-four weeks. The salient features of the Maternity Benefit (Amendment) Bill, 2016 are as follows: (i) increase the maximum period of maternity benefit from the existing twelve weeks to twenty-six weeks, in case of women who have less than two surviving children and in other cases, the existing period of twelve weeks maternity benefit shall continue; (ii) to extend the maternity benefits to a "commissioning mother"93 and "adopting mother" and they shall be entitled to twelve weeks maternity benefit from the date the child is handed over; (iii) to facilitate "work from home" to a mother by inserting an enabling provision; (iv) to make it mandatory in respect of establishment having fifty or more employees, to have the facility of creche either individually or as a shared common facility within such distance as may be prescribed by rules and also to allow four visits to the creche by the woman daily, including the interval for rest allowed to her; (v) every establishment shall intimate in writing

92 2016 LAB. I.C. 4564 (Utr.).
93 Section 2. ‘(ba) “commissioning mother” means a biological mother who uses her egg to create an embryo implanted in any other woman;’.
and electronically to every woman at the time of her initial appointment about the benefits available under the Act. The provision of the Bill empowers the Central Government to make rules for the purpose of prescribing the distance for facility of creche in respect of every establishment having fifty or more employees. The maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks of which not more than six weeks shall precede the date of her expected delivery. The Bill also provides that where a woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death. It further provides that where a woman, having been delivered of a child, dies during her delivery or during the period immediately following the date of her delivery for which she is entitled for the maternity benefit, leaving behind in either case the child, the employer shall be liable for the maternity benefit for that entire period but if the child also dies during the said period, then, for the days up to and including the date of the death of the child. This Amendment Bill has been passed by Parliament\textsuperscript{94}.

\subsection*{3.4.8 The Payment of Gratuity Act, 1972}

Gratuity is a voluntary payment made by the employer to the employee in recognition of continuous, meritorious services and sincere efforts by the employee towards the organization. It is governed under the Payment of Gratuity Act 1972. It is a social security enactment. The provisions of the Act will apply to (a) every factory, mine, oilfield, plantation, port and railway company; (b) every shop or establishment within the meaning of any law for the time being in force in relation to shops and

\textsuperscript{94} Press Information Bureau, Government of India, 10 August, 2016.
establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months; (c) such other establishments or class of establishments, in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf.\textsuperscript{95} It further provides that a shop or establishment to which this Act has become applicable shall continue to be governed by this Act, notwithstanding that the number of persons employed therein at any time after it has become so applicable falls below ten\textsuperscript{96}. Every employee other than an apprentice irrespective of his wages is entitled to receive gratuity after he has rendered continuous service for five years or more. In a case Chandrabhaga Machindra Dudhade v. Mahatma Phule Karushi Vidhyapeeth, Ahmadnagar\textsuperscript{97} the court held that Payment of gratuity become applicable to every employee who has worked continuously for five years not withstanding whether he is a permanent employee or not. No exceptions is created by the payment of Gratuity act that act would not be applicable to those employee who are no permanent. Gratuity can be withhold in case of dismissal and cannot be denied merely on the basis of undertaking by workers for not claiming the same. Denial of gratuity in absent of forfeiture is improper.\textsuperscript{98} But the Government is entitled to retain gratuity payable to retired Government employee more that 50% during pendency of judicial proceeding subject to consideration of charges levelled with holding of gratuity, leave encashment and salary against suspension.

\textsuperscript{95} Section 1(3), The Payment of Gratuity Act, 1972.
\textsuperscript{96} Ibid. Section 1 (3a).
\textsuperscript{97} 2016 LAB. I.C. 4437 (Bom.)
\textsuperscript{98} Tamil Nadu Cooperative Milk Producer Federation Limited v. Joint Commissioner Labour, Chennai and other, 2016 LAB.I.C. 2000 (Mad.)
on the ground of pendency of criminal case is impermissible.\textsuperscript{99} In \textit{Rattan Brothers v. Appellate Authority and Others},\textsuperscript{100} the Court held that rejecting claim of wages along with bonus etc., on the ground that employee is not workman and only doing stitching work at home is not sustainable, once the petitione\textsuperscript{r} management has admitted that there was inter se relationship which continued for 20 long years controlling authority well within right to direct payment of gratuity with interest. The significance of this legislation lies in the acceptance of the principle of gratuity as a compulsory statutory retiral benefit. Thus, the main purpose and concept of gratuity is to help the workman after retirement, whether retirement is a result of the rules of superannuation, or physical disablement or impairment of vital part of the body. Thus, it is a sort of financial assistance to tide over post retiral hardships and inconveniences. It is derived from the word ‘gratuitous’, which means ‘gift’ or ‘present’. Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years, (a) on his superannuation, or (b) on his retirement or resignation, or (c) on his death or disablement\textsuperscript{101} or due to accident or disease.\textsuperscript{102} In the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor shall be deposited with the

\textsuperscript{100} 2015 I LLJ 262 (P&H).
\textsuperscript{101} The condition of five years is not necessary if service is terminated due to death or disablement.
\textsuperscript{102} Section 4, The Payment of Gratuity Act, 1972.
controlling authority (i.e. government officer) who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority. The Act provides that the amount of gratuity payable to an employee shall not exceed ten lakh rupees. In computing the gratuity payable to an employee who is employed, after his disablement, on reduced wages, his wages for the period preceding his disablement, shall be taken to be the wages received by him during that period, and his wages for the period subsequent to his disablement shall be taken to be the wages as so reduced. The benefits are calculated as fifteen days wages for every completed year of service or part thereof in excess of six months based on the rate of wages last drawn by the employee concerned.

3.4.9 The Building and Other Construction Workers’ (Regulation of Employment and Conditions of Service), Act, 1996

In building and other construction works more than eight million workers are engaged throughout the country. These workers are one of the most vulnerable segments of the unorganized labour in India and their work is of temporary nature, the relationship between employer and the employee is temporary, working hours are uncertain. Basic amenities and welfare facilities provided to these workers are inadequate. Risk to life and limb is also inherent. In pursuant to the decision of the 41st labour ministers conference held on 18th

103 Section 4(3), The Payment of Gratuity Act, 1972.
104 Section 4(4), The Payment of Gratuity Act, 1972.
may, 1995, the Committee of State Labour Ministers had expressed its consensus for the Central Legislation on this subject. In order to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures the building and other construction workers (regulation of employment and conditions of service) ordinance, 1995 (ord. 14 of 1995) was promulgated by the President on 3rd November, 1995, as the Parliament was not in Session. Subsequently ‘the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Bill’ having been passed by both the Houses of Parliament received the assent of the President on 19th August, 1996. The Act provides a definition to the Building Worker as “a person who is employed to do any skilled, semiskilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, in connection with any building or other construction work but does not include any such person (i) who is employed mainly in a managerial or administrative capacity; or. (ii) Who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature. The Act also defines the “employer” in relation to an establishment, means the owner thereof, and includes, (i) in relation to a building or other construction work

105 Section 2(e), The Building and Other Construction Workers’ (regulation of Employment and Conditions of Service), Act, 1996.
carried on by or under the authority of any department of the government, directly without any contractor, the authority specified in this behalf, or where no authority is specified, the head of the department; (ii) in relation to a building or other construction work carried on by or on behalf of a local authority or other establishment, directly without any contractor, the chief executive officer of that authority or establishment; (iii) in relation to a building or other construction work carried on by or though a contractor, or by the employment of building workers supplied by a contractor, the contractor\textsuperscript{106}. Further the Act deals with the registration of establishments and make it mandatory for the employers to get registered the establishments to which this Act applies on its commencement, within a period of sixty days from such commencement; and (b) in relation to any other establishment to which this Act may be applicable at any time after such commencement, within a period of sixty days from the date on which this Act becomes applicable to such establishment, by making an application to the registering officer for the registration of such establishment. The Act further provided that the registering officer may entertain any such application after the expiry of the periods aforesaid, if he is satisfied that the applicant was prevented by sufficient cause from making the application within such period\textsuperscript{107}. After registering the establishment a certificate of registration to the employer shall be issued by the registering officer. If the registration of any

\textsuperscript{106} Section 2(i), The Building and Other Construction Workers’ (Regulation of Employment and Conditions of Service) Act, 1996

\textsuperscript{107} Section 7, The Building and Other Construction Workers’ (Regulation of Employment and Conditions of Service), Act, 1996
establishment has been obtained by misrepresentation or by suppression of any material fact or if the provisions of the Act are not being complied with in relation to any work carried on by such establishment, the registration may be revoked by the registering officer by giving an opportunity to the employer of the establishment to be heard. Registration of building workers makes them entitle to the benefits under the Act. It also provides that every building worker who is between the age of eighteen and sixty and who has been engaged in any building or other construction work for not less than ninety days during the last twelve months is eligible for registration as a beneficiary of the building and other construction workers' welfare fund. A registered beneficiary, until he attains the age of sixty years, has to contribute to the fund at the rates specified by the state government. If any beneficiary is unable to pay his contribution due to any financial hardship, the building and other construction workers' welfare board can waive the payment of contribution for a period not exceeding three months at a time. It further says that if any beneficiary fails to pay his contribution for a continuous period of not less than one year, he ceases to be a beneficiary of the fund. But if the failure to pay the contribution was for a reasonable ground and the building worker is willing to deposit the arrears, his registration may be restored. The Act also contains the provisions for the constitution of welfare boards. According to Act every State Government are under an obligation, to constitute a board to be known as the “State Building and Other Construction Workers' Welfare Board” to exercise the powers conferred on, and perform the functions assigned to, it
under this Act. Functions of the Boards are to (a) provide immediate assistance to a beneficiary in case of accident; (b) make payment of pension to the beneficiaries who have completed the age of sixty years; (c) sanction loans and advances to a beneficiary for construction of a house not exceeding such amount and on such terms and conditions as may be prescribed; (d) pay such amount in connection with premium for group insurance scheme of the beneficiaries as it may deem fit; (e) give such financial assistance for the education of children of the beneficiaries as may be prescribed; (f) meet such medical expenses for treatment of major ailments of a beneficiary or, such dependant, as may be prescribed; (g) make payment of maternity benefit to the female beneficiaries; and (h) make provision and improvement of such other welfare measures and facilities as may be prescribed.

3.4.10 Mahatma Gandhi National Rural Employment Guarantee Act, 2005

This legislation is a flagship programme of Government of India. This Act (MGNREGA) is job guarantee legislation for rural Indians. It was come in to force on 5th September 2005 as National Rural Employment Guarantee Act. In 2009 this Act was renamed as Mahatma Gandhi National Rural Employment Guarantee Act, This Act is a major piece of legislation which reaffirmed India’s position as being a welfare State. The Act guarantees at least 100 days of paid work in rural areas in a year. This Act is widely hailed as definitely securing social justice to a very section of society, which is until remained largely, ignored and sidelined. It has been devised as a public works programme in India to address the issue of a rights-
based approach to development, provide income security to rural households through guaranteed wage employment, reduce/check distress migration from rural to urban areas; and create durable community assets (in rural areas) to trigger the overall development of about 600,000 Indian villages\textsuperscript{108}. The Act was notified initially in 200 most backward districts of the country with effect from February 02, 2006 and subsequently extended all over India with effect from April 1, 2008. Thus at present, this Act covers the entire country. The employment programme under the Act aims at enhancing livelihood security of the households in rural areas by providing at least 100 days of guaranteed wage employment in a financial year to every household whose adult members volunteer to do unskilled manual work. The Act seeks to create durable assets and strengthen the livelihood resource base of the rural poor. The choice of works suggested in the Act address causes of chronic poverty like drought, deforestation, soil erosion, so that the process of employment generation is on a sustainable basis. Other objectives of the Act include Reduction of distress migration from rural to urban and from one part of rural to another rural area, creation of durable assets in villages, Invigoration of civic and community life and enlivening of Panchayati Raj Institutions, as they have been entrusted to formulate, implement and monitor the scheme, empowerment of rural women by providing them the opportunity to earn income independently and participate in social groups (workers), overall development of the rural

\textsuperscript{108} ILO publication: MGNREGA - A review of decent work and green jobs in Kaimur District in Bihar, 2010
economy, promotion of inclusive growth and development. The categories of works permissible under Mahatma Gandhi National Rural Employment Guarantee Act, are water conservation, drought proofing (including plantation and afforestation), flood protection, land development, minor irrigation, horticulture and land development on the land owned by scheduled caste and scheduled tribes etc. Thus, Mahatma Gandhi National Rural Employment Guarantee Act is a powerful instrument for ensuring inclusive growth in rural India through its impact on social protection, livelihood security and democratic empowerment. The salient features of the Act are as follow:

(i) All adult members of a rural household willing to do unskilled manual work have the right to demand employment.

(ii) Such a household will have to apply registration to the Gram Panchayat

(iii) After verification, the Gram Panchayat will issue a Job Card with photograph of all adult members of the household willing to work under the programme.

(iv) The Job Card must remain in the custody of the household.

(v) Job Card holder can apply for work to the Gram Panchayat which will issue him/her a dated receipt of the work application

(vi) Employment will be provided by the Gram Panchayat (local self governing body) within 15 days of work application, failing which unemployment allowance will be paid.
(vii) Disbursement of wages has to be done weekly basis and not beyond a fortnight. Wages will be paid at the wage rate to the wage earners through their Bank/Post office accounts.

(viii) An annual shelf of works to be prepared in advance for each year.

(ix) A ratio of 60:40 for wage and material costs should be maintained at Gram Panchayat level.

(x) No contractors and no labour-displacing machinery shall be used in execution of works.

(xi) Panchayati Raj Institutions will have a principal role in planning, monitoring and implementation.

(xii) At least one-third of the workers should be women.

(xiii) Inbuilt incentive-disincentive structure to the State Government for guaranteeing employment.

This Act provides unemployment allowance also. If an applicant is not provided employment within fifteen days of receipt of his/her application seeking employment, he/she shall be entitled to a daily unemployment allowance. In the case of advance applications, employment should be provided from the date that employment has been sought, or within 15 days of the date of application, whichever is later, else unemployment allowance becomes due. The unemployment allowance will be paid as per Section 7 of the Act. The allowance will not be less than one-fourth of the wage rate for the first thirty days and not less than one-half of the wage rates for the remaining period of the financial year.

This legislation provides a legal guarantee for wage employment. It is a demand-driven programme where provision
of work is triggered by the demand for work by wage-seekers. On the employment issue this legislation is also half hearted. As per Government statistic there are 27.34 crore job seekers registered under the Act in the whole country.\textsuperscript{109} Under this Act 13.4 crore job cards have been issued, out of which, only 6.97 crore are active job cards\textsuperscript{110}. However employment guarantee is a type of social security but it does not cover the whole aspect of the social security. Secondly it deals with only unskilled and rural labour and does not cover all unorganized workers.

\subsection*{3.4.11 The Unorganized Workers’ Social Security Act, 2008}

This is the recent legislation enacted by Parliament, exclusively for the welfare of major labour force of unorganized sector. The aim and objective of this Act is to provide the social security to unorganised workers, which were not on the statute books before this enactment. This subject shall be minutely discussed in the next chapter of the thesis. However in this chapter aim is to discuss only the term social security.

\subsection*{3.5 Social Security: International Development}

The United Nations Organization\textsuperscript{111} has been assigned by the charter the task of promoting progress and international development.

\begin{itemize}
\item[\footnotesize{109}] \url{www.planningcommission.nic.in},
\item[\footnotesize{110}] \url{www.nrega.nic.in}
\item[\footnotesize{111}] The United Nations Organization is an International Organization founded on 24th October 1945 after the Second World War by 51 countries committed to maintaining international peace and security, developing friendly relations among nations and promoting social progress, better living standards and human rights. U.N. Headquarter is in New York, where 192 countries meet to solve international problems in a consensual manner. Due to its unique international character, and the powers vested in its founding Charter, this Organization can take action on a wide range of issues, and provide a forum for its 192 Member States to express their views through the General Assembly, the Security Council, the Economic and Social Council and other bodies and committees.
\end{itemize}
co-operation in economic, social, health, education and other related matters. The International Labour Organization, being a specialized agency of United Nation works in the field of social security and welfare of the labour. The role of International Labour Organization since its inception in 1919, in creating International Standards of social insurance and in promotion of social security has been significant. The International Labour Organisation through its Conventions and Recommendations has exerted its influence to extend the range and class of person protected and contingences covered and to improve the efficacy of benefits assured. The latest trends regarding the provision of comprehensive social security were brought out by its recommendation on Income Security and Medical Care, adopted in 1944. This was followed by adoption of Social Security (Minimum Standards) Convention, 1952, which embodied the universally accepted basic principles and common standards of social security. The application of these principles has guided development in this field throughout the world. In 1944, ILO convened ‘Philadelphia Recommendation’ relating to social security, and evolved certain guidelines for the income security in the event of certain contingencies like sickness, maternity, invalidity, old

113 It was formed after the First World War on 1919, as an Autonomous Institution by the Treaty of Versailles under League of Nations with a unique membership. It was an Inter-Governmental Institution with a tripartite structure including Government Representatives, Labour Organizations and Employer Organizations. Its role is to maintain the social peace for improvement of the situation of the world’s worker. Its work has been pioneering from the date of its inception; it is playing an important role in formulating standards with a view to extending social security benefit to larger section of people in greater number of contingencies.
age etc. This convention was actually the adoption of Atlantic Charter of United Nation which declares and contemplates fullest collaboration between all Nations in economic field for securing improved labour standards, economic advancement and social security to all. The Philadelphia Declaration recognizes the solemn obligation of the International Labour Organization to further among the Nations of World, programmes which will have to achieve “the extension of social security measures to provide a basic income to all, in need of such protection and comprehensive medical care”. Coordination of social security legislations among Countries have been a major concern of International Labour Office along with International and Inter-Governmental Organizations in the social security field. International Labour Office serves as the secretariat of the International Social Security Association which groups together government services as well as central institutions and national unions for social security of different countries.

International Labour Office sets ideal standards for

115 Atlantic Charter 1941, “The objects of the Charter were securing for all, improved labour standards, economic advancement and social security”. (Adopted by UN in 25th General Assembly 1995).
117 The ISSA was founded in 1927. It is “a privileged forum for social security institutions throughout the world and an acknowledged partner with everyone interested in the appropriate development of social protection adapted to the genuine needs of populations, [http://www.issa.int/engl/homef.htm](http://www.issa.int/engl/homef.htm).
118 The principal objective of the ILO is the setting up the International Labour Standards. Conventions are International Treaties and creates obligation on countries which ratify them. Recommendations are non-binding in nature and set out policies for actions for states. The ILO has so far adopted 183 conventions and 204 recommendations till 2015, out of which 22 conventions and 16 recommendations, respectively encompassing subjects such as worker's fundamental rights, worker's protection, social security, labour welfare, occupational safety and health, women and child labour, migrant labour, indigenous and tribal population, etc. [http://www.cecindia](http://www.cecindia).
their universal application to ameliorate the working conditions of the workers and to ensure social justice to them. These universal standards are known as conventions and recommendations. All these conventions and recommendations have been discussed in the following pages.

3.5.1 Convention on Women, 1919

ILO in its first session which was held in 1919 adopted this convention. Its aim is to provide protection to the women workers who are in their family-way, to stay at home with appropriate health care, to away from work place. They are also conferred with right to certain maternity benefits before and after child birth. It defines ‘women’ as any female person irrespective of age or nationality, whether married or unmarried and the ‘child’ means legitimate or illegitimate. This convention lays down that ‘in any private or public, industrial or commercial undertakings or in any branch thereof a woman shall not be permitted to work during 6 weeks following her confinement. She should be made entitle to leave up to 6 weeks before confinement. During the period of absence from work she shall be paid benefits sufficient for the full and healthy maintenance of her and her child from an insurance

119 Core Conventions of the ILO: The eight Core Conventions of the ILO (also called fundamental/human rights conventions) are: Forced Labour Convention (No. 29) Abolition of Forced Labour Convention (No.105) Equal Remuneration Convention (No.100) Discrimination (Employment Occupation) Convention (No.111) (The above four have been ratified by India). Freedom of Association and Protection of Right to Organized Convention (No.87) Right to Organize and Collective Bargaining Convention (No.98) Minimum Age Convention (No.138) Worst forms of Child Labour Convention (No.182) (These four are yet to be ratified by India).
http://labour.nic.in/ilas/indiaandilo.htm.
120 Article 2, Convention on Women, 1919.
system or from public funds as determined by a competent authority. The convention provisions are also deals with illness arising out of her pregnancy or confinement and debar a notice of dismissal and make such a notice unlawful if her absence is due to illness, during pregnancy or resulted out of pregnancy or confinement. This convention was revised in 1952 and a new convention titled as Maternity Protection Convention (Revised) came in to force. However, the revision of this convention did not affect the applicability of earlier convention and it is still open for ratification.

3.5.2 Workmen’s Compensation (Agriculture) Convention, 1921

This Convention aimed at providing compensation in occupational accidents to agricultural workers arising out of and in the course of employment. The principles contained in the convention were subsequently revised and included in Employment Injury Benefits Convention, 1964. This convention has been ratified by 77 States, some of these are, Australia, Austria, Belgium, Bosnia, Bulgaria, Columbia, Czechoslovakia, Fiji, Haiti, New Zealand. It is unfortunate that India being a largest democratic country in world and having a constitutional mandate for the welfare of working class or its citizen has yet not ratified this convention.

121 Article 3, Convention on Women, 1919.
122 ILO, Convention No.12.
123 ILO, Convention No.121.
3.5.3 Maternity Protection (Agricultural) Recommendation, 1921

It was superseded by revised Maternity Protection Convention. 1952 Maternity Protection Recommendation is supplementary to 1952 Maternity Protection Convention. It suggests possible improvements on the protection provided under the Convention like extension of maternity leave to a total of 14 weeks, higher rate of cash benefits, more exclusive medical care. It also recommends prohibition of the employment of pregnant women and young mothers on specified type of work prejudicial to their health.

3.5.4 Workmen Compensation (Accidents) Convention, 1925

The objective of this Convention is to provide compensation to workers injured in industrial accidents. The injured worker is entitled to medical, surgical and pharmaceutical aid at the cost of employer or insurance institution including the supply and renewal of surgical appliances. If the worker is permanently incapacitated or dead, he or his dependants are entitled to get compensation as periodical payments. The periodical payment may be converted with lump sum in exceptional cases and must be increased if the worker needs the constant help of another person. The States are under obligation to frame legislation for safeguarding in all circumstance the payment of compensation in the event of insolvency of the employer or insurer. National legislation must provide for supervisory measures to prevent abuses. This convention is also revised by the Employment
Injury Benefit Convention, 1964 and is still open for ratification.

3.5.5 Workmen’s Compensation (Occupational Disease) Convention, 1925

This Convention provided details of such diseases, their nature and cause which have to be considered as occupational diseases having arose out of the respective employments. The Conventions contemplates that compensation shall be payable to workman incapacitated by occupational diseases or in case of death from such diseases to their dependants. This Convention provides a schedule of occupational diseases and of substances which cause occupational diseases. It was revised in 1934\textsuperscript{124}.

3.5.6 Convention on Equality of Treatment (Accident Compensation) 1925

This Convention\textsuperscript{125} contemplates equality of treatment for national and foreign workers as regards workmen’s compensation for accidents. The member country has to assure the foreign sufferer of personal injury due to industrial accidents happening in its territory, or to their dependants, the same treatment as to that of national in respect of compensation. The equality of treatment has to be guaranteed to foreign workers and their dependents without any condition as to residence, by the States ratified the Convention.

\textsuperscript{124} ILO, Convention No.42, \textit{Workmen’s Compensation (Occupational Diseases)} Revised, 1934.
\textsuperscript{125} ILO, Convention No.19.
3.5.7 **Sickness Insurance (Industry) Convention 1927**

This Convention was adopted on 25th May 1927. It deals with sickness insurance for workers in industry and commerce and domestic servants. It requires the member countries to set up compulsory Sickness Insurance System\(^{126}\) which shall apply to manual and non-manual workers including apprentices employed by industrial undertakings, commercial undertakings, out workers and even domestic servants. However the convention allows exemption to special schemes with more benefits and employees of special categories specified as in national laws or regulations. The sickness benefit shall be payable in cash to an insured person who is rendered incapable of work by reason of his abnormal bodily or mental health. It prescribes time periods and conditions under which the cash benefits can be withheld. The convention also provided the service of doctor or medicine even after period of sickness benefit and extending the benefits to the dependants. It is again clarified that sickness benefit granted under this convention shall not affect the obligations arising out of the convention relating to women and the Maternity benefits. The convention was revised by the Medical Care and Sickness Benefit Convention, 1969.

3.5.8 **Sickness Insurance (Agricultural) Convention, 1927**

This Convention\(^{127}\) is simultaneously adopted along with Convention No.24\(^{128}\) relating to the same benefit in respect of

\(126\) As per Convention’s provisions the insured and their employers shall share financial resources of Sickness Insurance Scheme.

\(127\) ILO, Convention No.25.
workers working in industries, commercial undertakings and domestic servants. The provisions of this convention are same as that of Sickness Insurance (Industrial) Convention, 1927.

3.5.9 **Unemployment Provision Convention, 1934**

This Convention\(^\text{129}\) was adopted to ensure benefit or allowances to the involuntary unemployed persons. It deals with various aspects of providing unemployment benefit, condition for eligibility and the period for which such employment benefit is payable and also the event on the happening of which such unemployment benefit ceases to be. This Convention also contemplates that each Member State of the ILO that ratifies the Convention shall undertake to maintain a scheme for the payment of benefit to the persons who are involuntary unemployed. Such schemes can be compulsory or voluntary or a combination of both. The National law of the ratifying Member-State may provide for the payment of benefit on allowance and also the conditions under which a person passes from benefit to allowance. This convention applies to all persons employed for wages or salary. It also provides for the age-limit to be prescribed by the national law for the unemployment benefit and also for qualifying period of eligibility for benefit or allowance. The person is disqualified to receive the unemployment benefit if he refuses to accept any suitable employment, to undergo training or if he has lost his employment as a direct result of a stoppage of work due to trade dispute or has left it voluntarily.

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129 ILO, Convention No.44.
without just cause. If the claimant tried to receive any benefit fraudulently or fails to comply with the instruction of a public employment exchange, then also he is disqualified to receive any unemployment benefit.

3.5.10 Income Security Recommendation, 1944 (No. 67)

Recommendation No. 67 is at the origin of the development of social security in ILO instruments and can be considered the blueprint for comprehensive social security systems. Together, it establish a comprehensive system of income security and medical care protection for each of the nine classical branches of social security in addition to general neediness (called “general want” in 1944), with the objective of relieving want and preventing destitution. This recommendation aim at formulating general principles to be followed by States in making income security schemes for employed persons and their dependants. It recommends that such schemes should be founded on compulsory social insurance supplemented by assistance measures. The risks covered under this recommendation are sickness, maternity, invalidity, old age, death of the wage earner, unemployment, emergency expenses and employment injuries.

3.5.11 Medical Care Recommendation, 1944 (No. 69)

This Recommendation deals with the concept of medical care as a guarantee for all members of the community whether gainfully occupied or not i.e., deriving from every person’s right to health. It lays down general principles to be followed by States in developing medical care services and organization and administration of such services. The recommendations
no.67 and 69 are grounded on the guiding principle of universal coverage following which income security and medical care services should be extended to the population as a whole through a combination of social insurance and social assistance.

### 3.5.12 Social Security (Minimum Standards) Convention, 1952

This Convention\(^\text{130}\) contains the provisions relating to social security and establishes minimum standards for nine fundamental branches of social security namely medical care, sickness, unemployment, old age, employment injury, family, maternity, invalidity, and survivor’s benefit. The principles anchored in this Convention are, guarantee of defined benefits, participation of employers and workers in the administration of the schemes, general responsibility of the State for the due provision of the benefits and the proper administration of the institutions; collective financing of the benefits by way of insurance contributions or taxation. The Member States are allowed to ratify the Convention partially. But the partial ratification is subjected to certain conditions \(viz.\), ratifying states must secure at least three benefits out of nine benefits covered by the convention and at least one from Part iv\(^\text{131}\), v\(^\text{132}\), vi\(^\text{133}\), ix\(^\text{134}\) and x\(^\text{135}\). The persons covered are prescribed classes of employees, active population of residents and families of

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\(^{130}\) ILO, Convention No.102.

\(^{131}\) It deals with unemployment benefit.

\(^{132}\) It deals with old age benefit.

\(^{133}\) It deals with employment injury benefit.

\(^{134}\) It deals with invalidity benefit.

\(^{135}\) ILO Convention No.102 deals with survivors benefit.
beneficiaries. The instrument indicates the manner of calculation and applicable limits. Equality in treatment of Non-Nationals and Nationals is also ensured by this convention, if money is paid from public fund.

3.5.13 Maternity Protection Convention, 1952

It covers industrial undertakings and non-industrial and agricultural occupations, including home workers and domestic servants. It aim is to secure to women workers, a substantial period of leave with subsistence and medical benefits before and after confinement and safeguard their continued employment.

3.5.14 Equality of Treatment (Social Security) Convention, 1962

This Convention is designed to secure equal treatment for Nationals and Non-Nationals including Refugees and Stateless persons in case of social security except in special schemes for public servants, war victims and public assistance by ratifying States. But the equality is assured to the non-nationals of another ratifying States in case of medical care, sickness, maternity, invalidity, old age, and survivor’s employment or family benefits. Equal treatment is guaranteed regardless of residence, on condition of reciprocity. The States, accepting obligation are bound to make payment on the basis of invalidity, old age, and survivor’s employment and family benefits. The States can impose conditions in relation to the minimum period of residence for granting benefits of maternity, unemployment survivors and old age benefits.
3.5.15 Employment Injury Benefits Convention, 1964

This Convention regulates the compensation for injuries resulting from industrial accidents and occupational diseases. The Convention lays down the criteria of eligibility and dependence for availing the benefit of compensation. It lays down standards in respect of contingencies to be covered, contents duration, rates etc. of the benefits to be provided in case of employment injury caused by accidents and occupational diseases. Each Member State which ratifies this Convention is required to prescribe a definition of “industrial accident” including the conditions under which a commuting accident is considered to be an industrial accident. Each member country also has to describe the list of diseases which shall be regarded as occupational diseases which shall be regarded as occupational diseases under prescribed conditions. The Convention prescribes the nature of medical care and allied benefits which should be available to the injured workman. Medical benefits include not only services of a medical practitioner and hospitals but also dental, pharmaceutical and other surgical supplies. It also prescribes that the employer should provide at the place of work facilities for emergency treatment of persons sustaining a serious accident. The convention also prescribes for cash benefits in respect of loss of earning capacity, periodically or lump sum, for its proper utilization by the injured workman. The compensation in case of the death of the workman is prescribed in the nature of periodical payments to the widow or a disabled and dependent widower and it also provides for funeral expenses. Ratifying states also promote occupational
safety and health, and provide rehabilitation and placement services for disabled persons.

3.5.16 Employment Injury Benefit Recommendation, 1964

This Recommendation is supplementary to the Convention 1964 and it envisages the extension of coverage to members of co-operatives, self-employed persons, those engaged in small scale business or firms or those undergoing training for future occupational employment or trade. It is also recommended to other member of voluntary bodies engaged in combating natural disasters, with saving lives and property or with maintaining law and order. It calls for periodical adjustment of rates of cash benefits payable under the Convention in case of total loss of earning capacity.

3.5.17 Medical Care and Sickness Benefits Convention, 1969

This Convention is concerning medical care and sickness benefit. It revised two earlier, 1927 convention relating to sickness insurance industry and agricultural conventions. This document contains 45 Articles. This Convention regulates the protection of worker in respect of entitlement to medical care of a curative and preventive nature and compensation for loss of earning through sickness. Ratifying States are responsible to secure the provision of medical care and sickness benefit to employees or prescribed classes of persons. Medical care can also be extended to wives and children of persons covered and must include in particular hospitalization, pharmaceutical and surgical supplies and dental treatment. Sickness benefit must be periodical payment and be reckoned, as regards the wage of male member of beneficiary’s previous earnings or at a
sufficient rate to maintain the beneficiary’s family in health and decency. Benefits must be available equally to Nationals and Non-Nationals. The rate of cash benefits payable to the standard beneficiary should not be less than 60% of the earnings of the class of employees to which the beneficiary belongs.

### 3.5.18 Maintenance of Social Security Rights Convention, 1982

This Convention is considered as supplementary to the Social Security (Minimum Standards) Convention 1952, Equality of Treatment (Social Security) Convention, 1962 and Maintenance of Migrant Workers’ Rights in Social Security (Revision of Convention No. 48). Under this convention various branches of social security are offered. It lays down that each member shall endeavor to participate the members concerned in schemes for the maintenance of rights in the course of acquisition, as regards each branch of social security and for which every one of these members has legislation in force, for the benefit of the persons who have been subject to their legislation. Such schemes for maintenance of rights in case of acquisition shall provide for periods of insurance, employment, occupational activity or residence to be completed under the legislation of the concerned members and it should

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136 The ‘beneficiary’ means with wife and two children.
137 ILO, Convention No 157.
138 Article 2 of the Maintenance of Social Security Rights Convention(no.157) 1982 states that this convention(no. 157) applies to those of the following branches of social security for which a Member State has legislation in force: (a) medical care; (b) sickness benefit; (c) maternity benefit; (d) invalidity benefit; (e) old-age benefit; (f) survivors’ benefit; (g) employment injury benefit, namely benefit in respect of occupational injuries and diseases; (h) unemployment benefit; and (i) family benefit.
provide for the participation in voluntary insurance or optional continued insurance scheme acquisition, maintenance or recovery of rights,\textsuperscript{139} periods completed currently under the legislation of two or more members shall be reckoned only once\textsuperscript{140}. The convention requires the Members to provide schemes of maintenance and to determine formula for awarding, invalidity, old age and survivor’s benefits and pensioners benefit in respect of occupational diseases, and cost involved. The convention requires that Members concerned shall endeavor to participate in schemes for the maintenance of rights acquired under their legislation, as regards each of the following branches of social security for which each of these Members has legislation in force: medical care, sickness benefit, maternity benefit and benefit in respect of employment injuries, other than pensions and death grants. These schemes shall guarantee such benefits to persons resident or temporarily resident in the territory of one of these Members other than the competent Member, under conditions and within limits to be determined by mutual agreement between the Members concerned\textsuperscript{141}. Each member is also required to promote the development of social services to assist persons covered by this convention, particularly migrant workers, in their dealings with the authorities and institutions as well as promote the welfare of the person and his family\textsuperscript{142}.

\textsuperscript{139} Article 7, Convention on Maintenance of Social Security Rights, 1982.
\textsuperscript{140} Ibid, Article 7(2).
\textsuperscript{141} Ibid, Article 10.
\textsuperscript{142} Ibid, Article 14.
3.5.19 Maintenance of Social Security Rights
Recommendation, 1983

It aims to provide minimum guidelines to be followed by the Members who ratified the Convention. The recommendation and its annexure contains model provisions for all those instruments scheme for various benefits, trilateral or multilateral agreements that are required to be implemented or concluded between the parties.

3.5.20 Convention on Employment Promotion and
Protection against Unemployment, 1988

This Convention came into force in 17th October 1991. It is a comprehensive convention and provides a detailed scheme suitable for any enactment. It constitutes that each Member shall take appropriate steps to co-ordinate its system of protection against unemployment and its employment policy. To this end, it shall seek to ensure that its system of protection against unemployment, and in particular the methods of providing unemployment benefit, contribute to the promotion of full, productive and freely chosen employment, and are not such as to discourage employers from offering and workers from seeking productive employment.\textsuperscript{143} Further it deals with full productive and freely chosen employment\textsuperscript{144}. It envisages that each member shall endeavor to establish special programmes to promote additional job opportunities and employment assistance and encourage freely chosen and productive employment for identified categories of

\textsuperscript{143} Article 2, Convention on Maintenance of Social Security Rights (1982).
\textsuperscript{144} Article 7, Convention on Maintenance of Social Security Rights (1982).
disadvantaged persons\textsuperscript{145} having difficulties in finding lasting employment such as women, young workers, disabled persons, older workers, the long-term unemployed, migrant workers lawfully resident in the country and workers affected by structural change.\textsuperscript{146}. This convention details the contingencies to be covered by such schemes which include loss of earning due to partial unemployment, suspension or reduction of earning, etc. This convention explains the methods of protection and such methods may consist of contributory or non-contributory systems or a combination of both. It also specifies various benefits to be provided. It deals with the quantum of benefit, qualifying period, calculation of periodical payments and other conditions that may be prescribed for availing the benefit. It also provide for duration of any benefit including medical benefit and conditions under which such benefits can be varied or suspended.

3.5.21 Recommendation on Employment Promotion and Protection against Unemployment, 1988

This Recommendation is supplementary to the Convention of 1988. It deals with general provision and promotion of productive employment, protection of unemployed persons and the development and improvement of systems of protection. It calls upon Member States to work out their National policy for the promotion of full, productive and freely chosen employments. The International Labour Organization offers its co-operation and technical advice for

\textsuperscript{145} Means women, young workers, disabled persons, older workers, migrant workers etc.

\textsuperscript{146} Article 8, Convention on Maintenance of Social Security Rights, 1982.
better implementation of the social security schemes for unemployment benefits and also to set up a national provident fund to provide periodical cash payments to the holders of the account in the fund.

**3.5.22 Domestic workers convention, 2011(189)**

Recognizing the significant contribution of domestic workers to the global economy and considering that domestic work continues to be undervalued and invisible and is mainly carried out by women and girls, who are mostly migrant, or member of disadvantaged communities and who are vulnerable to discrimination in respect of conditions of employment and of work International Labour Organisation adopted this convention. The objectives of this convention are to take measures to ensure the effective promotion and protection of human rights of all domestic workers. The member states are bound to ensure the right to collective bargaining, fair terms of employment as well as decent working conditions and minimum wage coverage. This convention states that every domestic worker has the right to a safe and healthy working environment.

**3.5.23 Social Protection Floors Recommendation, 2012 (No. 202)**

This Recommendation is the first International instrument to offer guidance to countries to close social security gaps and progressively achieve universal protection through the establishment and maintenance of comprehensive social security systems. To this aim, the Recommendation calls for (1) the implementation, as a priority, of social protection
floors (SPF) as a fundamental element of national social security systems and as a starting point for countries that do not have a minimum level of social protection; and (2) the extension of social security with a view to progressively ensure higher levels of social security to as many people as possible according to national economic and fiscal capacity and as guided by Convention No. 102 and other ILO social security standards. Social protection floors should comprise at least four basic social security guarantees including access to essential health care and basic income security for children, persons of active age who are unable to earn sufficient income, and older persons and should be set at a level that allows people to live in dignity. Through the social protection floors concept, Recommendation No. 202 provides the minimum core content of the human right to social security. A major achievement of the recommendation is the policy guidance it offers States to give effect to their general and overall responsibility to establish and maintain these comprehensive social security systems. It does this through a set of principles that provide instructions for the design and implementation of social security programs. These guiding principles intentionally echo both fundamental human rights principles but also core principles related to the good governance, delivery and financing of social security systems.

3.5.24 Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204)

This Recommendation recognizes the lack of protection of workers in the informal economy, and provides guidance for improving their protection and facilitating transitions to the
formal economy. It also recognizes that decent work deficits that mean the denial of rights at work the absence of sufficient opportunities for quality employment, inadequate social protection and the absence of social dialogue. These are most pronounced in the informal economy and that most people enter the informal economy not by choice, but as a consequence of a lack of opportunities in the formal economy and in the absence of other means of livelihood. Recognizing the complexity of informality, this recommendation covers various policy areas, including legal and policy frameworks, employment policies, rights and social protection, incentives, compliance and enforcement, freedom of association, social dialogue and role of employers’ and workers’ organizations, as well as data collection and monitoring.

All social security Conventions adopted by International Labour Organization have a difficulty in defining the protected class of people or persons. It always has tried to expand the categories of persons covered while Member States have tried to limit the prescribed categories to a percentage of waged workers or residents. The Social Security (Minimum Standard) Convention, 1952 aims at providing social security benefits ensuring a person’s right to live in a healthy and decent conditions and hence the implementation requires the right to access to all. The level of benefits depends on the category of persons covered depends on the wages and needs of them. The Member State may declare that its national schemes will protect an acceptable percentage of protected classes of workers, but this leaves out many categories of the population, such as non-industrial workers, self employed and workers in
informal sector who often exercise several economic activities. Thus social protection has been the historical goal of social security regime which is seen as specific mean of promoting social protection. The increasing poverty over the world governs the quest for comprehensive approach to both social protection and social security. Such an approach would facilitate social cohesion and inclusion, and protect individuals from social risks. Since beginning of 1990s, the ILO’s social security division has been given a mandate by the International Labour Conference to search for solutions that can include “other workers” in a social protection scheme.

In view of the above discussion it can be concluded that ILO since its inception has played a significant role for providing social security to workers across the World.

3.6 Informal Workers and need of Social Security

The social security needs of informal workers include, health care costs, survivors’ benefits, disability benefits, maternity and child care benefits (all four addressed by International Labour Organization Convention No. (102). The right to social security, as guaranteed in the ICESCR, makes no difference to the ILO conventions on social security. ILO has held several conventions on the rights of the workers. Among all these conventions, India has ratified only four conventions namely Workmen’s Compensation (Occupational Diseases) Convention, 1925, Equality Treatment (Accident Compensation), 1925, Workmen’s Compensation (Occupational Diseases) Revised Convention, 1934; and Equality of

Treatment (Social Security) Convention, 1962. ILO is committed to the end of social justice. India being a welfare State is also committed to the same goal. The approach of India with regard to International labour standards has always been positive. The ILO instruments have provided “guidelines and useful framework for the evolution of legislative and administrative measures for the protection and advancement of interest of workers”. But, India’s response regarding ratification of ILO conventions on social security is very poor. However the implementation of the ILO conventions can be noticed through the legislatives and administrative actions of the Government.

3.7 Constitutional Provisions Relating to Social Security

At the dawn of Indian independence, political thinking of the whole World was mainly centered on three political systems viz., Capitalism, Marxism and Socialism. When the Constitution was in the process of making, the framers were much influenced by socialistic thought and visualized an egalitarian social order by incorporating several provisions for eliminating inequalities and prevention of concentration of wealth. Thus the Constitution of India provides certain rights namely, right of equality before law, right to unionization,

148 India has not ratified the Social Security Minimum Standard Convention 1952.
149 Ministry of Employment and Labour explains that ratification imposes legally binding obligations and hence India is careful in ratifying Conventions. India ratifies a Convention only if all laws and practices are in conformity with the relevant convention. India adopted a strategy to proceed with progressive implementation of standards and ratification at a later stage.
151 Article 14 (c), Constitution of India.
freedom of speech and expression\textsuperscript{153}, right against forced labor\textsuperscript{154}, right against child labor\textsuperscript{155}, right to livelihood\textsuperscript{156}, equal pay for equal work\textsuperscript{157}, right to appropriate conditions of work\textsuperscript{158}, and maternity relief for the female working force in the country. While some of these right are constitutional guaranteed, such as right of equality before law, right to unionization, freedom of speech and expression, right against forced labor, and right against child labor are justifiable\textsuperscript{159} in the court of law, others are not\textsuperscript{160}. The Constitution of India envisages that constitutionally guaranteed labor rights are to be realized through appropriate legislative enactment. The Directive principles have a direct bearing on labour. On the relevancy and validity of the directive principle, Dr.B.R.Ambedkar in Constituent Assembly stated\textsuperscript{161}:

"In enacting this part of the constitution the assembly is giving certain direction to the future legislation and the future executive to show in what manner they are to exercise the legislative and the executive power they will have. Surely it is not the intention to introduce in this part these principles as mere pious declaration, it is intension of the assembly that in future both the legislature and the executive should not merely pay lip service to these

\begin{thebibliography}{9}
\bibitem{152} Article 19 (c), \textit{Constitution of India}.
\bibitem{153} Article 19 (a), \textit{Constitution of India}.
\bibitem{154} Article 23, \textit{Constitution of India}.
\bibitem{155} Article 24, \textit{Constitution of India}.
\bibitem{156} Articles 21 and 39, \textit{Constitution of India}.
\bibitem{157} Article 39 (d), \textit{Constitution of India}.
\bibitem{158} Article 42, \textit{Constitution of India}.
\bibitem{159} Part III, \textit{Constitution of India}.
\bibitem{160} Part IV, \textit{Directive Principles of State Policy, Constitution of India}.
\end{thebibliography}
principles but that they should be made the basis of all legislative and executive action they may be taking hereafter in the matter of governance of the country”.

Workers in India are protected under the Socialist Constitution that envisages providing social justice for its citizens. In promoting social justice the Constitution of India distinguishes between rights and goals. The fundamental rights guaranteed in Part III of the Constitution are enforceable rights, whereas the directive principles in Part IV are Unenforceable goals or aspirations. If a citizen of (or a person in) the country is deprived of his fundamental rights (which are mostly civil and political rights), the deprived person can ask the Court to enforce his rights through the issuance of appropriate Writs such as habeas corpus, mandamus, quo warranto, prohibition and certiorari. But on the other hand, the directives in Part IV (which are principally economic and social rights) need some proactive action and economic expenditure on the state’s part. Therefore, these rights have been made conditional upon the availability of resources at the State’s disposal. Accordingly, the Courts cannot enforce goals declared under this Part of the

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162 Preamble to the Constitution of India. Jawaharlal Nehru, India’s first Prime Minister, addressing the Constituent Assembly members, noted: The first task of this Assembly is to free India through a new constitution to feed the starving people and cloth the naked masses and to give every Indian fullest opportunity to develop himself according to his capacity. At present the greatest and most important question in India is how to solve the problem of the poor and the starving his problem. If we cannot solve this problem soon, all our paper constitutions will become useless and purposeless. Constituent Assembly of India Debates (Proceedings), Vol. II, No. 3, 22 January, 1947.

163 Even though The Constituent Assembly vigorously debated whether directive principles of state policy should be made enforceable or not, they finally settled on the unenforceability of directive principles. See generally Granville Austin, The Indian Constitution: Cornerstone of a Nation (Bombay: Oxford University Press, 1976) at 75-83.
Constitution. Thus the labour jurisprudence drives their origin, inspiration and strength from the Constitution. However, the high powered National Commission for Enterprises in the Unorganized Sector report reveals that legislative enactment realizing constitutional guarantees are inadequate so far as informal workers are concerned. Accordingly, informal workers in India remain excluded from constitutional guarantees. According to the National Sample Survey Organization (NSSO) data (2009-10) only seven percent of the total workers in the country are formal workers. The rest of the ninety-three percent of workers are unorganized (informal) workers. For this enormous percentage of informal workers in India, the NCEUS notes that the real challenge is to improve the overall conditions of employment and livelihood of the workers. The Commission recognizes that the problem with employment in the informal sector is essentially a problem of quality of employment. The Commission argues that employment means job security, income security, social security, and decent conditions of work.

The welfare guarantees mentioned in the constitution are categorized as civil, political and socio-economic rights under the Constitution. Civil-political rights such as right to speech and expression, right to assembly, right to form association

and union are categorized under the Fundamental Rights. Socio-economic rights such as right to work, right to unemployment assistance, right to livelihood, equal pay for equal work, right to appropriate conditions of work, maternity relief are listed under the category of Directive Principles of State Policy. A careful perusal of the fundamental rights and the directive principles with respect to work and workers clarify that most of the guarantees are aimed at promoting a well-rounded dignified human life for workers. But despite this mandate it is mainly informal workers who live below the poverty line in India. Informal workers suffer from multiple deprivations compared to formal workers in India. There is plethora (Central and State’s) of welfare legislations in force in India, mostly for formal workers. Formal workers receive comprehensive benefits ranging from employees’ state insurance to maternity benefits. Informal workers, on the other hand, mostly remain untouched from the scope of these legislations. The NCEUS in its different report, conducted for comprehensive reviews of Indian labor welfare and social protection laws, in order to ascertain the coverage of informal workers under those laws reveals that these laws afford protection to only a small section of informal workers in the country. The NCEUS also documents the “abysmally poor” implementation of labor laws in India. The small size of labour administration personnel, the exclusive focus on the

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168 Part III, Constitution of India.
169 Part IV, Constitution of India.
171 Ibid. p.164.
formal sector, the inadequacy of infrastructure, and the lack of representative voices for informal workers are factors responsible for poor enforcement of labour Law\textsuperscript{172}. Thus, the exclusion of informal workers from legislative protection happens at two stages. First, informal workers are largely excluded from beneficial legislation and second, even when they are allowed legislative protection, such protection does not materialize because of non enforcement\textsuperscript{173}. What follows from the Commission’s review of labor laws is that labor laws in India are biased towards formal workers employed in an industry. Even though it is possible to argue that some of these laws address some informal workers, the majority of the statutes are not designed for them. The guarantees like job security, income security, social security, and decent conditions of work, provided under the Indian constitution are still unrealized for informal workers in India.

Directive Principles and Fundamental Rights on Social Security. The preambulatory objective of Indian Constitution is to secure justice- social, economic and political to its all citizens. The basis and origin of this concept was the ‘Objective Resolution’\textsuperscript{174} moved by Nehru in the Constituent Assembly. The founding fathers’ vision was to build up the nation on the


\textsuperscript{174} Nagabhooshanam, P., \textit{Social Justice and Weaker Sections: Role of Judiciary}, p.4, (ed. 2000). The object resolution states: “It shall be guaranteed and secured to all the people of India justice-social, economic and political, equality of status of opportunity before the law, freedom of thought, expression, belief, faith, worship, vocations, associations-but all are subject to law and public morality.”
strong foundation of socio-economic justice, which was denied to the millions of people in India. The concept of social justice therefore becomes a *sine qua non* for a true and purposive democratic State, particularly in India wherein the social stratification perpetrated for a long time. It was the philosophy of restoring the dignity of poor, the weak and the oppressed. Hence a modern State is expected to engage in all activities necessary for the promotion of the social and economic welfare of the community\textsuperscript{175}. Thus the aim of Directive Principles is to attain a democratic, socialistic society, where an individual has a right to the most basic necessities of life including food, clothing, housing, medical care and the right to social security in the event of unemployment, sickness, old age, disability, widowhood etc. The welfare State accepts the responsibility of meeting these legitimate demands. The social responsibility of modern welfare State extends to the field of human rights and imposes an obligation upon the government to promote liberty, equality and dignity. This welfare idealism covering wide range of socio-economic demands as well as aspirations of the people is seen permeated into the Constitution as Part III and part IV. The Fundamental Rights and Directive Principles are aimed at ensuring distributive justice to common man in India. In a nutshell, both these parts constitute the philosophy of the Social Service State.\textsuperscript{176} Though in real sense, the significant

\textsuperscript{175} Ram Jawaya Kapoor v. State of Punjab, AIR 1955 SC 549.

role and objective of the Directive Principles have not been rightly appreciated by courts initially. There has been conflict of opinions about the status and position of Directive Principles vis-à-vis Fundamental Rights in the Constitution. Krishna Iyer, J. in A.B.S.K.Sangh (Rly) v. Union of India\textsuperscript{177} emphasized on the following words: “The Directive Principles should serve the courts as a Code of interpretation. Every law attacked on the ground of infringement of fundamental rights should be examined to see if the impugned law does not advance one or other of the Directive Principles or if it is not in discharge of some of the undoubted obligations of the State towards its citizens flowing out of the preamble, the Directive Principles and other provisions of the Constitution.” The above analysis shows that the goals set out in directive principles are to be achieved without abrogating the fundamental rights. The courts have used the directive principles not so much to restrict fundamental rights but to expand their scope and content\textsuperscript{178} In case of labour issues judiciary also has followed the same approach. The Supreme Court’s decision in Chandra Bhavan Boarding v. State of Mysore\textsuperscript{179} is a befitting example. The question in this case was whether fixing the minimum wages of different classes of employees in residential hotels and eating houses in State of Mysore would be arbitrary and violation of Article 14 of the Constitution. Section 5 (1) of the Minimum Wages Act, 1948 was challenged as unconstitutional on the ground that it conferred arbitrary power i.e., without

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177 & AIR 1981 SC 298. \\
179 & AIR1970 SC 2042. \\
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any guidance to fix minimum rates of wages. It was also challenged that the Act interfered with the fundamental right to carry on any trade or business. While upholding the validity of the Act, the Court explained the objectives of the Act and the significance of the directives contained in Article 43 of the Constitution in the following words: “Its (the Act’s) object is to prevent sweated labour as well as exploitation of unorganized labour. It proceeds on the basis that it is the duty of the State to see that at least minimum wages are paid to the employees irrespective of the capacity of the industry or unit to pay the same. The mandate of Article 43 of the Constitution is that the State should endeavor 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 and social and cultural opportunities. The fixing of minimum wages is just the first step in that direction”\(^\text{180}\). The Court further observed that while rights conferred under Part III are fundamental, the directives given under Part IV are fundamental in the governance of the country and there is no conflict on the whole between the provisions contained in Part III and Part IV. They are complementary and supplementary to each other and the mandate of the Constitution is to build a welfare society in which justice, social, economic and political shall inform all institutions of our national life\(^\text{181}\). The Court further held: “The workers therefore have a special place in a socialist pattern of

\(^{180}\) AIR1970 SC 2048.  
\(^{181}\) AIR1970 SC 2050.
society. They are not mere vendors of toil; they are not a marketable commodity to be purchased by the owners of capital. They supply labour without which capital would be impotent and they are, at least, equal partners with capital in the enterprise’. In *National Textile Workers Union v. P.R. Ramakrishnan*\(^\text{182}\), the Supreme Court pointed out the significant position of workers in Indian society and reiterated the profound concern to the workers by the socio-economic 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(l) (g),\(^\text{183}\) the Court further concluded ‘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’. In *Air India Statutory Corporation v. United Labour Union*\(^\text{184}\) it was

\(^{182}\) AIR 1983 SC 75.
\(^{183}\) AIR 1983 SC 83.
\(^{184}\) AIR1997 SC 645.
observed by Supreme Court that the Directive Principles are substantially human rights. Most of the rights of workers are included in Part IV, but the judicial interpretations gave them a better footing. All these decisions are pointing towards the necessity of a healthy work force in a welfare state. The labour jurisprudence in India evolved by the judiciary after 1950s has been a shield of protection to workers from all sorts of exploitation. The court was always with the labour in all reasonable circumstances, for protecting the interests of labour, but even after all these efforts the conditions of labour in India are remained the same, as they are always exposed to exploitation, except the advantaged group (the organized sector) who enjoys legal protection.

3.8 Judicial Approach on Social Security

There is a fluctuating judicial approach regarding social security relating to unorganized workers. The judgments delivered by Supreme Court and High Courts have been discussed in the following pages.

Indian Constitution provides guarantees for social security through its provisions under the headings of Fundamental Right and Directive Principles of State Policy. Judiciary of the country is also under an obligation to protect the right of the workers regarding social security. Before the beginning of globalization and liberalization era in India, the judiciary in India was known as the protector of the labour, particularly on employment and other related issues. But after adopting the globalization and liberalization strategy in India, there has been a considerable change in the judicial approach. There is a series of decisions of the Supreme Court and various
High Courts reflecting the fluctuating judicial approach regarding social security relating to unorganized workers. In *Shri Pal and Others v. State of Punjab and others*, Punjab and Haryana High Court on the issue of the regularization of service and equal protection under Article 14 of Constitution of India, has held that any action of State which amount to unfair discrimination will have to be redressed by this Court as primary administration of unfair discrimination without relegateing aggrieved workman to alternative remedies before labour court which are tardy and cumbersome provided disputed question of fact are not involved, then writ court is speedy and efficacious remedy. Court find not substance in stand of respondent State and any distinction sought to be drawn artificially between departments of Government by excluding petitioner department would hold no water in face of mandates of twin facts of unfair discrimination and reasonableness in Article 14 of Constitution of India. The stand of the State is not approved and is set aside as infringing of equal protection claim in Article 14 of constitution. In *Rajender Singh v. Union of India*, the Delhi High Court on issue of regularization held that employee cannot be kept temporary throughout his life if the nature of work is perennial employer has power to relax educational qualification and other terms while regularizing the petitioner. The reluctance of the Court to judicially examine the matters of economic policy was again visible in *Bhavesh D. Parish and Others v. Union of* 

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185 2015 IV LLJ 169 (P&H).
186 2015 I LLJ 389(Del).
India and Another, it was held by Supreme Court that the services rendered by certain informal sectors of the Indian economy could not be belittled. However, in the path of economic progress, if the informal system was sought to be replaced by a more organized system, capable of better regulation and discipline, then this was an economic philosophy reflected by the legislation in question. Such a philosophy might have its merits and demerits. But these were matters of economic policy. They were best left to the wisdom of the legislature and in policy matters the accepted principle was that the courts should not interfere. The Court’s approach towards the new economic policy was emphasized in the following words: Moreover in the context of the changed economic scenario the expertise of people dealing with the subject should not be lightly interfered with. The consequences of such interdiction and have large-scale ramifications and can put the clock back for a number of years. The process of rationalization of the infirmities in the economy can be put in serious jeopardy and, therefore, it is necessary that while dealing with economic legislations, this Court, while not jettisoning its jurisdiction to curb arbitrary action or unconstitutional legislation, should interfere only in those few cases where the view reflected in the legislation is not possible to be taken at all. In Narmada Bachao Andolan v. Union of India and Others, there was a challenge to the validity of the establishment of a large dam. It was held by the majority as follows, “it is now well settled that the courts, in the exercise of

their jurisdiction, will not transgress into the field of policy decision. Whether to have an infrastructural project or not and what is the type of project to be undertaken and how it has to be executed, are part of policy-making process and the courts are ill-equipped to adjudicate on a policy decision so undertaken”. The court, no doubt, has a duty to see that in the undertaking of a decision, no law is violated and people's fundamental rights are not transgressed upon except to the extent permissible under the Constitution. In *Bharat Aluminium Company Ltd. Employees Union (Regd.) v. Union of India & Ors*\(^{189}\), the Supreme Court elaborately considered the scope of review of economic policy affecting rights of labour. The Public Sector Disinvestment Commission in its second report suggested the Government of India to privatize Bharat Aluminium Company (BALCO) and thereby the Government immediately transferred its shares to its strategic partner. The Court held in this case that the process of disinvestment was a policy decision involving complex economic factors. It was also observed that the economic expediencies lack adjudicative disposition and unless the economic decision, based on economic expediencies, was demonstrated to be so violation of constitutional or legal limits on power or so abhorrent to reason, that the courts would decline to interfere. According to the Court in matters relating to economic issues, the Government had, while taking a decision, right to "trial and error" and as long as both trial and error were bona fide and within limits of authority the courts would not interfere. The

\(^{189}\) (2002) 2 SCC 333.
Court opined that even though the workers might have interest in the manner in which the Company was conducting its business, in as much as its policy decision might have an impact on the workers' rights, nevertheless it was an incidence of service for an employee “to accept a decision of the employer which has been honestly taken and which was not contrary to law.” The Court was emphatic in saying that the principles of natural justice had no role to play in taking of a policy decision in economic matters. The Court explained: “While it is expected of a responsible employer to take all aspects into consideration including welfare of the labour before taking any policy decision that, by itself, will not entitle the employees to demand a right of hearing or consultation prior to the taking of the decision. Thus the Court not only withdrew from its function of protection of rights of the marginalized employees but also endorsed that the employer would take the welfare of the labour in to consideration while taking policy decisions. The Court examined as to how the rights of labour is protected in this case and observed that in the shareholders agreement between the Union of India and the strategic partner, it was provided that there would be no retrenchment of any worker in the first year after the closing date and thereafter restructuring of the labour force, if any, would be implemented in a manner recommended by the Board of Directors of the company. The shareholders agreement further mandated that in the event of reduction in the strength of its employees was required, then it was to be ensured that the company offered its employees an

option to voluntarily retire on terms that were not in any manner less favorable than the Voluntary Retirement Scheme offered by the company on the date of the arrangement. Apart from the conditions stipulated in the shareholders agreement, the company has stated in the Court that it would not retrench any worker(s) who were in the employment of BALCO on the date of takeover of the management by the strategic partner, other than any dismissal or termination of the worker(s) of the company from their employment in accordance with the applicable staff regulations and standing orders of the company or other applicable laws. Thus the Court gave sanction to the employer’s decisions on interest of labour and also favoured the Voluntary Retirement Scheme, the most celebrated way to throwing away a workman from his job. The Court went to the extent of saying that ‘the consent of the management to better service conditions etc., would certainly depend on the achievement of the productivity and production’. The Court further held that guaranteeing the social security of the BALCO employees at par with the employees of the Government establishments might not be possible any time before or after the disinvestment. The Court trusted the Government by saying that normally the decisions would be taken with care and consideration. Hence, BALCO is a missed opportunity for the judiciary to protect the worker’s right in the context of globalization, liberalization and privatization. Unfortunately the subsequent decisions also followed the same without considering the impact of the
decisions on the position of Indian workers. In *District Red Cross Society v. Babita Arora and Ors*\(^{191}\), the Apex Court has denied to help the workmen while deciding the question related to protection of a worker against retrenchment. The respondent contended that the employer did not follow the procedure under Industrial Disputes Act i.e., ‘last come first go’. However she contended that her juniors were working under other units. The Court held that though other units were receiving grants from government and were functioning as separate entities and the mere fact that they had not been closed down, could not lead to the inference that the termination of services of the respondent was by way of retrenchment which was illegal on account of non compliance of the provisions of Sec. 25 (F) of the Act. In *Mohamad Fathahudden C.C. Chamayath Cheriyannal, Androth, Lakshadweep Island. v. Union of India by Director Department of Port Shipping and Aviation, U.T. of Lakshadwep, Kavarati and others*\(^{192}\), the Kerla High Court held that the equality clause in Article 16 mandates that every appointment to the public post or office should be made by open advertisement so as to enable all eligible persons to compete for selection on merit. Therefore the appointment through side door is constitutionally impermissible, accordingly the casual labour and temporary employee are not even appointees in the strict sense of the term appointment and they do not hold a post. On the other hand in *O.N.G.C. Ltd. v. Petroleum Coal Labour Union and*
Other\textsuperscript{193} the Apex Court held that when workman appointed by issuing memorandum of appointment to work in corporation providing monthly salaries, it cannot arbitrarily stated that certified standing orders of corporation not applicable to workman, workman cannot denied legitimate, statutory and fundamental rights to be regularized provided under certified standing orders. Even though the due process not followed by corporation for appointment of workman same does not disentitle right to seek regularization after completing more than 240 days. Alleged policy decision taken by corporation to employee CISF in place of workman cannot said to be taken by Central Government. Since not issued by following due procedure under Business Transactions Rule. In \textit{Indian Airline Officer’s Association v. Indian Airlines Ltd. and Ors.},\textsuperscript{194} the Supreme Court examined the rights of workers’ union in the decision, as to merger of two industrial units. The Employees’ Association of Indian Airlines, Indian Airline Cabin Crew Association and Vayudoot Karmachari Sangh who were having conflicting interest approached the Supreme Court against the order of Division Bench of Delhi High Court on absorption of employees on merger of Vayudoot with Indian Airline. The Supreme Court elaborately discussed the law on absorption of employees and their promotional perspectives. Quoting Justice V.R. Krishna Iyer, the Court held: “In Service Jurisprudence integration is a complicated administrative problem where, in doing broad justice to many, some bruise to a few cannot be ruled out. Some play in the joints, even some wobbling, must

\textsuperscript{193} 2015 II LLJ 257 SC.
\textsuperscript{194} AIR 2007 SC 2747.
be left to Government without fussy forensic monitoring, since
the administration has been entrusted by the Constitution to
the executive, not to the court. All life, including
administrative life, involves experiment, trial and error, but
within the leading strings of fundamental rights, and, absent
unconstitutional 'excesses', judicial correction is not right.
Under Article 32, this Court is the constitutional sentinel, not
the national ombudsman. We need an ombudsman but the
court cannot make do."195 But the Court took the position that
that there was nothing wrong done in adopting two different
methodologies in case of Air India and Indian Airlines cases.
The above two decisions are in accordance with the decision of
Supreme Court in BALCO Employees Union Case, where the
Court opined that ‘in case of policy, the employees may suffer
to certain extent, but such suffering should be taken to be
incidence of service’. The Court in this case categorically held
that Government had not to give the workers prior notice of
hearing before deciding to disinvest. According to the Court,
there was no principle of natural justice which requires prior
notice and hearing to persons who are generally affected as a
class by an economic policy decision of the Government. While
denying the Union’s right to become part of decision making of
their establishment, the Supreme Court adopted a retrograde
step that actually denied the rights of the workers196. In
Secretary, State of Karnataka and Ors. v. Umadevi and Ors.,197
the issue was with regard to regularization of employees, The

195 Id. at para 28.
196 Union of India and Another v. International Trading Co. and Ors. AIR 2003 SC 3983.
197 AIR 2006 SC1806.
Supreme Court viewed that a sovereign government, considering the economic situation in the country and the work to be got done, was not precluded from making temporary appointments or engaging workers on daily wages. After referring to many conflicting decisions, the Court continued that the right of the Union or of the State Government could not be limited and there was nothing in the Constitution which prohibited such engaging of persons temporarily or on daily wages, to meet the needs of the situation. The Court said that the State must be ‘model employer’ at the same time the Court endorsed the ‘hire and fire’ policy of the Government in the new Indian economy. The Supreme Court thus concluded in the following words: “If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis the same would come to an end when it is discontinued”. In Mahatma Phule Krushi Vidhyapeeth v. Ahmednagar Zilla Shetmajoor Union, the Bombay High Court held that unless specifically prescribed, legal heirs of daily wages/ adhoc employee/temporaries would not be entitled for seeking compassionate appointment. Same view was endorsed by Punjab and Haryana High Court in Reena Devi v. State of Haryana and others.

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199 2015 IV LLJ 34 (Bom).

200 2015 IV LLJ 293 (P&H)
So, in conclusion, in cases of dismissal, termination of service\textsuperscript{201}, in case of merger of industrial units\textsuperscript{202} and regularization of employees\textsuperscript{203}, the hands-off approach of the judiciary is visible. Without seeing the constitutional objective of socio-economic justice, the Court simply endorsed the governmental policy of economic liberalization and privatization. In many other countries, the judiciary protects\textsuperscript{204} the labour force from the adverse consequences of globalization. For example Spanish courts interpreted domestic Spanish law in the light of internationally recognized labour standards particularly the conventions of ILO. The above study shows that though the Indian judiciary has contributed a lot in labour jurisprudence, even by interpreting labour rights in the light of international conventions, but in the globalised era it gives a clean chit to the legislature in the name of ‘policy matters’ without foreseeing the adverse consequence of the legislative measures on the right of the workmen. In this context, the only way out is to strengthen the legislative measures to give enough social security to the workers.

3.9 **Sum up**

Man has to strive continually for material security of all types for himself, his family, his community and his nation.

\textsuperscript{201} *District Red Cross Society v. Babita Arora and Ors.* AIR 2007 SC 2879.

\textsuperscript{202} *Indian Airline Officer’s Association v. Indian Airlines Ltd. And Ors*, AIR 2007 SC 2747 and BALCO Employees Union Case, AIR 2002 SC350.

\textsuperscript{203} *Secretary, State of Karnataka and Ors. v. Umadevi and Ors.* AIR 2006 SC1806.

\textsuperscript{204} For example- “Spanish law does not provide social security, health care, or pension benefits for undocumented workers. Spanish judges have nonetheless interpreted the ILO Conventions on equality and immigrations implying these rights for undocumented workers because they are guaranteed to other segments of the Spanish Work force.”
From the first dawning of history man faced serious physical danger from wild animal, from the cold, from the famine and drought and from his fellow man. Over the many centuries, the frequency and severity of these threats to physical security have been lessened, and in some instances virtually eliminated, as man has developed mentally and spiritually. Despite this, even today, in many countries of the world, most of the people have very little real security as to basic human needs for food, shelter, and medical care. In the economically more developed countries, material conditions are at a quite favorable level, so that most of the population, especially those in families containing workers, are reasonably well off, at least as long as the worker is employed. In India care and protection of the needy and the helpless has always been regarded as a ‘pious duty’ of anyone who undertakes them. Social security as a practice in our country has been in existence since ancient days in the form of care and protection by some traditional institutions such as, joint families, caste panchayats, village panchayats, religious institutions and charitable institutions which were based on the ideas of charity, philanthropy and social responsibility to support persons without means and capacity to have a decent living. However with rise of migration, urbanization, nuclear families and demographic changes, Joint family system has declined. Hence a need of the concept of social security was felt. The concept of social security is essentially related to the high ideals of human dignity and social justice. Social Security measures have introduced an element of stability and protection in the midst of the stresses and strains of modern life. Social security programmes are increasingly being accepted as useful
and necessary instruments for the protection and stability of the labour force. It is primarily an instrument of social and economic justice. It is a dynamic concept. The ILO defines social security as "the protection which society provides for its members through a series of public measures, against the economic and social distress that otherwise would be caused by the stoppage or substantial reduction of earnings resulting from sickness, maternity, employment injury, unemployment, invalidity, old age, and death, the provision of medical care", and he provision of subsidies for families with children. The term social security came into popularity after the US Government passed the Social Security Act in 1935, introducing the old age pension system. International Labour Organization declare that income security is an essential element of social security and compensation has to be provided for accidents, occupational diseases, sickness, maternity benefits, old age, invalidity and widow’s and orphans’ pension and provision for unemployment. The International Social Security Association works effectively in framing and implementing solution for contemporary problems in social security system. Article 9 of the United Nation International Covenant on Economic Social & Cultural Rights (ICESCR) declares that everyone has a right to social security, including social insurance. On the concept of social security International Labour Organization’s work is pioneer. The International Labour Organization’s work and the standards have developed the most important source of interpretation in defining social security as a fundamental right. International Labour Organization presumes

205 Covenant means a signed written agreement between two or more parties (Nations) to perform same action.
that, in world, peace could not be achieved without devoting sufficient attention to creating the condition for social security and social justice. In India the unorganized sector workers, on the matter of social security are not able to pursue their common interests due to constraints like casual nature of employment, invariably absence of definite employer-employee relationship, ignorance, illiteracy, etc. They are generally low paid and outside the purview of any type of social security. The workforce in India is increasing, though the workforce in organized sector is not increasing proportionately\textsuperscript{206}. The organized workers constitute only seven percent of the total workforce (approximately four hundred and thirty million) in the country. International Labour Organization considers social security as a tool of social justice, and has much emphasis on it. India being a Member State of International Labour Organization is under an obligation to ratify all social security conventions and recommendations for the welfare of labour class. Following the International approach the Government of India has enacted certain legislations for the protection of the rights of these workers. The issue of social security in India has been addressed by the Central Government through various Acts. These are The Employee’s Compensation Act, 1923. The Employees State Insurance Act, 1948. The Industrial Disputes Act, 1947, The Factories Act, 1948, The Minimum Wages Act, 1948, The Employees’ Provident Funds & Miscellaneous Provisions Act, 1952, The Maternity Benefit Act, 1961, The Payment of Gratuity Act, 1972, The Building and Other Construction Workers’ (Regulation of Employment and

\textsuperscript{206} Workforce Estimates in National Accounts. http://mospi.nic.in/.
Conditions of Service), Act, 1996, and Mahatma Gandhi National Rural Employment Guarantee Act, 2005. It is very unfortunate that most of these social security legislations are applicable to organised sector workers and the unorganized workers in India are still deprived of the social security. However India being the welfare, socialist, and democratic country, through its Constitution provides the guarantee and assurance to its labour class for the protection of their sweat and dignity of their lives. In India all the labour legislations have been enacted in the light of the philosophy of the Constitution. The Fundamental Rights and Directive Principle of State Policy connote about equality before law, equality of opportunity in matters of public employment, protection of life and personal liberty, right to work, just and humane conditions of work and maternity relief, living wages etc. Since the unorganized workers of the country were deprived of their right of social security for a long period after Independence, the Indian Parliament taking into account the lack of legal protection and going ahead on the concept of social security, enacted the legislation namely The Unorganized Workers’ Social Security Act, 2008, to provide the social security to the unorganized workers. This is the exclusive legislation enacted specially for unorganized workers on the matter of social security.