At the dawn of Indian independence political thinking of the world over was mainly centered around 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 order1 by incorporating several provisions for eliminating inequalities and prevention of concentration of wealth.

5.1 Right to Social Security: The Constitutional Framework

The preamble expresses the essential features of political and economic philosophy underlying the provisions of the Constitution. It

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declares that India would be a sovereign, socialist, secular democratic republic and to secure to all its people justice, liberty, equality and fraternity. It assures a democratic way of life and embraces the ideal of establishing social, political and economic justice in the country. Naturally, the dignity of individual occupied a central place of honor in its scheme. Though the individual rights are protected through Fundamental Rights under Part III, the claims of social good and egalitarianism are enshrined in Part IV. These two parts are rightly observed by Granvillie Austin as the core commitment to social revolution and the conscience of the Constitution. Fundamental Rights in the Constitution recognizes the importance of the individual in the affairs of the state and seek to assure every citizen full freedom to enjoy life, liberty and happiness as he likes and the state will interfere with it only if consideration of public good justifies such interference. On the other hand, Directive Principles make precaution to provide inbuilt provisions on the strength of which reconciliation has to be attempted between the rights of individual and the claims of social good. The framers of the Constitution were clear in their mind that Directive Principles are fundamental in the governance of the country. The significance of Directive Principles in relation to that of Fundamental Rights can be determined only by making a reference to the intention of

2. The words “socialist, secular” were added to the preamble only in the year 1976 by the Constitution (Forty-second Amendment) Act, 1976, S.2
3. Glanville Austin, The Indian Constitution: Cornerstone of Nation, Oxford University Press, New Delhi, (1966), p.50. According to Glanville Austin, Indian Constitution is the first and foremost social document and says, “the core of commitment to the social revolution is in Part III & IV in the Fundamental Right and Directive Principles of State Policy. These are consciences of the Constitution”
4. Ibid.
the framers in making these principles as an integral part of the Constitution.

The framers of the Constitution visualised that the socio-economic policy envisioned in the Directive Principles along with guarantee of freedom and liberty by the state can assure a welfare state. The framers did not make the fundamental rights absolute. The objectives of Directive Principles can be achieved by making appropriate law by the state. Articles 36 to Article 51 of this Part reflect the socio-economic principles in the governance of the country. The provisions relating to social security of labour lie in Part IV though the right to life and protection from discrimination and exploitation are laid down in Part III, the Fundamental Rights.

Dr. B. R. Ambedkar, the Chairman of the Drafting Committee, has categorically stated that Directive Principles “are really instruments to the executive and the legislature as to how they should exercise their power”\(^5\). Provisions of several constitutions were instrumental in formulating the Directive Principles. German Constitution\(^6\), Spanish Constitution\(^7\) and Constitution of Bolivia\(^8\) are some of them. Charter of

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6. Article 14(2) “Maternity shall have the right to the protection and public assistance of the state.
7. Article 14(2) “Maternity shall have the right to the protection and public assistance of the state.
8. “The Law shall provide regulations for contemporary instance to cover sickness, accidents, involuntary unemployment, disability, old age, employees and workers, women and minors, the maximum working days, maximum salary, weekly day off, rest and holidays maternity leave with pay, medical and … attention and other protective benefits for workers”.
League of Nations and Universal Declaration of Human Rights were also influenced the drafting of Directive Principles.

Article 38 (1) directs the State to promote the welfare of the people by securing and protecting as efficiently as it may a social order in which justice – social, economic and political shall inform all institutions of national life. This is a re-affirmation of the preambular objective of securing socio-economic and political justice. The 44th Amendment added clause (2) to Article 38 which directs the state to minimize the irregularities in income, and to endeavour to eliminate inequalities in status, facilities and opportunities not only amongst individuals but also groups of people residing in different areas or engaged in different vocations. This clause represents the group equality.

Article 39 lays down certain specific objectives. Clauses (a) (b) and (c) particularly lay down the norms for an egalitarian operation of economic and social system of the country. Securing of adequate means of livelihood for citizens, preventing the concentration of economic power in few hands and ensuring the operation of the economic system for the general good are stated as the guiding principles. Ensuring of equal pay for equal work and protection of health and strength of workers from abuse are some other objectives of the Article. To make effective provision for securing the right to work, education and public assistance in case of unemployment, old age, sickness and disablement and in other cases of

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10. According to Prof. M.V.Pylee “the concepts of socialism and secularism was explicit in the Constitution as it was originally passed” M.V.Pylee, *Indian Constitution*, Asia Publishing House (P) Ltd., (1974), Bombay, at p.55.
undeserved want are significant measures of social security under Article 41. But this provision is subject to the limits of economic capacity of the State. Provisions for securing just and humane conditions of work and for maternity relief, a living wage to all workers, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities are yet another measures of social security enshrined in Articles 42 and 43. Many of these provisions in Part IV of the Constitution (Article 38, 39, 40 and 41 are examples) are intended to bring about a socialistic order in the Indian society. These objectives have been later summed up in the phrase “socialistic pattern of society” and have been explained in length in the Fifth Five Year Plan Documents. At this juncture, it is noteworthy to recall what Jawaharlal Nehru had said while introducing the Constitution (First Amendment) Bill. He said:

“The Constitution lays down certain Directive Principles of State Policy and after long discussions we agreed to them and they point out the way we have got to travel. The Constitution also lays down certain fundamental rights. Both are important. The Directive Principles of State Policy represent a dynamic move towards a certain objective. The fundamental rights represent some static, to preserve certain rights which exist. Both again are rights”

The difference between the two according to Chinnappa Reddy, J., is that fundamental rights are aimed at assuring political freedom to citizens by protecting them against excessive state action while the directive

11. See supra Chapter 4.
principles are aimed at securing social and economic freedoms for citizens by state action\textsuperscript{12}. Thus the Directive Principles are intended to be systematically put into application with a view to transforming Indian Society and bring out a social order in conformity with these principles.

Directive Principles of State Policy, though they are fundamental in governance of the state, i.e., there is a duty of the state to apply these principles in making laws, are not enforceable by any court\textsuperscript{13}, according to Article 37. In other words, no organs including the courts have power to enforce them. However, the judicial pronouncement by the Supreme Court, on whom ultimately the power to interpret these provisions is vested, reveals drastic changes in judicial approach towards this part\textsuperscript{14}.

5.2 Directive Principles, Welfarism and Social Security vis-à-vis Fundamental Rights: Judicial Approaches

The main preambular objective of Indian Constitution is to secure to all its citizens justice—social, economic and political. The basis and origin of this concept was the ‘objective resolution’\textsuperscript{15} moved by Nehru in the Constituent Assembly. The founding father’s vision was to build up the nation on the strong foundation of socio-economic justice which was denied to the millions of people in India.

\textsuperscript{12} O. Chinnappa Reddy, The Court and the Constitution of India: Summits and Shallows, Oxford University Press, New Delhi (2008) at p. 76

\textsuperscript{13} Supra n.3.


\textsuperscript{15} 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” Nagabhooshanam, P., Social Justice and Weaker Sections: Role of Judiciary, Sitaram Co. (2000), p.4.
The concept of social justice therefore become 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\(^{16}\).

Hence a modern state is expected to engage in all activities necessary for the promotion of the social and economic welfare of the community\(^{17}\). 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 debates in the Constituent Assembly categorically shows that the utility of the state would be first judged from its effect on common mans’ welfare and that the Constitution must establish state’s obligation beyond doubt\(^{18}\). The Fundamental Rights and Directive Principles are aimed at ensuring

\(^{16}\) *Ibid.*


distributive justice to common man in India. In a nutshell, both these parts constitute the philosophy of the social service state\textsuperscript{19}.

But the true nature, significance, role and objective underlying 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. Soon after the commencement of the Constitution, the approach of the judiciary was to give an undue emphasis on the unenforceability of Directive Principles without taking them as fundamental in the governance and ignoring the constitutional duty imposed on the state to implement them. The ‘non-justiciable’ and ‘non-enforceable’ character of these principles as discussed and concluded by the Constituent Assembly might be the reason behind this approach of judiciary. Thus it strengthened the belief that Directive Principles carry mere pious aspirations of little legal force and had to conform to and run subsidiary to Fundamental Rights.

It was in \textit{State of Madras v. Chempakam Dorairajan}\textsuperscript{20}, the Supreme Court held that Directive Principles had to conform to and run as subsidiary to the chapter on Fundamental Rights on the reason that the latter are enforceable in the courts, while the former are not. Later the Supreme Court placed reliance on the Directive Principles for validating a number of legislations by propounding a theory of harmonious


\textsuperscript{20} A.I.R. 1951 S.C. 226.
construction of both directive principles and fundamental rights. For instance, the very same judge\textsuperscript{21} who held the view in \textit{Chempakam Dorairajan} adopted a significant approach in \textit{Mohd. Hanif Qureshi v. State of Bihar}\textsuperscript{22}, when he observed:

“A harmonious interpretation must be placed up on the Constitution, and so interpreted it means that the state should certainly implement the directive principles, but it must do so in such a way as not to take away or abridge fundamental rights”\textsuperscript{23}.

Again in \textit{Re Kerala Education Bill}\textsuperscript{24}, S.R. Das, C.J., observed that the Directive Principles had to conform to and run as subsidiary to the chapter on fundamental rights. Nevertheless, in determining the scope and ambit of the Fundamental Rights relied on by or on behalf of any person or body of persons, the court might not entirely ignore these Directive Principles of State Policy but should adopt harmonious construction and should attempt to give effect to both as much as possible\textsuperscript{25}. It reveals the fact that though the Supreme Court initially tried to give predominance to Fundamental Rights over Directive Principle in case of conflict between the two.

Later, the Court adopted an approach of harmonious construction to give effect to both Directive Principles as well as Fundamental Rights. In

\begin{flushright}
\begin{tabular}{l}
21. S.R. Das, J. \\
22. A.I.R. 1958 S.C. 731. \\
23. \textit{Ibid} \\
25. \textit{Id} at p. 967
\end{tabular}
\end{flushright}
Sajjan Singh v. State of Rajasthan\textsuperscript{26}, it was observed that even if Fundamental Rights could be taken as unchangeable, the needs of the viable dynamism would still be satisfied by properly interpreting the Fundamental Rights in the light of values and ideologies contained in Directive Principles of State Policy. But in the same year in Golaknath v. State of Punjab\textsuperscript{27}, it was held that the Directive Principle and Fundamental Rights enshrined in the Constitution formed an ‘integrated scheme and was elastic enough to respond to the changing needs of the society’\textsuperscript{28} and ‘the scheme was made so elastic that all Directive Principles could reasonably be enforced without taking away or abridging the fundamental rights’\textsuperscript{29}. Thus the Supreme Court reached a stage of realizing “an integrated scheme” of the two parts of the Constitution. Again in another following case the court held that it did not see any conflict on the whole between the two provisions and found that ‘they are complementary to each other’\textsuperscript{30}. It was held in this case that the provisions of Constitution were not erected as the barriers to progress. They provided a plan for orderly progress towards the social order contemplated in the Preamble of the Constitution\textsuperscript{31}.

The Constitution was amended in 1972 to establish pre-eminence of some of the directive principles over some of the fundamental rights i.e., Article 31-C was inserted by the 25\textsuperscript{th}

\textsuperscript{26} A.I.R. 1967 S.C. 845.  
\textsuperscript{27} A.I.R. 1967 S.C. 1643.  
\textsuperscript{28} Id. at p.1656  
\textsuperscript{29} Ibid  
\textsuperscript{31} Id., as per Hegde J.
Amendment Act\(^\text{32}\). The validity of this amendment was challenged in *Kesavananda Bharati v. State of Kerala*\(^\text{33}\). While recognizing the significance of directive principles in the Constitution, the Supreme Court by majority upheld the validity of the 25\(^\text{th}\) Amendment. Mathew, J., went to the extent of observing that in building a just social order, the fundamental rights could be subordinated to Directive Principles because only if men existed then there could be fundamental rights\(^\text{34}\). It was also held that the two parts constitute the conscience of the Constitution and there is no antithesis between fundamental rights and directive principles as one supplements the other\(^\text{35}\). Moreover both parts have to be balanced and harmonized\(^\text{36}\). Similarly in *Mumbai Karigar Sabha v. Abdulbhai*\(^\text{37}\) it was held that, where two statutory choices are available, the construction in conformity with the social philosophy of the Directive Principles has to be preferred. The Judicial role was further explained by the Supreme Court in *Uttar Pradesh Electricity Board v. Hari Shanker*\(^\text{38}\) where the Court expressed the view that even though the courts could not direct making of legislations implementing the directives,

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32. The 25th Amendment was to make Articles 14, 19 and 31 inapplicable to the laws made by the Parliament or State legislature for implementing the directive principles enshrined in Article 39 (b) and (c). Consequently, those legislations could not be questioned in a court of law.
35. See *Supra* n.31 Per Hegde and Mukherjee, JJ. , *Id* at p. 1641
36. *Id.*, Per Shalet and Grover, JJ., *Id* at p. 1658
38. A.I.R. 1979 S.C. 65
judiciary was bound to evolve and adopt principles of interpretation which would further the goals set out in Directive Principle in the state policy\(^{39}\).

In *Kasturilal v. State of Jammu & Kashmir*,\(^{40}\) the Supreme Court found that the yardstick for determining reasonableness and public purpose is to be found in the law for implementing directive principles. The Court emphasized that an executive action or a law enacted for giving effect to directive principles in furtherance of constitutional goal of social and economic justice, would be *prima facie* reasonable and in public interest.

The 42\(^{nd}\) Amendment in 1976 further changed the content of Article 31 C for giving predominance to all directive principles over any of the fundamental rights conferred by Articles 14 (equality) 19 (freedom) and 31 (property rights). The majority of the Court in *Minerva Mills Ltd. v. Union of India*\(^{41}\) held the amendment unconstitutional on the reason that Indian Constitution is founded on the bedrock of the balance between Part III and IV. To give absolute priority to one over the other is to disturb the harmony of the Constitution. This harmony and balance between Fundamental Right and Directive Principles is an essential feature of the basic structure of the Constitution\(^{42}\) and ‘anything that destroys the balance between the two parts will *ipso facto* destroy an essential element of the basic

\(^{39}\) *Id.* at p.69.  
\(^{42}\) *Id.* at p.1806.
structure of our Constitution. In Minerva Mills, Bhagwati J., took a different approach. According to him, the directive principles enjoyed a very high place in the constitutional scheme and it was only in the framework of the socio-economic structure envisaged in the directive principles that the fundamental rights were intended to operate, for it was only then they could become meaningful and significant for the millions of poor and deprived people who did not have even the bare necessities of life and who were living below poverty line. Therefore, the goals set out in Part IV had to be achieved without the abrogation of the means provided for by Part III. Justice Bhagwati while upholding the amendment emphasized the State should take positive action for creating socio-economic conditions in which ‘there will be an egalitarian social order with social and economic justice to all’, and ‘this is the philosophy of distributive justice embodied in the directive principles’.

The duty of the court to apply directive principles in interpreting the Constitution and other laws was emphasized by justice Krishna Iyer later in A.B.S.K.Sangh (Rly) v. Union of India in 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

43. Id. at p.1807.
44. Supra n.39.
45. Ibid
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"47

Later in Unnikrishnan v. State of A.P48, it was observed that ‘it is thus well established by decisions of this court that the provisions of Part III and Part IV are supplementary and complementary to each other and that fundamental rights are but a means to achieve that goal indicated in Part IV’.

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 content49.

In case of labour issues also judiciary has followed the same approach. The Supreme Court’s decision in Chandra Bhavan Boarding v. State of Mysore50 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 violative 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

47. Id at p. 315
arbitrary power i.e., without 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 Acts’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 organisation 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”51.

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

51. Id. at p. 2048
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. The Court further held:

“The workers therefore have a special place in a socialist pattern of society. They are not mere vendors of toil, they are not a marketable commodity to be purchased by the owners of capital. They are producers of wealth as much capital –nay very much more. They supply labour without which capital would be impotent and they are, at least, equal partners with capital in the enterprise.”

In *National Textile Worker’s Union v. P.R. Ramakrishnan*, 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

52. *Id* at p. 2050
53. *Ibid*
under Article 19(l) (g)\textsuperscript{55}. The Court speaking through Bhagwati, J., 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 \textit{Air India Statutory Corporation v. United Labour Union}\textsuperscript{56} it was 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. But after the adoption of the globalization and liberalization strategy, it is seen that the Indian Judiciary also is shifting its approach towards the new economic policies of the government. This is evident from the decisions on labour issues especially issues relating to labour rights. 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 contributions of Krishna Iyer, Bhagwati and Chinnappa Reddy, JJ., are significant in this regard. The court was always with the labour in

\textsuperscript{55} \textit{Id.} at p.83  
\textsuperscript{56} A.I.R. 1997 S.C 645.
all reasonable circumstances, for protecting the interests of labour\textsuperscript{57}. The conditions of labour in India remain the same as they are always exposed to exploitation, except the advantaged group (the organized sector) who enjoys legal protection. But the slogans of development in the era of globalization influenced the Indian judiciary also\textsuperscript{58}.

**Changes in Judicial Approach**

After adopting the globalization and liberalization strategy in India, there has been a considerable change in the judicial approach. A series of decisions of the Supreme Court prove testimony to the new approach of ‘non-interference’ towards economic and labour policy of the government.

\textsuperscript{57} In *Tata Engg. And Locomotive Co. Ltd. v. S.C. Prasad*, the Supreme Court held: “No doubt, in fact the order was couched in the language of a discharge….can…examine the substance of the matter and decide whether termination is in fact discharge simpliciter or dismissal though the language of the order is one of simple termination of service. If it is satisfied that the order is punitive or malafide or is made to victimize the workmen or amount’s to unfair labour practice it is competent to set aside.” Similar view was taken in *Chartered Bank* ((1960) 3 S.C.R. 441), *Tata Oil Mills* (1964) 2S.C.R. 125. The law on this point has been best summarized in *L. Michael Ltd v. M/s Johnson Pumps Ltd* as “The tribunals has power and indeed, the duty to X-Ray the order and to discover its true nature. The object and effect in the present circumstances and the ulterior purpose, are to dismiss the employee, because he is an evil who to be eliminated. But if the management, to cover up the inability to establish by an enquiry, illegitimately but ingeniously passes an innocent looking order of termination simplicitor, such an action is bad and is liable to set aside”

\textsuperscript{58} Prof. Upendra Baxi has rightly observed: “I will suggest that the World Bank/IMF/UNDP and related programs of good governance understandably, if not justifiably, promote structured adjustment of judicial activism. These covertly address, as well as, overall seek to entrench market friendly, trade related forms of judicial interpretation and governance. Judicial self restraint covering macro-economic policy as on the basis of adjudicatory policy stands proselytized by the already hyper globalised Indian Appellate Bar” Upendra Baxi, Access to Justice in a Globalised Economy: Some Reflections, ILI Lecture, 5th August, 2006.
While considering the validity of the industrial policy of the State of Madhya Pradesh relating to the agreements entered into for supply of sal seeds for extracting oil in *M.P. Oil Extraction and Another v. State of M.P. and Others*\(^{59}\), the Court held that the Industrial Policy of 1979 which was subsequently revised from time to time could not be held to be arbitrary and based on no reason whatsoever but founded on mere ipse dixit of the State Government of M.P. and the executive authority of the State must be held to be within its competence to frame a policy for the administration of the State. The Court held:

“Unless the policy framed is absolutely capricious and, not being informed by any reason whatsoever, can be clearly held to be arbitrary and founded on mere ipse dixit of the executive functionaries thereby offending Article 14 of the Constitution or such policy offends other constitutional provisions or comes into conflict with any statutory provision, the Court cannot and should not outstep its limit and tinker with the policy decision of the executive functionary of the State.”

This Court, further held that the power of judicial review of the executive and legislative action must be kept within the bounds of constitutional scheme so that there might not be any occasion to entertain misgivings about the role of judiciary in outstepping its limit by unwarranted judicial activism. According to the Court, the democratic set-up to which the polity was to deeply committed could

\(^{59}\) (1997) 7 SCC 592, at page 610
not function properly unless each of the three organs appreciated the need for mutual respect and supremacy in their respective fields.\footnote{Id. at p. 611}

In *State of Punjab and Others v. Ram Lubhaya Bagga and Others*\footnote{(1998) 4 SCC 117} the change of Government policy in regard to the reimbursement of medical expenses to its serving and retired employees came up for consideration before the Supreme Court. Earlier, the reimbursement for treatment in a private hospital had been endorsed by Supreme Court. The State of Punjab changed this policy whereby reimbursement of medical expenses incurred in a private hospital was only possible if such treatment was not available in any government hospital. Dealing with the validity of the new policy, the Court expressed its hands off approach. The question in this case was whether the new policy which is restricted by the financial constraints of the State to the rates in AIIMS would be in violation of Article 21 of the Constitution of India. The Court held that it was not normally within the domain of any court, to weigh the pros and cons of the policy or to scrutinize it and test the degree of its beneficial or equitable disposition for the purpose of varying, modifying or annulling it, based on howsoever sound and good reasoning, except where it was arbitrary or violative of any constitutional, statutory or any other provision of law. The Court further held:

“\begin{quote}
When Government forms its policy, it is based on a number of circumstances on facts, law including constraints based on its resources. It is also based on expert opinion. It would be
\end{quote}
dangerous if court is asked to test the utility, beneficial effect of the policy or its appraisal based on facts set out on affidavits. The Court would dissuade itself from entering into this realm which belongs to the executive. It is within this matrix that it is to be seen whether the new policy violates Article 21 when it restricts reimbursement on account of its financial constraints."\(^{62}\)

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 India and Another*\(^ {63}\). In this case validity of Section 45-S of the Reserve Bank of India Act 1934 which restricts acceptance of deposits by individuals, firms and unincorporated associations was upheld by Supreme Court and held 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 organised 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:

\(^{62}\) *Id.* at p.129

\(^{63}\) (2000) 5 SCC 471
“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 can 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”64.

In Narmada Bachao Andolan v. Union of India and Others65, 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

64. Id. at p. 485
65. (2000) 10 SSC 664 at page 762
fundamental rights are not transgressed upon except to the extent permissible under the Constitution”66

The Supreme Court made a clear declaration that “the protectionism has gone” in *Haridas Exports v. All India Float Glass Manufacturers Association*67 as “it is to be born in mind that public interest does not necessarily mean interest only of the industry….Nevertheless, the era of protectionism is now coming to an end. The Indian industry has to gear up so as to meet the challenges from abroad.”68

In *BALCO Employees Union (Regd.) v. Union of India & Ors*69, 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 BALCO and there by 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 violative 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,

66. *Id.* at.p.762
67. (2002) 6 SCC 600
68. *Id.* at p.633
69. 2002( 2 )SCC 333
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 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…”\textsuperscript{70} 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.”\textsuperscript{71}

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

\textsuperscript{70} Id. at p. 342
\textsuperscript{71} Ibid.
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 favourable than the Voluntary Retirement Scheme (VRS) 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. The Court recorded this.

Thus the Court gave sanction to the employers decisions on interest of labour and also favoured VRS- the most celebrated and infamous term for “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. For instance in District Red Cross Society v. Babita Arora and Ors\textsuperscript{72}, the higher judiciary squandered a chance 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’. 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\textsuperscript{73}.

In Indian Airline Officer’s Association v. Indian Airlines Ltd. and Ors,\textsuperscript{74} the Supreme Court examined the rights of worker’s union in decisions 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

\textsuperscript{72} A.I.R. 2007 S.C. 2879

\textsuperscript{73} Id. at p. 2881

\textsuperscript{74} A.I.R. 2007 S.C. 2747
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 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”75.

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 Airlines76. The above two decisions are in accordance with the decision of Supreme Court in BALCO Employees Union Case77, 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

75. Id. at para 28
76. Ibid
77. See supra n. 65
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 workers.

Another important area of labour issues is with regard to security of tenure. In Secretary, State of Karnataka and Ors. v. Umadevi and Ors., the issue was with regard to regularization of employees. The 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 but be recognized 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.

78. Id. at para 48 See also, Union of India and Another v. International Trading Co. and Anr. AIR 2003 SC 3983 Where it is held that the policy decision should not be lightly interfered with
79. A.I.R.2006 S.C.1806
80. Id. at para 2
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.”

Though the court referred to equality principle and preamble of the Constitution, it forgot the socialist and economic justice concepts envisioned in the preamble.

So, in conclusion, in cases of dismissal, termination of service, rights of workers in case of merger of industrial units and regularization of employees, 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.

82. Supra n.74 at para20
83. Id. at para 34
84. United Bank of India v. Sidhartha Chakraborty Civil Appeal No. 2001 of 2006 decided on 27.08.2007
86. Indian Airline Officer’s Association v. Indian Airlines Ltd. And Ors, AIR 2007 S. C. 2747 and BALCO Employees Union Case, A.I.R.2002S.C.350
87. Secretary, State of Karnataka and Ors.V.s. Umadevi and Ors AIR2006SC1806,
But there is a silver lining in the cloud. In *BCPP Mazdoor Sangh v. N.T.P.C. & Ors*\(^{88}\), the Supreme Court has taken a realistic view and distinguished the decision from *BALCO’s case and All ITDC Worker’s Union &Ors*\(^{89}\). It reads

“There is no quarrel as to the proposition laid down in *BALCO’s* and *ITDC’s* case. However, considering our discussion relating to various aspects starting from calling for applications and subsequent actions taken by NTPC, we are satisfied that the employees have made out a case for continuing their service in NTPC\(^{90}\).”

In many other countries, the judiciary protects\(^{91}\) the labour force from the adverse consequences of globalization. For example Spanish courts interpreted domestic Spanish law in the light of internationally recognised labour standards particularly the Conventions of ILO.\(^{92}\)

The above analysis shows that though the Indian judiciary has contributed a lot in service jurisprudence, even by interpreting labour rights in the light of international conventions, in the globalised era it gives a clean chit to the legislature in the name of ‘policy matters’

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88. Decided On 11.10.2007  
90. *Supra* n.69 para 32  
91. 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.” Benjamin Aaron and Katherine V.W. Stone, “Comparative Labour Law- Bridging the Past and the Future”, 28 Comp. Lab.L & Pol’y 377 at 387 (2006-07)  
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.

5.3 Legislative Measures for Social Security in India: Current Position

In the Indian context, social security is a comprehensive approach designed to protect deprivation i.e., to protect the individual from any uncertainties in income. The State bears the primary responsibility for developing appropriate system for providing protection and assistance to its workforce. The workforce in India is increasing though the workforce in organized sector is not increasing proportionately. The organized workers constitute 7% of the total workforce of about 400 million in the country. They are covered by various legislations providing to social security to workers. The principal social security laws enacted in India are: (1)The Employees State Insurance Act, 1948, (2)The Employees’ Provident Funds & Miscellaneous Provisions Act, 1952, (3)The Workmen’s Compensation Act, 1923, (4)The Maternity Benefit Act, 1961 and (5)The Payment of Gratuity Act, 1972. These legislations protect those workers who are specifically mentioned in the enactments. A close scrutiny of these enactments would tell about the vires and virtues in brief.

93. Workforce Estimates in National Accounts, Chapter 7 Study conducted by National Samples Survey Organisation available in http://www.mospi.nic.in. The survey shows that in 1991, the total workforce was 314 million and out of which 27 million were in organized sector, in 2000, the total workforce has increased to 397 million and out of which 28 million were in organized sector.

(i) **The Employees State Insurance Act, 1948**

The question of introducing a Health Insurance Scheme in India has been initiated in 1929 by the Royal Commission of Labour. But it was materialized in the year 1944 after submission of Professor Adarkar’s Report. This scheme of health insurance was for workers below a certain wage ceiling in textile, engineering and minerals and metals which comprised major group of industries. The scheme was intended to provide medical care and the sickness benefit for the insured person. Professor Adarkar’s Scheme and suggestions made by ILO experts were incorporated into 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.

**Scope and Application of E.S.I.Act**

The E.S.I. Act, 1948 presently applies to the factories using power in the manufacturing process and employing 10 or persons and non power using factories, shops, hotels, and restaurants, cinema, pre-view theatres, road motor transport undertakings and news paper establishments employing 20 or more persons. The employees of factories using power and employing 10 or more persons. Based on the recommendations of committee on Perspective Planning in 1972 the corporation extended the coverage to non power using factories employing 20 or more persons. Along with this several non factory establishments such as shops, cinemas, hotels, restaurants, road motor transport undertakings and news paper establishments employing 20 or more persons were brought within its purview.

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95. ESI Review Committee appointed in 1966 by Government of India.

96. See, Report of the Working Group on Social Security, Planning Commission, Govt. of India appointed on 3-3-06

97. Initially the scheme applied only to factories using power and employing 10 or more persons. Based on the recommendations of committee on Perspective Planning in 1972 the corporation extended the coverage to non power using factories employing 20 or more persons. Along with this several non factory establishments such as shops, cinemas, hotels, restaurants, road motor transport undertakings and news paper establishments employing 20 or more persons were brought within its purview.
factories and establishments drawing wages up to Rs. 7,500/- per month\(^98\) are covered under the scheme. The scheme is administered by a separate body called the Employees’ State Insurance Corporation\(^99\) 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\(^100\) to advise the corporation in matters connected with provisions of medical care.

The Scheme is financed mainly by contributions from employers and employees\(^101\). 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\(^102\).

Employees who are earning less than Rs. 50 per day are exempted to contribute but their employers are required to pay their share of contribution. The state governments 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\(^103\).

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98. Initially the scheme was introduced to employees who are drawing wages up to Rs.400/- It is increased to Rs.500/- in 1966, Rs.1000/- in 1975, Rs.1600/- in 1985, Rs. 3000/- in 1992, Rs. 6500/- in 1997 and Rs. 7,500/- from 1.2004. On 15.06.06 the meeting of the corporation approved enhancement in the wage ceiling from Rs. 7,500 to 10,000/- per month


100. Id. at S.10.

101. Id. at S.39.


103. E.S.I. Act,S.26
The benefits under the Act include both cash benefits and benefits in kind like medical benefits. The cash benefits are: (1) Sickness benefit\textsuperscript{104} - payable in cash at the rate of about 50\% of wages for a maximum of 91 days in a year extendable up to 2 years in cases of specified long term diseases\textsuperscript{105} at a higher rate of about 70\% of wages; (2) Maternity benefit\textsuperscript{106} - payable for 12 weeks for confinement, six weeks for miscarriage and additional one month for sickness arising out of pregnancy at the rate of about full wage; (3) Temporary disablement benefit\textsuperscript{107} - payable at the rate about 70\% of wages till the disability is there; (4) Permanent disablement benefit\textsuperscript{108} - 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 70\% of the wages; (5) Dependant’s benefit\textsuperscript{109} - which is payable to the dependants in the contingency of death of insured person due to employment injury at the rate of about 70\% of wages; (6) Funeral Expenses\textsuperscript{110} - actual expenditure on the funeral of a deceased insured person up to Rs. 2,500/- which is reimbursable to any person incurring the same; (7) 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\textsuperscript{@} Rs.123/- per day or the amount charged by Vocational

\begin{itemize}
  \item \textsuperscript{104} Id. at S.49
  \item \textsuperscript{105} So far 34 diseases are specified.
  \item \textsuperscript{106} E.S.I. Act, S.50
  \item \textsuperscript{107} Id. at S. 51 (a)
  \item \textsuperscript{108} Id. at S. 51 (b)
  \item \textsuperscript{109} Id. at S. 52
  \item \textsuperscript{110} Id. at S. 46 (f)
\end{itemize}
Rehabilitation Centre is also payable\(^{111}\); (8) 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 50% of the wages.

The medical care services under ESI Scheme are provided by respective state governments\(^{112}\). The Medical care services to the beneficiaries\(^{113}\) 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 ESI 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 ESI Corporation and the State Government in the ratio 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 ESI Corporation\(^{114}\). As per the scheme one hospital of the state is to be taken over from the state government and run by ESI Corporation directly. Till now 12 hospitals have been taken over from State Governments by Corporation. Recent and Proposed initiatives of the Corporation include Rajiv Gandhi Shramik Kalyan Yojna which is an

\(^{111}\) http://esic.nic.in/benefits.htm, accessed on 16\(^{th}\) April 2009

\(^{112}\) Except in Delhi and Noida where these are provided directly by ESI Corporation

\(^{113}\) 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.

\(^{114}\) E.S.I. Act, S.59.
unemployment allowance scheme aiming at those insured who are losing their employment due to closure of factory, retrenchment and permanent invalidity. The unemployment allowance is paid at the rate of 50% of the wages for a maximum period of 6 months, setting up of Super specialty hospitals in four zones\textsuperscript{115} and extension of ESI Scheme to educational and private medical institutions\textsuperscript{116}.

(ii) The Employees’ Provident Funds & Miscellaneous Provisions Act, 1952

This is yet another welfare legislation enacted for the purpose of constituting a Provident Fund for employees working in factories and other establishments. The Act aims at providing monetary 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. This Act provided coverage to workers of factories and other classes of establishments engaged in specific industries and classes of establishments employing 20 or more persons\textsuperscript{117}. 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. An establishment which is not otherwise coverable under the Act, can be covered voluntarily with mutual consent of the employers and

\textsuperscript{115}133rd Meeting of ESI Corporation held on 7.7.05 decided to set up super speciality hospitals in Delhi, Kolkata, Hyderabad and Mumbai at cost of Rs. 50 Crores each.

\textsuperscript{116}Decision in 125th Meeting of ESI Corporation held on 21.2.2003(to educational institutions) and 27.2.2005(to private medical institutions)

\textsuperscript{117}The Central government is empowered to notify coverage of this Act to any establishment employing less than 20 employees and once it is included the coverage will be there though the number of employees falls below 20.
majority of the employees\textsuperscript{118}. The Act currently applicable to factories and other establishments engaged in about 180 specified industries\textsuperscript{119}. The Schemes under The Employees’ Provident Funds & Miscellaneous Provisions Act are

\textit{Employees Provident Fund Scheme, 1952}

The Fund is constituted on the basis of the contribution from employers and employees. The normal rate of contribution is 12\% of the pay\textsuperscript{120} of the employees. Under the scheme the contributor can withdraw the amount standing in 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.

\textit{Employees Deposit Linked Insurance Scheme, 1976}

Under this scheme, the employees are not contributing but the employers are required to contribute and the contribution can be not to exceed more than 1\% of the aggregate of the basic wages dearness allowance and retaining allowance plus the administrative charge at the rate of .05\% of the wages. Under this scheme, if the employee dies while in service, the nominees or members of the family of the employees of the establishment get an additional amount equal to the average balance in the provident fund account of the deceased during the preceding 12 months if the balance is less than 35000/- and if the balance is above Rs.35000/- the

\begin{thebibliography}{9}
\bibitem{118} Section 1(4) of the Act.
\bibitem{119} Industries covered by the Act are specified in Schedule I of the Act.
\bibitem{120} The ‘wages’ includes basic wage, dearness allowance, including cash value of food concession and retaining allowance.
\end{thebibliography}
amount payable shall be Rs.35000/- plus 25% of the amount in excess subject to a ceiling of Rs. 60000/-. Revamping the whole EPF Scheme has started in the year 2001 by initiating “Re-inventing EPF, India” Project. Social Security Number is a new initiative as the part of the project. SSN aims at uniquely identifying a subscriber i.e., every working person in India.

**Employees Pension Scheme, 1995**

The Act is amended in 1995 and replaced the Employees Family Pension Scheme, 1971. The benefits under the new scheme include:

1. Superannuation Pension
2. Early Pension
3. Permanent Total Disablement Pension
4. Widow / Widower’s Pension
5. Children or Orphan Pension

From and out of the contributions payable by the employer to the provident fund, a contribution equivalent to 8.33% and 1.16% of the employees pay by the Central Government is remitted to Employee’s Pension Fund. If the pay of the employee exceeds Rs. 6500/- per month, the contribution payable by the employer and the central contribution is limited to Rs. 6500/- . The superannuation pension will be payable on attaining the age of 58 years or on completion of 20 years of service or more and early pension can be taken at a reduced rate between 50-58 years of age, on completion of 10

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121. Report of a Multi Disciplinary Expert Committee(a project for IT Reforms) was accepted by executive committee on 14.03.2000. M/s. Siemens Information Systems Ltd. is appointed as consultant
122. It is argued that SSN will address the needs of mobile and seasonal workforce, minimize the possibility of multiple accounts for the same member and pension claims for the same person and other fraudulent practices.
years pensionable service or more. If the service is less than 10 years a lump sum withdrawal benefit is given.

(iii) The Workmen’s Compensation Act, 1923

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 otherwise than in clerical capacity, 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.

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 if the disablement continues more than 3 days. The amount of compensation in case of death is an amount equal to 50% of the monthly wages of the deceased workman multiplied by the relevant factor

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123. Section 2(1) (n)
124. Section 3
or Rs. 50000/- whichever is more. In case of permanent total disablement results from injury, 60% of the monthly wages multiplied by relevant factor or 60000/- whichever is higher. If the monthly wages of the workman exceeds Rs. 2000/-, then his monthly wages for the above purpose will be deemed to be Rs. 2000/- only.

(iv) The Maternity Benefit Act, 1961

This Act 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.

(v) The Payment of Gratuity Act, 1972

This Act provides for a scheme of compulsory payment of gratuity to employees engaged in: (1) every factory, mines oil fields, plantations, port and railway company, (2) every shop or establishment in which 10 or more persons are employed or were employed on any day of the preceding 12 months, (3) every motor transport undertaking in which 10 or more persons are employed or were employed on any day of the preceding 12 months and (4) such other establishments or class of establishments in which 10 or more employees are employed or were employed on any day of the
preceding 12 months as the central government notifies from time to time.

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. Gratuity is payable at the time of termination\textsuperscript{125} of his services on superannuation or on retirement or resignation or death or disablement due to accident or disease\textsuperscript{126}. The benefits are calculated as 15 days wages for every completed year of service or part there of in excess of six months based on the rate of wages last drawn by the employee subjected to a maximum of Rs. 3,50,000/-.

(vi) The Factories Act, 1948

This Act regulates the working conditions in the factories and ensures that basic minimum requirements for safety, health and welfare of the factory workers. The Act also regulates the working hours, leave, holidays, overtime, employment of children, women and young persons. The Act covers all workers employed in the factory\textsuperscript{127} premises, directly or through agency including contractor, with or without knowledge of principal employer, whether for

\begin{itemize}
\item \textsuperscript{125} termination of service includes retrenchment.
\item \textsuperscript{126} the condition of five years is not necessary if service is terminated due to death or disablement.
\item \textsuperscript{127} Section 2 (m) Factory means any premises including the precincts there of (i) wherein 10 or more workers are employed on any day preceding 12 months and a manufacturing process is carried on with the aid of power or (ii) wherein 20 or more workers are employed on any day preceding 12 months and a manufacturing process is carried on without the aid of power.
\end{itemize}
remuneration or not, in any manufacturing process or any kind of work incidental or connected there to.

(vii) **Industrial Dispute Act, 1947 (Chapter V A and V B)**

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. These provisions provide for adequate notice to employees as well as compensation in such situations. Chapter V A deals with those industrial establishments which are not seasonal in character and in which at least 50 workmen on an average is 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 50% of the basic salary plus D.A subject to the maximum of 45 days. If the lay off continues beyond 45 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 15 days salary multiplied by number of years of continuous service and (c) notice to appropriate government stating reasons for retrenchment. In case of closure, the employees are entitled to notice of 60 days before closure and compensation as in the case of retrenchment subject to a maximum of 3 month’s salary if the closure is due to unavoidable circumstances. Chapter V B deals with industrial undertakings where number of employees are more than 100. The compensation is the same as that in
Chapter V A, but these establishments have to take written approval from state government before lay off, retrenchment and closure.

5.4 Social Security in Unorganized Sector

The unorganized sector workers are those who have not been 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 government has enacted certain legislations for the protection of these workers.

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\textsuperscript{128} and central\textsuperscript{129} governments from time to time under their respective jurisdictions. This Act does not discriminate between male and female workers. No standard is laid down by the Act for fixing the minimum wage and hence, norms recommended by Indian Labour Congress, 1957 are taken into account for fixing minimum wages. The decision in \textit{The Workmen v. Reptakose Brett and Co. Ltd Reptakos and Co.}\textsuperscript{130} by Supreme Court is another guideline. It is

\textsuperscript{128} So far 1530 employments are covered under this Act, See, http://www.indialabourstat.com/India, accessed on 19\textsuperscript{th} April 2009

\textsuperscript{129} See, http://www.indialabourstat.com/India There are 46 scheduled employments in the central sphere, accessed on 19\textsuperscript{th} April 2009

\textsuperscript{130} A.I.R. 1992 S.C. 504
decided by apex court that the children’s education, medical requirement, minimum recreation, provision for old age, marriage etc., should further constitute 25% 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 and Section 13 protects workers from exploitation by fixing the number of hours in a working day.

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 of recommendations of National Commission on Rural Labour in 1991. The Central government revised the national minimum according to the recommendations of different working groups from time to time.

Apart from this Act, the social security coverage to the unorganized sector workers are through some Central legislations including Welfare Funds\textsuperscript{131}. 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. According to survey conducted by NSSO in 1999-2000 about 1.76 crores of workers are employed in construction activities. The Building and Other Construction Workers (regulation of Employment and Conditions of Service Act, 1996 and The Building and

Other Construction Worker’s Welfare Cess Act, 1996 are the legislations covering the welfare of the workers in the construction activities\(^\text{132}\).

Apart from these welfare schemes, there are other social insurance schemes like Janshree Bima Yojna-a group insurance scheme implemented by LIC- is available to persons between age of 18 and 60 years and are living below or marginally above poverty line. This scheme provides death insurance of Rs. 30000/ and accidental benefits for partial and total disability\(^\text{133}\). Universal Health Insurance Scheme is another heavily subsidized scheme for BPL families covering reimbursement of hospitalization and personal accident insurance cover. Apart from these there are insurance scheme for handloom weavers, fishermen, etc.

\(^{132}\) The Social Assistance Scheme include (1) National Old Age Pension Scheme-for destitute persons or more than 65 years of age. (2) Swarnajayanti Gram Swarozgar Yojna\(^\text{132}\) for bringing self employed persons above poverty line by providing them income generating assets through bank credit and government subsidy. (3) Sampoorna Grameen Rozgar Yojna\(^\text{132}\) which started in 2001 for providing additional wage employment in the rural areas and also food security. (4) Indira Awas Yojna\(^\text{132}\) which provides for dwelling units, free of costs, to the scheduled castes and scheduled tribes and other BPL families in rural areas. (5) National Rural Health Mission which seeks to provide effective health care to rural population including unorganized sector labourers through out the country. (6) National Rural Employment Guarantee Act (NREGA) is aiming to provide for 100 days of guaranteed wage employment in every financial year to every house hold whose adult members volunteer to do unskilled manual work\(^\text{132}\). This Act also provides insurance coverage. (7) Pradhanmantri Gram Sadak Yojna\(^\text{132}\) launched in 2000 in order to provide all weather connectivity to all eligible unconnected rural habitations. It provides employment to rural poor in addition to systemic upgradation of the existing rural road network. (8) Swarna Jayanti Shahari Yojna\(^\text{132}\) is covering two programmes viz, the Urban Self –Employment Programme and Urban Wage Employment Programme.

\(^{133}\) http://rajlabour.nic.in/janshree_hous. 24th September, 2008
The Unorganized Sector Worker’s Social Security Scheme, 2004 envisages 3 benefits: old age pension at the rate Rs.500/- per month on attaining the age of 60 years; personal accidents insurance cover of Rs. one lakh; and the coverage will be under Universal Health Insurance Scheme.

The common characteristic of all these new programmes is to provide jobs to large masses in unorganized sector and thus to assist to acquire security by themselves. This is a good trend but only acceptable for a short duration. The state is constitutionally bound to provide social security and it has the responsibility to accept social security as a right of citizen rather than managing things in an ad hoc manner as they do now.

Another reality is that most of the employees working in the above mentioned establishments are informal workers as under ‘contract system’. Hence the benefits are out of reach to them.

**The Unorganised Sector Workers’ Social Security Act, 2008**

The study will be incomplete, if the analysis of the Act is omitted. The Act primarily aims at providing social security and welfare of unorganised sector workers. The words “unorganised sector” in the Act hold an exhaustive definition which can be made applicable to all sections apart from organised sectors where social

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135. The Cabinet approved the Bill on 21.8.08. It will be introduced in the parliament in the September Session.

136. “It will build a social security for unorganised workers. The issue of income security, employment security and working conditions will have to be addressed through other legislation. http://pmindia.nic.in/nac/communocation, accessed on 12th November 2009.
security measures already exist. Unorganised sector is defined in the Act as, “home based worker, self employed worker, or a wage worker in the unorganised sector.” It really includes almost every category other than organised sector. Chief Justice K.G. Balakrishnan aptly highlighted the objectives of the Act in the following words:

“Needless to say, the millions of unorganised workers are in dire need of a stable and reliable social security regime. The Unorganised Workers’ Social Security Act contemplates the delivery of benefits to unorganised workers in instances of sickness, disability, maternity, unemployment, old age and the death of a family’s bread winner. The Act has defined ‘Unorganised workers’ in a wide and liberal manner so as to include those who are casually employed and receive daily or monthly wages as well as ‘home-based workers’ and even farmers who work on small land-holdings. Hence, the legislative intent is to expand the social safety net as widely as possible.”

The benefits proposed are (1) life and disability cover (2) health and maternity benefits (3) old age protection generally and any other benefit as determined by Central Government. The Act envisages that the state government may formulate suitable welfare schemes including provident fund, employment injury benefit, housing,

educational schemes for children, skill upgradation of workers, funeral assistance and old age homes which may be wholly funded either by Central Government or shared by Central and State Government or along with contribution from employees also. The machinery for implementing these schemes will consist of a National Social Security Board and State-level Social Security Boards. These Boards will perform the tasks of supervising the collection of contributions, maintenance of Social Security Funds and ensuring the proper dispersal of benefits. The nodal role will be played by the District-level authorities who will be responsible for the registration of workers for the scheme and unique identification cards will be issued to the intended beneficiaries. In keeping with the philosophy of decentralisation, the actual registration of workers will be performed by Worker Facilitation Centres (WFC) which could be run by Panchayati Raj institutions, trade unions or recognised NGOs. The main drawback of the Act is that social security has not been defined within the Act and “social security” and “welfare” are used interchangeably\textsuperscript{138}.

Another criticism against the Act is that, it lacks of fund allocation. The fund allocation is now according to the discretion of Central or State Governments. Another flaw in the Bill is that the social security provided by the Act is not at all right based ie., the Act does not recognise social security as a right. It merely provide for

the social security schemes without any permanent funding. More over the Board envisaged in the Act is only an advisory body and not an empowered body. This Act does not provide any security as expected to unorganised sector. Hence the Act is to be strengthened by adequate amendments in this sphere to rectify the above defects.

5.5 Conclusion

There are many laws covering different set of benefits available in India. But these are available to a small portion of the labour force only i.e., the organized sector. These laws generally provide minimum number of employees for their application to an industrial establishment\(^\text{139}\). The provision for wage ceiling is another impediment in widening the application of these Acts\(^\text{140}\). Clauses for barring benefits if the worker is entitled to more than one benefits is another drawback of the present legal framework\(^\text{141}\). For instance, medical benefits are provided under E.S.I. Act and Plantation Act. Similarly maternity benefit is provided under E.S.I. Act and various Central and State maternity Acts. Further, employment injury benefits are available under E.S.I. Act and Workmen’s Compensation Act. Another problem is the machineries for implementing these laws. For example with respect to workmen’s compensation, it is noted that “however wonderful legal provisions for the payment of compensation to workmen for industrial injuries may be, they are of little use to an injured workmen, in the absence of a proper machinery for their

\(^{139}\text{For example E.S.I. Act, 1944 is applicable establishment using power if the minimum number of employees employed are 10 and without power the number is 20.}\)

\(^{140}\text{For example E.S.I. Act is applicable to workmen with wages up to 7,500/- per month.}\)

\(^{141}\text{Deepak Bhatnagar, Labour Welfare and Social Security Legislations In India, Deep and Dep Publications, New Delhi, (1984), p. 116}\)
enforcement”142 In a nutshell, the present social security system in India is suffered mainly by multiplicity of laws, shortage of coverage, lack of policy and scarcity of implementation mechanism143.

It is worthy to analyze how other countries are trying to cope up with the wind of globalisation. Understanding about how the legal system works in other countries will definitely help to reconcile the principle of unlimited market freedoms sought by employers with the demands of workers for the guaranteed basic rights and social protections.
