CHAPTER - IV

SOCIAL SECURITY PROTECTION FOR SECTOR SPECIFIC UNORGANISED WORKERS - THE CENTRAL MODULES

4.1 Introduction

The concept of social welfare as envisaged in the sector specific labour legislations contains an in built mechanism for the social security provisions. In this regard the concept of social welfare is viewed as genus and social security protection as one of its species. The concept social welfare as envisaged in the sector specific labour legislations in India is mainly viewed from employment protection perspective. The Government of India, immediately after independence in pursuance of the Industrial Policy Resolutions as well as on the basis of the recommendations of Royal Commission on Labour (1931), enacted some sector wise welfare legislations providing broadly a measure of social welfare protection for the workers covered there under. Keeping in view, the employment insecurity problem as confronted by the Dock Workers, the Royal Commission on Labour (1931), in its report, recommended that Government need to adopt a policy of decasualization to regulate conditions of work of dock workers in ports and also to provide a measure of welfare protection to dock workers. The enactment of the Dock Workers (Regulation of Employment) Act, 1948 is
identified in this background. Later after the commencement of the Constitution, the Government of India, in pursuance of the Directive Principles of State Policy, under Part IV of the Constitution, further enacted sector specific welfare legislations for unorganised workers namely, the Plantation Labour Act, 1952, the Beedi and Cigar Workers (Conditions of Employment and Welfare) Act, 1966, the Contract Labour (Regulation and Abolition) Act, 1970, the Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 and the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996. Of all above mentioned legislations, the discussion of two basic legislations namely, the Dock Workers (Regulation of Employment) Act, 1948 and the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 deserve a merit in the context of title of this research.

4.2 The Dock Workers (Regulation of Employment) Act, 1948

Dock worker means a person employed in a port on work in connection with the loading, unloading, movement or storage of cargos. The demand for dock labour is intermittent depending on the arrival and departure of vessels, the size and nature of their cargo as well as seasonal and cyclical fluctuations.
In the ports, therefore, there is usually labour in excess of minimum requirements and the general tendency on the part of employers is to ensure larger reserves than necessary in order to provide ample margin against emergencies. The main problem connected with dock labour is unemployment or under employment.¹

In 1931, the Royal Commission on Labour in its Report recommended that “a policy of decasualisation should be adopted with a view to regulate the numbers of dock labourers in accordance with requirements and to ensure that the distribution of employment depends not on the caprice of intermediaries, but on a system which, as far as possible, gives all efficient men an equal share.”² The Government accepted these recommendations and efforts were made to induce Port Trusts to formulate necessary Schemes of decasualisation. However, this voluntary attempt was not a success.

Finally in 1948, the Government of India enacted the Dock Workers (Regulation of Employment) Act, 1948 (herein after referred to as 'the Act’) mainly to provide for a measure of employment as well as welfare protection for the dock workers. The Act provides for the setting up of the Dock Labour

¹See Statement of Object and Reasons, The Dock Workers (Regulation of Employment) Act, 1948, Gazette of India, Part IV at.432.
Boards, on the basis of principle of tripartism representing equal number of members of employers, workers and government representatives. The Act also empowers the Central Government in respect of major ports and to the Provincial Government in respect of other ports, to frame a Scheme for the registration of dock workers with a view to securing greater regularity of employment and for regulating the employment of dock workers, in a port. In particular, the Scheme may provide *inter alia* for the terms and conditions of employment of workers, including rates of remuneration, hours of work and conditions as to paid holidays. It also provides for payment to registered workers of minimum pay for the days on which work may not be available to them and for their training and welfare.

The law defines ‘dock worker’\(^3\) means a person employed or to be employed in, or in the vicinity of, any port on work in connection with the loading, unloading, movement or storage of cargos, or work in connection with the preparation of ships or other vessels for the receipt or discharge of cargoes or leaving port. From the definition of dock worker as defined under section 2(b), it cannot be said that, there cannot be a particular class of dock workers working exclusively on board or exclusively on shore. The definition

\(^3\) See Sec. 2(b) of the Dock Workers (Regulation of Employment) Act, 1948.
of dock worker speaks generally of dock workers and states that, such workers can be employed in or in the vicinity of any port.4

The term ‘employer’ is defined as in relation to a dock worker, means the person by whom he is employed or to be employed by them.5

4. 2. 1 Scheme for Dock Workers Contained in the Act

The Act empowers the appropriate government, to frame a Scheme, to provide for registration of dock workers for regulating the employment of dock workers and for other welfare measures.6 In particular, the Scheme provides

(i) for the application of the Scheme to such classes of dock workers and employers as may be specified therein;

(ii) for defining the obligations of dock workers and employers subject to which the Scheme may apply to them;

(iii) for regulating the recruitment and entry in to the Scheme, registration of dock workers and employers;

41975 Lab IC 56(61 to 63) (Goa).
5See Sec. 2(c) of the Act.
6Sec. 3 of the Act.
(iv) for regulating the employment of dock workers by fixing the terms and conditions of employment, including rates of remuneration, hours of work and holidays with pay;

(v) for securing that, in case of non availability of employment, such workers will, subject to the conditions of the Scheme, receive a minimum pay;

(vi) for creating such fund which may be necessary for the purposes of the Scheme and for the administration of such fund;

(vii) for the training of dock workers and

(viii) for constituting the authority for the administration of the Scheme.

The major highlights of the Scheme are securing a minimum pay to dock workers in respect of periods during which employment or full employment is not available and welfare benefits for the dock workers. This is a first model in India, wherein a specific category of unorganised workmen, namely the dock workers who are ensured a measure of regulation of employment and welfare measures in all major ports in India. This mechanism is based on 'closed shop' basis. This means that every worker
who is employed in the dock should register himself as a member in the Dock Labour Board, constituted under the Act and has to fulfill the conditions specified there under. This clearly prevents the exploitation of dock workers and ensures a measure of employment protection and welfare benefits.

Further, the Act provides for penal liability for the contravention of any of the provisions under the Scheme. It is punishable with imprisonment for three months or with fine or with both. \(^7\) This clearly demonstrates the intention of the Parliament, in ensuring the benefits provided there under for the dock workers.

The Act empowers the appropriate government to frame one or more schemes for a port or group of ports or to amend or vary or revoke any scheme made by it.

4. 2. 2 Dock Labour Board

The Government is empowered under the Act, to constitute a Dock Labour Board in respect of each port, for the administration of the Scheme. The Dock Labour Board shall have equal number of representation of from government, dock workers and employers. The Dock Labour Board is a local

\(^7\) Sec. 3 of the Act.
authority within Art 12 of the Constitution. The Board is responsible for the administration of the Scheme in the port. It can exercise such powers and perform such functions as conferred on it by the Scheme. While performing the functions the board is bound by the direction of the Government.

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

Construction workers constitute the second largest category of workers in the unorganised sector. According to the NSSO estimates, in 2004-05, about 5.57 percent of workers are engaged in building and other construction works. The construction industry covers a vast field of activity in the civil, mechanical, electrical and public health area processes. A large number of multinational, national and local companies employ lakhs of such workers. Moreover, a large number of self employed individuals are engaged in actual construction works and allied activities like white washing, painting, plumbing and fixing of mechanical or electrical fixtures etc. Since independence, various developmental works like dams, roads, industries ,

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8 (1976) 1 Cal LJ 377 (385).
10 A.C Dhas & M. Helen, Social Security for Unorganised Workers in India MPRA Paper No. 9247, posted 06. July 2008 / 07:10 Online at http://mpra.ub.uni-muenchen.de/9247/
bridges have been built and crores of rupees have been spent through budgetary provisions and five year plans. However, the quality of life of the workers who contributed to these developments did not improve.

These workers are not able to afford even basic necessities like food, shelter, education etc. They are deprived of employment security or social security benefits or good working conditions. Since 1980s construction workers were demanding for a legislation to regulate conditions of the employment and to provide for welfares measures.

The enactment of this legislation by the Government of India was due to a strong movement of union leaders from the construction industry in Tamil Nadu, with the backing of retired bureaucrats and the former judges of the Apex Court like Justice Krishna Iyer who took keen interest in this cause. The movement started in early eighties by the efforts of the Organisation ‘National Campaign Committee for Central Legislations on Construction labour’ resulting in presenting a petition along with the Draft Bill to the Committee on Petitions of the Lok Sabha in the year December 1986.\(^\text{11}\) Later, the efforts continued relentlessly till 1996 and finally succeeded in lobbying powerfully for the enactment of the Building and Other Construction

\(^{11}\) An interaction by the author with Shri N.P. Swamy, the former Secretary General of National Campaign Committee for Central Legislation on Construction labour, revealed this information.
Workers’ (Regulation of Employment and Conditions of Service) Act in the year 1996 by short lived Mr. Deve Gowda Government at the Center. Without any doubt it is a landmark achievement in the history of unorganised sector workers’ trade union movement in India.

4.3.1 Scope and Application of the Act

The long title of the Building and Other Construction Workers’ (Regulation of Employment and Conditions of Service) Act, 1996 (herein after referred to as ‘the Act’) provides for the regulation of the employment and conditions of building and other construction workers and to provide for their safety, health and welfare measures and for other matters connected there with or incidental there to.\(^{12}\)

It extends to the whole of India. The Act applies to every building and other construction work\(^{13}\) establishment which employs or had employed ten

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\(^{12}\) The Gazette of India, Extraordinary, Part II, Section I, 20\(^{th}\) August, 1996.

\(^{13}\) Sec.2(1) (d) of the Act defines "building or other construction work" means the construction, alteration, repairs, maintenance or demolition, of or, in relation to, buildings, streets, roads, railways, tramways, airfields, irrigation, drainage, embankment and navigation works, flood control works (including storm water drainage works), generation, transmission and distribution of power, water works (including channels for distribution of water), oil and gas installations, electric lines, wireless, radio, television, telephone, telegraph and overseas communications, dams, canals, reservoirs, watercourses, tunnels, bridges, viaducts, aqueducts, pipelines, towers, cooling towers, transmission towers and such other work as may be specified in this behalf by the appropriate Government.
or more building workers\textsuperscript{14} in any building or other construction work.\textsuperscript{15} It covers all Central and State government establishments. The Act also covers all private residential buildings if the cost of construction is more than Rupees ten lakhs. Initially there were protests by the workers’ Trade unions to amend the definition of ‘establishment’\textsuperscript{16} as far as cost factor of the building, reducing it from rupees ten lakhs to five lakhs in order to have a wider coverage of the legislation, but went in vain. The argument of the Trade Unions sounds correct in view of the fact that many constructions by the individuals range from five to eight lakhs.\textsuperscript{17} But demand of trade unions is yet to be implemented.

\textsuperscript{14} Sec. 2(1) (e) of the Act defines "building worker" means a person who is employed to do any skilled, semi-skilled 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.

\textsuperscript{15} Sec. 1(4) of the Act.

\textsuperscript{16} Sec.2(1)(j) of the Act defines “establishment” means any establishment belonging to, or under the control of, Government, any body corporate or firm, an individual or association or other body of individuals which or who employs building workers in any building or other construction work; and includes an establishment belonging to a contractor, but does not include an individual who employs such workers in any building or construction work in relation to his own residence the total cost of such construction not being more than rupees ten lakhs;

\textsuperscript{17} An interaction by the author with Shri K.Jeevanand, the Secretary General of Karnataka Kattada Nirmana Sangha revealed this information.
4.3.2 Registration of Establishment

Every employer within a period of sixty days from the date of commencement of the Act shall register establishment under the Act. No establishment without registration can employ any building or construction worker. The Act empowers the appropriate government, to appoint Registering Officers by defining the limits within which he shall exercise his powers. Every employer shall apply for registration of the establishment with all details and a registration fee of twenty-five rupees. The registration fee shall be directly credited to the Welfare Fund created for the administration of welfare benefits for the registered worker. The registering officer after registering the establishment, issue a certificate of registration.

4.3.3 Registration of Building Workers

The Act makes the registration of building worker as a condition precedent to avail of the benefits from the Board. Every building worker who is between eighteen to sixty years of age and who has been engaged in any

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18 Sec. 2(1) (i) of the Act defines "employer", in relation to an establishment, means the owner thereof, and includes,- (i) in relation to a building or other construction work 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 through a contractor, or by the employment of building workers supplied by a contractor, the contractor,
19 See Sec. 7 of the Act.
20 Sec. 6(a) of the Act.
21 Sec. 7 of the Act.
building or other construction work not less than ninety days during the preceding twelve months shall be eligible for registration as a beneficiary under this Act. Once the formalities of registration are completed, the worker shall be issued a photo identity card with the necessary details.\textsuperscript{22} Employer need to enter the details of the work done by the beneficiary in the identity card and authenticate same.\textsuperscript{23} The registration is subject to periodical review as provided under the rules. The building worker, who has been registered as a beneficiary under the Act, shall, until he attains the age of sixty years contribute at the prescribed rate to the fund maintained by the Welfare Board and is entitled to benefits as prescribed under the Act. This proviso is challenged vehemently by the trade unions. According to trade unions prescribing the upper age limit of sixty years for the purpose availing pension benefit is unjust as this will require longer period of tenure for the beneficiary to avail social security benefits during his old age.\textsuperscript{24} This issue was raised by the trade unions in view of the fact that a construction worker usually would start his carrier as a worker at a very tender age (fifteen year or even less) and sixty year is inordinately longer duration for a worker to avail the pension benefit. So age prescribed should be reduced to fifty years. This argument sounds reasonable as the unorganised sector worker who works more than

\textsuperscript{22} Sec. 13 (1) of the Act.
\textsuperscript{23} Sec. 13 (2) of the Act.
\textsuperscript{24} supra note 11.
forty years in his life time which substantially increases mortality rate in view of the physical hardship involved in the nature of the work. But the Government did not heed to the requests of the Trade unions.

4.3.4 Building and Other Construction Workers’ Welfare Fund

The law envisages a mechanism for the creation of a fund for the providing benefits to the registered workers. The fund is created from the cess collected from the employers, and contributions by the workers. At the time of seeking permission for the building construction, employers must contribute a ‘Cess’ at the rate not exceeding 2% of the cost of the construction made. As far as the workers contribution is concerned the law leaves it to the will of appropriate government to deal the same under the rules made there under. For example the Building and Other Construction Workers Karnataka Rules, 2006 provides for the annual contribution by the beneficiaries which is presently at Rs 100. Further the State Government can allocate annually the funds to the Welfare Fund. Trade unions have objected to annual levy of contribution by workers in view of the hardship that may possibly be confronted with by these unprotected workers. Looking at the vastness of the construction workers in the State perhaps, it is a practically difficult to collect annual contributions by the workers. Moreover, the creation of the Welfare Board under the Act is confined only to the State
capital without any linkage to the grass root level. To make contribution under the Act, workman has to necessarily approach the Welfare Board situated in the capital either directly or through other means.

4.3.5 Building and Other Construction Workers’ Welfare Board

The State government is empowered under the Act, to constitute a Building and Other Construction Workers Welfare Board to exercise such powers and functions as assigned to it under the Act. The Welfare Board shall have equal number of representation of from the government, workers and employers.\(^{25}\)

4.3.6 Benefits Available Under the Welfare Fund

The Welfare Board provides various welfare measures to every registered building worker namely pension, loans for construction of house, financial assistance for the education of children, payment of medical expenses for treatment of major ailments, payment of maternity benefit, assistance in case of accident, payments with regarding group insurance schemes. Most of these benefits are available only to the skilled workers and those who work continuously in the industry. Unskilled workers, who

\(^{25}\) See Sec. 18 of the Act.
do not work with a construction establishment continuously, may not get the
benefits available under the Act. It will not be possible for those unskilled,
uneducated and purely casual workers to make regular, timely contributions
to the fund as per the provisions of the law.

The Act also makes provisions for regulating working hours,
prescribes safety and health measures, and other precautions that are
required for safe working such as safety devices for installation work,
demolition work, excavation, underground construction, handling measures,
proper ladders, ropes and fencing, etc.

It is interesting to note that the matters relating to regulation of
employment and conditions of service pertaining to building and other
construction workers find no place in functions assigned to the Welfare
Board under section 22(1) of the Act, which goes against to the long title of
legislation. The long title of the legislation broadly provides for two aspects
namely, regulation of employment and conditions of service and to provide
for health safety, and welfare measures. The aspect of regulation of
employment provided under any legislation is generally understood in India,
to mean that the Act provides a mechanism for security or continuity of
employment. This aspect plays a vital role in ensuring welfare and social
security protection for an unorganised sector worker. One of the basic problems confronted by the unorganised sector worker in India is, the security or continuity of employment or avocation or occupation. If this aspect is adequately dealt by the legislation, then the worker is ensured in all probability the security of right to livelihood which is unfortunately not given due consideration under Building and Other Construction Workers’ (Regulation of Employment and Conditions of Service) Act, 1996. There is urgent need that the government shall seriously consider this issue.

One more issue which requires urgent attention is delay in framing rules and setting up of welfare Boards by the State Governments. Under this legislation all State governments are expected to enact their own legislations and frame rules. So far only States like Kerala, Tamil Nadu, Madya Pradesh, Delhi have enacted such legislations. Most of the other States are still in the process of adoption and implementation of these Acts. The Trade Unions like National Campaign Committee, Nirman Mazdoor Panchayat, Tamil Nadu are of the opinion that the State Governments conniving with the builders by not notifying the rules and not setting up Boards as prescribed. And thus builders have saved several thousand crores of the cess which needs to be paid under the Act. These organisations demanded that
Rules be framed by all State Governments immediately to implement the law.26

It is evident that Law envisages a model where in the state governments have to frame Rules under the Act, to define various welfare and social security benefits, eligibility conditions etc under the Act. In the absence of normative criteria in the parent Act, there may be a possibility that the state governments may specify welfare and social security benefits on political considerations which will keep away lakhs of construction workers from welfare and social security benefits.

4. 3. 7 Welfare and Social Security Benefits under the Building and Other Workers (Regulation of Employment and Conditions of Service), Karnataka Rules, 2006

In exercise of powers conferred under section 40 and section 62 of the Building and Other Construction Workers’ (Regulation of Employment and Conditions of Service) Act, 1996 the government of Karnataka framed the Building and Other Workers (Regulation of Employment and Conditions of

Service), Karnataka Rules, 2006. These Rules provide for following welfare measures for the registered building and other construction workers.

(i) **Pension benefit**: Every registered worker who has put at least five years of continuous service and who has completed sixty years is entitled for a pension of Rs 200 per month. In case, such worker is not completed sixty years but disabled due to sickness is also eligible for pension.

(ii) **Disability pension**: If the beneficiary is permanently disabled due to paralysis, leprosy, cancer or T.B, he is entitled to disability pension of Rs 150 per month. In addition to that he is also eligible for an *ex gratia* payment of not more than Rs 5000 depending on percentage of disability.

(iii) **Loan for purchase of tools**: The registered worker who has completed fifty five years and who has been member of the fund for last three years is eligible for loan of Rs. 5000 for purchasing tools.

(iv) **Assistance for construction of a house**: Every registered worker who is a beneficiary for a period of not less than five years and having 15 years of service for superannuation and who owns a site in his name or in the name of his spouse is entitled for a loan of Rs. 50,000 for construction of house.
(v) **Assistance for delivery of a child:** Registered construction worker who has been registered for one year is entitled for Rs. 4000 for delivery of child. This assistance is available only for first two deliveries.

(vi) **Assistance for funeral expenses:** In the event of the death of a registered construction worker, Rs 2000 shall be given to the nominee of the deceased worker to meet the funeral expenses.

(vii) **Medical assistance to beneficiaries:** In case beneficiary is hospitalized for 5 or more days due to any disease is entitled for financial assistance subject to the maximum limit of Rs. 1000.

(viii) **Assistance in case of accidents:** If the beneficiary meets with an accident resulting in death or permanent disablement during the course of employment is entitled for financial assistance of Rs.100000.

(ix) **Assistance for medical expenses:** In case a registered construction worker is incurring medical expenditure for heart operation, kidney transplantation or treatment of cancer, is entitled Rs.10000 towards such expenditure.

These assistances are available to the construction worker on fulfillment of the conditions prescribed under the Scheme framed there under. Most of these benefits are only symbolic. For example the Rules provide that
every registered building and construction worker who has completed 60 years is entitled for Rs 200/month pension. This is highly inadequate for any person to satisfy even his basic needs. Same is in case of disability pension which is mere 150/month for permanent disablement. Financial assistance for construction of house is subject to the condition that such worker should own a site in his or his spouse name and he should have at least fifteen years of service for superannuation. Moreover, to avail of the facility he needs to apply along with original sale deed and approved plan by local authority. Naturally it is impossible for a poor and illiterate construction worker to fulfil these conditions. In a nutshell, most of the welfare measures provided under the Building and Other Workers (Regulation of Employment and Conditions of Service), Karnataka Rules, 2006 are either inadequate or out of the reach of poor building and construction worker.