CHAPTER - III
UNORGANISED TRIBAL LABOUR & PROTECTIVE LABOUR LAWS

Labour laws constitute the mechanism of state intervention to secure protection to persons employed in work and to protect their interests. The International Labour Organization has done a great deal of work in order to make member countries of which India is one to conform to the standards of Labour legislation for the welfare of the labour. The Government of India and the Government of Tamilnadu had enacted number of legislations to protect the labour. Many of the labour legislation are applicable to unorganised construction workers. An attempt is made in this section to briefly point out the object of the various Acts enacted by the state and central Government to protect the rights and interests of construction workers. The rights and interests of the tribal workers in construction sector are protected by various legislations, some of the important laws which has prime importance are specifically discussed here briefly to give an insight in to the the protective measures extended to the tribal workers in Construction sector. Unorganised workers, in the various occupations, have no identity and are invisible on records since there are no work records and so registration is an important felt need. Also the insecurity of employment and wages are noted in the various kinds of wage labour, be it construction, employing the biggest number of migrant labour, domestic, sanitary, handloom, etc. Also, child labour and bonded labour are seen
in many occupations. So, regulation of employment and wages acquire significance and that is provided in the Tamil Nadu Manual Workers’ Act 1982.

The Government of India is under constitutional obligation to protect the interests of the Scheduled Castes and Scheduled Tribes communities and to uplift them socially and economically. In order to do so, the working group on Labour Statistics (fourth plan) in its interim report in the year 1964 recommended, inter-alia, collection of data on certain aspects of working and living conditions of Labour belonging to Scheduled Castes and Schedules Tribes communities to assess the ways and means to be adopted for their welfare and improving their working & living conditions. Planning Commission and National Commission on Labour (1966-69) while commenting upon the inadequacy of available information in this regard also emphasized the importance and need for such data base.

As per the 1991 Census, 90.60% of the total 286 million main workers in India were in the unorganized sector. Only 9.40% of the total labour force in the country was accounted for by the organized sector. Sector-wise, as many as 99.2% of those employed in the primary sector, 75% of those employed in manufacturing sector, 78% in building and construction, 98% in trade and commerce and 61.5% of those employed in transport, storage and communication were in the unorganized sector.

In Tamilnadu, the organized sector accounted, as of 1991 Census, for only 9.7% of the total employment in the State, which itself was lower than the 9.9%
during the 1981 Census. According to the data in the Employment Market Information Programme (EMIP), total organized sector employment, as on 31st March 1997, was 25.55 lakhs, in which public sector contributed 16.45 lakhs and private sector, 9.09 lakhs. Among those employed by the organized sector, women accounted for 28.1% The 16.45 lakhs employed by the public sector was accounted for by State Government (41.0%), Quasi Government (34.3%), Central Government (14.3%) and Local Bodies (10.4%). The Government Committee on Unorganised labour in

Tamilnadu calculated that about 20,000,000 out of the 25,000,000 total workers in Tamilnadu are in the unorganized sector. Among the major sections of unorganised labour in Tamilnadu are the following:

**Agricultural Labour**

“In India, there are 74.6 millions of agricultural labourers and in Tamilnadu their population is 78.96 lakhs. It is because of the toiling of agricultural labourers, our 846 million hungry stomachs are getting filled up three times daily. If they do not put their hands in the soil, others cannot put their hands in their food. But, they still remain poorest among the poor in India” . Agricultural workers constitute by far the largest segment of workers in the unorganised sector. In Tamilnadu, 66% of population is still dependent on agriculture and 59.4% of the total workforce is in agriculture sector. A significant part of the agricultural labour in cuddalore district covers the tribal women and men. Agricultural operations are seasonal and agricultural workers are faced
with unemployment during the lean months, which can be as long as 6 months. During off seasons, they migrate to urban centres in search of jobs, upsetting family situations and general welfare. Construction sector provides opportunities for tribal people during the off season.

Other major sections of unorganised workers in Tamilnadu, (as per the Govt. Committee) are:

Auto rickshaws- and taxi- drivers

More than 1 lakh workers are employed as auto rickshaw drivers. Of late, majority of them are registered themselves with unions working for them. Job security, promotional opportunities and social security benefits are not extended to them. Most of them are working under the registered owners under contract basis. No minimum wages are guaranteed in many cases though they are brought under the Minimum Wages Act, 1948 and minimum wages modified by TN Labour Dept. G.O. No.605

Appalam Making

About 25,000 workers are engaged in appalam manufacturing. Mostly elderly women are engaged in this trade. Though spread all over the State, more concentrated in Chennai and the districts of Madurai, Tirunelveli, Salem, Coimbatore and Tiruchy. More women than men are involved in the work. Yet women normally get only 50% of the wage of men for same work. Being small in number and dispersed no organizational strength. They are brought under the
1948 Minimum Wages Act and minimum wages modified, latest, by Tamil Nadu Labour Department.

**Dyeing and Bleaching works**

More than 1 lakh workers are engaged in the dyeing and bleaching works. They are found mostly in the districts of Karur, Tiruppur, Erode, Coimbatore, Madurai and Chingleput. Both men and women equally employed. Their Working conditions are very bad, unhygienic and detrimental to health causing occupational diseases. Because of the fear and treats of employers many of them are kept out of union activities. Majority of them are working under small entrepreneur who are not covered under any laws. They are brought under the 1948 Minimum Wages Act. And TN Labour Dept. G.O.

**Bricks and tiles making**

About 75,000 workers are engaged in bricks and tiles making. Though spread throughout the state, concentrated more in and around Manamadurai, Rajapalayam, Chingleput, Salem, Vellore, Hosur, Tirunelveli and Tiruchy Mostly they are working as contract labour under contractors and constantly migrating. They are brought under the 1948 Minimum Wages Act

**Cashew workers**

Cashew workers mostly in Kanyakumari and South Arcot (Villupuram, Cuddalore) Districts and parts of Thanjavur District. In Kanyakumari District alone, about 50,000 workers are employed in about 280 cashew factories. Mostly
women are employed in this trade. This cashew trade has been contributing great in terms of foreign exchange and mostly controlled by agents from Kerala. Workers in cashew trade are prone to diseases such as cancer and various skin ailments. They are covered under Minimum Wages Act, 1948.

Catering establishments

As of 1999, 10,855 establishments, employing 91,818 workers, had been registered under the 1958 Act. Union activities strong among workers in cities like Chennai, Madurai, Coimbatore, Tiruchy, Salem and Tirunelveli, but not in other rural areas

Workers under catering establishments are covered under the 1948 Minimum Wages Act. They are brought under the 1958 Tamilnadu catering Establishments Act, which protects the workers from unlawful dismissals etc.

Copra works

About 22,000 workers are engaged in this trade. They are found in Pattukottai (Thanjavur district), Melur (Madurai district), Tiruchy district, Vazappadi (Salem district) and in the districts of Vellore, Dindigul, Theni and Ramanathapuram. Works are available only for 15-17 days in a month. They are working under the contractors. They are protected by no law except the 1948 Minimum Wages Act.
Coir works

More than 15,000 workers are engaged in coir trade. They are found in Pollachi, Pattukottai, Vazappadi and in the districts of Kanyakumari, Dharmapuri, Thoothukudi and Tirunelveli. Works are available seasonally for about 6 months starting in January. They are covered under the 1948 Minimum Wages Act.

Gas Cylinders Distribution

About 15,000 boys / workers are employed for delivering the gas cylinders. Based on categories of Corporations, Municipalities, Townships and others, minimum wages have been fixed by Tamilnadu.

Fisher folk

In Both coastal and inland fisheries, about 4.97 lakh workers are engaged in fishing trade. Though brought under the 1948 Minimum Wages Act, no minimum wages fixed yet.

Footwear producers

About 15,000 workers, spread all over Tamilnadu are engaged in the footwear manufacturing trade. They are employed either on the roads or as workers under contractors. Though brought under the 1948 Minimum Wages Act, benefits reach only those who come under the Factories Act.
General Engineering, Fabrication and Automobile workshops

More than 27,000 workers are employed in auto workshops and about 64,000 in Engineering workshops. Though brought under the 1948 Minimum Wages Act, benefits reach few, since most workshops employ less than 10 workers.

Gold and Silver works

About 67,000 workers are found mostly in towns and cities. Mostly home-based and are excluded from the minimum wages legislations. There are trade unions in corporations like Chennai, Madurai and Coimbatore and district headquarters like Tiruchy, Salem, Cuddalore and Ramanathapuram to protect the rights of these gold and silver workers. Particular caste based employees are dominated in the trade. This gold and silver making being mostly traditional, children get involved very early in the work, thus denied education facilities are automatically brought in to this trade. They are brought under the 1948 Minimum Wages Act.

Sacks trade

Workers are engaged in sack trade during the Seasonal (harvest times) in rural areas and throughout the year in towns and cities. Though mostly men are employed in many cases children do get inducted often. They are brought under the 1948 Minimum Wages Act.
Hairdressing saloons

Workers in hair dressing saloons are mostly hereditary and mostly not unionized and being unorganized they are not enjoying the fruits of many protective legislations. They are covered under the 1948 Minimum Wages Act and minimum wages modified, latest, by G.O. No 10 (4-1-1995)

Handlooms and silk weaving

Next to agriculture, the most important sector of unorganised workers in Tamilnadu, is handloom and silk weaving. It is spread throughout the State The major sections are the single self-employed weavers, the big weavers, wage-earning weavers and members of cooperative weaving societies. More than 90% do the work at home, in very unhealthy conditions of limited space. Children too get inducted in the trade. They are brought under the 1948 Minimum Wages Act.

Washermen and laundries

More than 25, 000 workers (may be much more, according to groups) involved as washermen and working in laundries Workers in laundries brought under the Minimum Wages Act1948.

Loadmen

More than a lakh workers are working in railway goods sheds, go-downs, markets etc, spread throughout Tamilnadu. Concentrations are in railway good sheds, Gandhi market and Tiruvaanaikoil areas in Tiruchy, in Valinokkam, Thirupularani, Devipattinam and Tondi salt pans in Ramanathapuram District, in
the mills of Athur, Thammapatti, Magudanjavadi, Thalaivasal and Ayothiapattinam in Salem District, in the dyeing and handloom industries in Erode District and in Waltax Road, Guindy Industrial estate, Ambattur estate, Koimbedu market and other areas in northern Chennai. Though at times unionized, mostly in the grip of contractors. No protection except the 1948 Minimum Wages Act. (Tamilnadu Social Development Report 2000:213)

**Fireworks and Match Industries**

1631 units employing 90383 workers have been registered under the 1948 Factories Act mostly concentrated in Gudiyatham in Vellore District, Sivakasi and Sattur in Virudhunagar District and Kovilpatti in Thoothukudi district Just like Beedi workers, mostly home based, involving large number of women and children. At the end of 1996-97, 84,045 workers (ages from 10 to 65) had been registered under the Accident Insurance scheme Brought under the 1948 Minimum wages Act and minimum wages last modified by TN Labour Department. G.O No 852 (7-10-1997).

**Toddy tappers**

More than 25,000 workers involved in toddy tapping, jaggery making and related works. Protected by no legislation except the notification dated 1-4-1997, fixing the minimum daily wages as Rs 25 for tapping and Rs 15 for jaggery makers, plus an allowance of Rs 64/-. 
Power loom workers

About 8.85 lakh workers in the 2.43 lakhs officially registered power looms and more than 1 lakh unregistered power looms in Tamilnadu. Most of them in boded situations under the big owners. Most of the looms, under the pretext of not employing more than 10 persons, escape the provisions of 1948 Factories Act.

Press Workers

About 27,408 workers, mostly concentrated in Sivakasi. Though spread out all throughout the State, most of the presses do not come under the 1948 Factories Act. Brought under the 1948 Minimum Wages Act and minimum wages have been fixed, latest, by the TN Labour Department. (G.O. No 69 (3-11-1995)). But reports from Sivakasi have found out that workers get hardly Rs 650-750 per month as wages.

Rice Mills and other grain mills

More than 15,000 workers, spread throughout the State. Employments are mostly according to agricultural seasons. They have been brought under the 1948 Factories Act. They are also covered under the 1948 Minimum Wages Act, and minimum wages fixed, latest, by TN Labour Department. G.O. No 21 (18.04.1996).
Salt pans

More than 20,000 workers employed in the about 400 salt pans, spread throughout the State, but mainly in Thoothukudi, Thiruchendur, Arumuganeri, Vedaranyam and Kanyakumari District. Only 136 units, employing 3041 workers have been registered under the 1948 Factories Act. They are brought under the 1948 Minimum Wages Act and minimum wages fixed by TN Labour Department. G.O. No 15 (28-3-1996) Tamilnadu Social Development Report 2000 214

Shops and Establishments

About 4,12,628 workers in about 2,56,472 units spread across all the districts of the State are working in the shops and establishments. They are better protected by legislations such as the 1948 Minimum Wages Act, the 1958 Tamilnadu Factories (National and religious Holidays) Act, and the 1961 Maternity Benefits Act. Minimum wages fixed, latest, by TN Labour Department. G.O. No 10 (4.1.1995).

Gem Cutting

More than 1 lakh workers, mainly concentrated in Tiruchy, Pudukkottai, Erode, Karur and Salem districts. Mostly they work under bonded conditions, in the grip of contractors and brokers. They are brought under the 1948 Minimum Wages Act and minimum wages fixed.
Tailoring

About 2.25 lakhs workers, spread throughout the State but found in greater numbers in Chennai, Coimbatore, Madurai, Karur, Tiruppur, Vellore and other district headquarters. The major 3 sections are the self-employed, those employed by agents and those employed in garment factories. Brought under the 1948 Minimum Wages Act and minimum wages fixed, latest, by TN Labour Dept. G.O. No 40 (18-1-1994).

Vessels making

More than 50,000 workers, spread throughout the State, but concentrated in Chennai, Coimbatore, Thanjavur, Madurai, Karaikudi and in places in Tirunelveli district. Mostly operating through agents of contractors. Brought under the 1948 Minimum Wages Act and minimum wages fixed, latest, by TN Labour Dept.

Bullock cart drivers

More than 12,000 workers, employed mostly around lorry sheds, godowns, markets, factories and construction areas Not brought under any Factories Act or Minimum Wages Act.

Shamiana workers

6952 workers, spread throughout the State, but mainly concentrated in Chennai, Coimbatore, Madurai, Tiruchy and Tirunelveli Municipality areas. Not brought under any Factories Act or Minimum Wages Act.
Tin boxes making


Forest products collection

About 28,000 out of the 5.74 lakhs tribals in the State are involved mostly in hills of Kollimalai, Yercadu, Kalvarayan, Pachaimalai, Yelagiri and Javadu hills. Both men and women are involved in the collection of honey, firewood, tamarind, vegetables and fruits, through tenders issued by contractors.

Pen manufacturers

Pen manufacturing workers are mainly in placed at Virudhunagar district, especially Sattur and around. More than 100 workers in Virudhunagar district alone are engaged in this trade. They are not brought under any Factories Act or Minimum Wages Act.

Cooks

About 18,000 workers are employed as unorganized labour in various places of Tamilnadu. Mostly they are engaged in festival seasons and working under agents. They are not brought under any Factories Act or Minimum Wages Act.
Rag pickers

Rag pickers are mostly tribal children and women from poor families are engaged for rag picking. A considerable portion of men are also engaged in the rag picking trade. Most of these Rag pickers are in the control of contractors and subjected to much social exploitation. They are concentrated in the corporations of Chennai, Madurai Coimbatore an in almost all the important towns of Tamilnadu. They are not protected by any legislations.

Roadside shops

About 25,000 workers are engaged in the road side shops. They are working under small entrepreneur who establish road side Tiffin centre. They are not protected by any legislation for Minimum Wages etc.

The constitution of India and Tribal workers

National Council for Tribal Welfare has been constituted. The Council will be chaired by the Prime Minister. In addition to the Council, a Standing Committee has also been constituted. This will be chaired by the Minister of Tribal Affairs. The National Council for Tribal Welfare set up objectives are (i) provide broad policy guidelines to bring about improvement in the lives of the Scheduled Tribes community in the country (ii) review the implementation of the Forest Rights Act (iii) review the implementation of Fifth Schedule and Sixth Schedule of the Constitution (iv) monitor the implementation of Tribal Sub Plan (v) monitor programmes aimed at protecting particularly vulnerable Tribal Groups. The Constitution of India, the Supreme Law has also provided for
the protection of the tribal workers. The Directive principles of State Policy contained in part IV incorporate many directives to the state to improve the status of the Women and for their protection. Article 39 (A) directs the state to direct its policy towards securing the Rights to an adequate means of livelihood for all citizens equally (Men and Women). The Equal Remuneration Act, 1976 was enacted to comply with this directive principle. By this provision Women Construction Workers are entitled to receive equal remuneration on par with her male counterparts in Construction Industries. Article 39 (e) specifically direct the state not to abuse the health and strength of women workers. Article 42 incorporates a very important provision for the benefit of the Women. It directs the state to make provision for securing just and human conditions of work and for maternity relief. The Maternity Benefit Act, 1961 is the result in this direction. Of course the preamble of the constitution, which is the supreme law of land seeks to secure its citizen including women workers, justice-social, economic and political, liberty of thought, expression, belief, faith and work ship, equality of status and opportunity and promote fraternity assuring the dignity of the individual (Criminal Law Journal, 1999). The constitution of India has given attention to the need of women to enable them to exercise their rights on equal footing with men and participate in the national development. The Article 39 (d) directs the state to secure equal pay for equal work for both men and women.
Indian Constitution has accepted the ideas of equality and justice both in the Social and Political fields. Accordingly it abolishes any discrimination to any class of persons on the ground of religion, race or place of birth.

“It would have been a blunder on the part of the makers of the constitution if, on a logical application of the above principle “they have omitted to make any special provisions for the advancement of those who are socially and economically backward, for the democratic march of nation would be impossible if those who are handicapped are not aided at the start. The principle of democratic equality, indeed can work only if the nation as a whole is brought on the same level as far as that is practicable. Our Constitution, therefore, provides certain temporary measures to help the backward sections to come up to the same level with the rest of the nation, as well as certain permanent safeguards for the protection of the cultural, linguistic and similar rights of any section of the community who might be said to constitute “minority” from the numerical, not communal point of view in order to prevent the democratic machine from being used as an engine of oppression by the numerical majority”.

The Indian Constitution specifically provided certain Articles in the Constitution for the upliftment of tribals and also to protect them from the oppressions caused by the other people in the society. The protective rights granted by the Indian Constitution, 1950 to the tribal people can be classified under the following heads.
1. Educational and Cultural Rights (Articles 15(4), 29, 46 and 350.)

2. Social Rights (Articles 23 and 24)

3. Economic Rights (Articles 244 and 275)

4. Political Rights (Articles 164(1), 243, 330, 334 and 371.)

5. Employment Rights (Articles 15(4), 16(4) and 16(4A).)

In addition to these rights Fifth and Sixth Schedule of the Indian Constitution completely deals with the tribal people.

1. **To Protect Educational and Cultural Rights of Tribals:**

   Article 15(4): It states that reservations should be provided to the socially and educationally backward classes (including Scheduled Tribes). It also empowers state to make special laws for relaxation of minimum qualifying marks for admission for scheduled castes and scheduled tribes.

   In State of Madhya Pradesh Vs. Nivedita Jain[2], the Supreme Court upheld the validity of an executive order of the State Government which had completely relaxed minimum qualifying marks in pre-medical examination for selection of students to medical colleges of the state in respect of scheduled castes and scheduled tribe’s candidates.

   Article 29: It guarantees to any section of the citizens residing in any part of India having distinct language, script or culture of its own, the right to conserve the same i.e. language, script or culture. A minority community can
preserve its language, script or culture by and through educational institutions. (Including Scheduled Tribes).

Article 46: It enjoins the State to promote with special care education and economic interest of the weaker sections of the people, and in particular of the scheduled castes and scheduled tribes, and to protect them from social injustice and of all forms of exploitation.

Article 350: The Constitution also gives right to every person to submit a representation for the redress of grievance to any officer or authority of the Union or a State in any of the languages used in the Union or in the States as the case may be.

2. To Protect Social Rights of Tribals:

Article 23: It prohibits the system of bonded labour because it is a form of force labour within the meaning of this article.

Article 24: It prohibits employment of children below the age of 14 years in factories and hazardous employment.

3. To Protect Economic Rights of Tribals:

Article 244: It deals with the administration of Scheduled Areas and Tribal Areas.

Article 275: It empowers parliament to make special grants given to the States which undertakes schemes of development for the purpose of promoting
the welfare of the scheduled tribes or raising the level of administration of the scheduled areas.

4. To Protect Political Rights of Tribals:

   Article 164(1): It empowers the State to establish special Ministry for Scheduled Tribes in the States like Chattisgarh, Madhya Pradesh, Orissa, etc.

   Article 243, 330 and 334: It deals with the reservation of seats for scheduled castes and Scheduled Tribes in the House of the people and the panchayats.

   Article 371: It deals with the special provisions with respect to the states of Sikkim, North-eastern states.

   In a significant Judgment [3], a five judge bench of the Supreme Court has held that a person belonging to scheduled Caste or Scheduled Tribe, bearing the same nomenclature (name) in two states is entitled to the rights, privileges and benefits only in the state of his origin but not entitled to those rights and benefits in other states where he migrates subsequently to other states though they are specified in the scheduled caste or Scheduled Tribe list of the State (Articles. 341 and 342).

5. To Protect the Employment Rights of Tribals:

   Article 15(4): It provides reservations to scheduled tribes in the educational institutions.
Article 16(4) and 16(4A): It provides reservations to scheduled tribes in the employment and promotions.

**Fifth and Sixth Schedules of the Constitution:**

The provisions relating to the administration and Control of the Scheduled Areas and scheduled Tribes in any state, other than Assam, Meghalaya, Tripura and Mizoram are contained in the Fifth Schedule to the Constitution.

Article 244-A empowers parliament to form an autonomous State comprising certain Tribal areas in Assam and create local legislature or Council of Ministers for such States.

The Administration of the Tribal Areas in the State of Assam carries on according to the provisions of the sixth Schedule. It provides for autonomous Districts and autonomous regions.

**Constitution of Commissions:**

The Constitution of India does not define as to who are the persons who belong to Scheduled castes and scheduled Tribes. However, Article 341 and 342 empowers the President to draw up a list of these castes and tribes. Under Article 341 the President after consultation with the Governor with respect to the State, specify the Castes, races or tribes or of groups within castes, races or tribes for the purpose of their constitution.

Article 330 deals with the reservation of seats to scheduled tribes in the autonomous districts of Assam. Article 332 provides for the reservation of seats
of scheduled Castes and Scheduled Tribes in the legislative Assembly of every State (Except Assam).

The Constitution (89th Amendment), 2003 has amended Article 338 and added a new Article 338-A which provides for the establishment of National Commission for the Scheduled Tribes.

National Commission for Scheduled Tribes:

The Commission consists of a Chairman, Vice-Chairman and three other members. They shall be appointed by the president of India.

Duties of Commission: It shall be the duty of the Commission

A. to investigate and monitor all matters relating to the safeguards of Scheduled Tribe’s under the Constitution and any other law or any order of the Government and to evaluate the working of such safeguards.

B. to inquire into specific complaints with respect to the deprivation of rights and safeguards of Scheduled Tribes.

C. to participate and advice on planning process of socio-economic developments of scheduled tribes and to evaluate the progress of their development under the Union and any State.

D. to present to the President reports upon the working of all those safeguards annually and at such other times as the commission deems fit.
E. to make recommendations as to measures that should be taken by the centre and states for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of Scheduled Tribes.

F. to discharge such other functions for protection, welfare, development and advancement of Scheduled Tribes as the president may, subject to the provisions of any law made by parliament, by rule specify.

Article 339(1) states that the President may at any time and shall at the expiration of ten years from the commencement of the Constitution appoint a commission to report on the administration of Scheduled areas and the Scheduled Tribes in the State.

Hindrances to implement the provisions in Indian Constitution regarding the welfare of Tribals:

The Problems for implementing the provisions specifically enacted for the welfare, development and advancement of tribal people can be ascertained by observing various aspects. Those aspects shall be classified under the following heads to know the problem in an easy way and to provide a remedy for the difficulties arising day-by-day in the lives of the people. They are: Socio-Economic Problems, Health Problems, Educational Problems and Employment Problems.
1. Socio-Economic Conditions:

The Government has spent substantial sums of money in the various Five Year Plans for development of tribal areas and for improving the socio-economic conditions of tribal peoples, but the results so far has not been encouraging.

The Government Schemes were based on two level planning

A. The Tribal Sub-Plan. (T.S.P.)

B. The Integrated Tribal Development Project (I.T.D.P.)

Under the Tribal sub plan and Hill area development Schemes, the first priority is to protect and preserve tribal areas from encroachment. It is well known that middlemen and money lenders have kept the people in bondage for many generations. This is sought to be remedied by establishing co-operative societies, Cottage Industries, Marketing and Credit organisational facilities manned by the tribal communities themselves. Tribal Co-operative Marketing Development Federation of India (TRIFED) was set up in 1987 to help tribals market their forest produce and agricultural surplus.

Along with economic strengthening, the plan also aims at encouraging the preservation of tribal dialects, cultural traditions, forms of art and modes with the growth of population, the tribes need more land for settlement, cultivation and other needs. Shifting Cultivators are being encouraged to plant trees in forest clearings so as to check soil erosion. Land is being assigned to them for settlement.
According to data on the Union Tribal Affairs Ministry’s Website, till June 30, 2009. Andhra Pradesh had distributed 67,855 title deeds, Chattisgarh 12,02,800; Gujarat 1,997; Madhya Pradesh 24,571; Orissa 30,794; Rajasthan 1,778; Tripura 66,573 and West Bengal 5,249 to the tribal people in forests. But this is very low compared to the population.

Deforestation is also one of the causes which make the lives of the tribal people miserable. More and more government programmes should be implemented to makes their lives happy.

2. Health Conditions:

Data from the National Family Health Survey-III (2005-06) clearly highlight the caste differentials in relation to health status. The survey documents low level of contraceptive use among the scheduled castes and the scheduled tribes compared to the forward castes. Stunting, wasting, underweight and anemia in children and anemia in adults are high among the scheduled tribes. Reduced access to maternal and child health care is evident with reduced evident of antenatal care, institutional deliveries and complete vaccination coverage among the lower castes. Similarly, neonatal, postnatal, infant, child and under-five statistics clearly show a higher mortality among the scheduled castes and scheduled tribes.

The poor, a majority from the lower castes, migrate to different parts of the country in search of work. Their migrant status means they lose many benefits generally offered to the poorer sections as their below poverty line and ration
cards. Poverty and social exclusion have a multiplicative effect on the social determinants of health.

Developmental steps: The health conditions of the tribal people can be developed by following three principles:

1. Improving the conditions of daily life.

2. Tackling the iniquitous distribution of power, money and resources.

3. Raising public awareness of issues, measuring the problems and evaluating actions.

3. Educational Conditions:

Even though the Government has established separate educational institutions for educating the children of the tribal people. Due to superstitious beliefs and poor economic conditions the percentage of literacy rate is very low among the tribals.

Developmental Steps: To improve the literacy rate among tribals the following measures has to be taken by the government.

1. Provide free and compulsory education to the children of tribal people.

2. Provide mid day meal programme in tribal educational institutions.

3. Special scholarships and fee-reimbursement programmes shall be granted to tribals.
4. Some of the above measures are already granted but the implementation must properly been take place.

4. Employment Conditions:

The Constitution of India provided reservation to the tribal people in government employment but they remains on paper as most of the tribal were uneducated and they are unaware of the provisions provided by the government.

As tribal people have not acquired any skills they have not been much from the industrialization that has taken place in areas contiguous to their habitation. Most of the unskilled jobs in the industries of Chotanagpur belt such as Heavy Engineering Corporation, Ranchi, Bokaro Steel Plant, DVC, etc. have gone to the local people of nearby towns and villages and not to tribals. A vast majority of tribal population therefore continues with their traditional occupations like cultivation, agricultural labour, household industry, etc.

Although mining activities expanded considerably between 1961 and 1981, the percentage of tribals employed there went down. Employment as agricultural labour and in unorganized industrial sector went up. The shift in employment from cultivation to agricultural labour is more significant, proving that the tribals are being deprived of even their small landholdings and have to work as agricultural workers. As tribals lived in many of the areas where these industries have come up, it is evident that land alienation away from tribals is occurs both due to land acquisition by non-tribals and also due to the pace of industrialization.
Due to unemployment, most of the tribals were becoming revolutionists against government to get the benefits and came out from utter poverty.

**Steps to be taken for the development of Tribals:**

The best method to prevent or remove group tensions is to do away with the circumstances and the conditions or the causes for tensions. Measures such as expansion of proper education, healthy literature, formation of healthy opinion, bring about better social adjustment, removal of social evils, paving the way for social reforms, development of common goals, ideals and values, harmony and healthy development of the personality, Improvement in mutual and social contacts, Reduction of economic disparities, Legal reforms and remedies, Healthy groups and organization can be taken to prevent and remove the tensions and difficulties in the tribal lives.

**The Human Rights at Issue**

**THE SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) ACT, 2006**

This Act is intended to recognize and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded: to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land.
This Act is intended to protect the Human Rights of tribal people. This Act provides for the following rights which secure individual or community tenure or both, shall be the forest rights of forest dwelling Scheduled Tribes and other additional forest dwellers on all forest lands, namely:-

(a) right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers;

(b) community rights such as mister by whatever name called, including those used in erstwhile princely States, Zamindari or such intermediary regimes;

(c) right of ownership access to collect use and dispose of minor forest produce which has been traditionally collected within or outside village boundaries; other community rights of uses or entitlements such as fish and other products of water bodies grazing (both settled or transhumant) and traditional resource access of nomadic or pastoralist communities;

(d) rights including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;

(e) rights in or over disputed lands under any nomenclature in any State where claims are disputed;

(f) rights for conversion of pattas or leases or grants issued by any local authority or any State Government on forest lands to titles;
(g) rights of settlement and conversion of all forest villages, old habitation; unsurveyed villages and other villages in forests, whether recorded, notified or not into revenue villages;

(h) right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;

(i) rights which are recognised under any State law or laws of any Autonomous District Council or which are accepted as rights of tribals under any traditional or customary law of the concerned tribes of any State;

(j) right of access to biodiversity and community right to intellectual property and traditional knowledge related to biodiversity and cultural diversity; any other traditional right customarily enjoy by the forest dwelling Scheduled Tribes or other traditional forest dwellers, as the case may be, which are not mentioned but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal;

(k) right to in situ rehabilitation including alternative land in cases where the Scheduled Tribes and other traditional forest dwellers have been illegally evicted or displaced from forest land of any description without receiving their legal entitlement to rehabilitation prior to the 13th day of December, 2005
Notwithstanding anything contained in Forest (Conservation) Act, 1980, the Central Government shall provide for diversion of forest land for the following facilities managed by the Government which involve felling of trees not exceeding seventy-five trees per hectare, namely:-

1) schools;

2) dispensary or hospital;

3) anganwadis;

4) fair price shops;

5) electric and telecommunication lines;

6) tanks and other minor water bodies;

7) drinking water supply and water pipelines;

8) water or rain water harvesting structures;

9) minor irrigation canals;

10)non- conventional source of energy;

11)skill upgradation or vacationing centres ;

12)roads; and

13)community centers
The human rights of indigenous people and peoples are explicitly set out in the ILO Indigenous and Tribal Peoples Convention (No. 169), the Universal Declaration of Human Rights, the International Covenants, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Rights of the Child, and other widely adhered to international human rights treaties and Declarations. They include the following indivisible, interdependent and interrelated human rights.

The human right to freedom from any distinction, exclusion, restriction or preference based on their indigenous status which has the purpose or effect of impairing the enjoyment of human rights and fundamental freedoms that are:

*The human right to freedom from discrimination in access to housing, education, social services, health care or employment.

* The human right to equal recognition as a person before the law, to equality before the courts, and to equal protection of the law.

* The human right of indigenous peoples to exist.

* The human right to freedom from genocide and ‘ethnic cleansing’.

* The human right to livelihood and work which is freely chosen and to subsistence and access to land to which they have traditionally had access and relied upon for subsistence.
* The human right to maintain their distinctive spiritual and material relationship with the lands, to own land individually and in community with others, and to transfer land rights according to their own customs.

* The human right to use, manage and safeguard the natural resources pertaining to their lands.

* The human right to freedom of association.

* The human right to enjoy and develop their own culture and language.

* The human right to establish and maintain their own schools and other training and educational institutions, and to teach and receive training in their own languages.

* The human right to full and effective participation in shaping decisions and policies concerning their group and community, at the local, national and international levels, including policies relating to economic and social development.

* The human right to self-determination and autonomy over all matters internal to the group, including in the fields of culture, religion, and local government.

In recognition of the fact that indigenous and tribal peoples are likely to be discriminated against in many areas, the first general, fundamental principle of The Tribal People’s Convention No. 169 is non-discrimination. Article 3 of the Convention states that indigenous peoples have the right to enjoy the full measure
of human rights and fundamental freedoms without hindrance or discrimination. In Article 4, the Convention also guarantees enjoyment of the general rights of citizenship without discrimination. Another principle in the Convention concerns the application of all its provisions to male and female indigenous persons without discrimination (Article 3). Article 20 provides for prevention of discrimination against indigenous workers.

In response to the vulnerable situation of indigenous and tribal peoples, Article 4 of the Convention calls for special measures to be adopted to safeguard the persons, institutions, property, labour, cultures and environment of these peoples. In addition, the Convention stipulates that these special measures should not go against the free wishes of indigenous peoples.

Recognition of the cultural and other specificities of indigenous and tribal peoples and consultation of the Tribal People’s convention No. 169

Indigenous and tribal peoples’ cultures and identities form an integral part of their lives. Their ways of life, customs and traditions, institutions, customary laws, forms of land use and forms of social organization are usually different from those of the dominant population. The Convention recognizes these differences, and aims to ensure that they are protected and taken into account when any measures are being undertaken that are likely to have an impact on these peoples. The spirit of consultation and participation constitutes the cornerstone of Convention No. 169 on which all its provisions are based. The Convention requires that indigenous and tribal peoples are consulted on issues
that affect them. It also requires that these peoples are able to engage in free, prior and informed participation in policy and development processes that affect them. The principles of consultation and participation in Convention No. 169 relate not only to specific development projects, but also to broader questions of governance, and the participation of indigenous and tribal peoples in public life.

In Article 6, the Convention provides a guideline as to how consultation with indigenous and tribal peoples should be conducted:

Consultation with indigenous peoples should be undertaken through appropriate procedures, in good faith, and through the representative institutions of these peoples;

The peoples involved should have the opportunity to participate freely at all levels in the formulation, implementation and evaluation of measures and programmes that affect them directly;

Another important component of the concept of consultation is that of representativity. If an appropriate consultation process is not developed with the indigenous and tribal institutions or organizations that are truly representative of the peoples in question, then the resulting consultations would not comply with the requirements of the Convention.

The Convention also specifies individual circumstances in which consultation with indigenous and tribal peoples is an obligation.
Consultation should be undertaken in good faith, with the objective of achieving agreement. The parties involved should seek to establish a dialogue allowing them to find appropriate solutions in an atmosphere of mutual respect and full participation. Effective consultation is consultation in which those concerned have an opportunity to influence the decision taken. This means real and timely consultation. For example, a simple information meeting does not constitute real consultation, nor does a meeting that is conducted in a language that the indigenous peoples present do not understand.

The challenges of implementing an appropriate process of consultation with indigenous peoples have been the subject of a number of observations of the ILO’s Committee of Experts, as well as other supervisory procedures of the ILO, which the ILO has now compiled in a Digest. Adequate consultation is fundamental for achieving a constructive dialogue and for the effective resolution of the various challenges associated with the implementation of the rights of indigenous and tribal peoples.

**Implementation of Convention No. 169**

Since its adoption, Convention No. 169 has gained recognition well beyond the number of actual ratifications. Its provisions have influenced numerous policy documents, debates and legal decisions at the regional and international levels, as well as national legislation and policies.

The Provisions of Convention No. 169 are compatible with the provisions of the United Nations Declaration on the Rights of Indigenous Peoples, and the
adoption of the Declaration illustrates the broader acceptance of the principles of Convention No. 169 well beyond the number of ratifications.

The Convention stipulates that governments shall have the responsibility for developing co-ordinated and systematic action to protect the rights of indigenous and tribal peoples (Article 3) and ensure that appropriate mechanisms and means are available (Article 33). With its focus on consultation and participation, Convention No. 169 is a tool to stimulate dialogue between governments and indigenous and tribal peoples and has been used as a tool for development processes, as well as conflict prevention and resolutions.

Indigenous peoples around the world have sought recognition of their identities, their ways of life and their right to traditional lands, territories and natural resources; yet throughout history, their rights have been violated. Indigenous peoples are arguably among the most disadvantaged and vulnerable groups of people in the world today. The international community now recognizes that special measures are required to protect the rights of the world’s indigenous peoples.

**International Instruments on Human Rights and Tribal Workers**

The International Instruments on Human Rights also have its own role in protecting the rights and Interest of the Women Workers. The Universal Declaration of Human Rights, 1948 list out certain rights Article (23) Provides for the Right to Work, Right to equal pay for equal work, just and favorable conditions of work, right to form and join the trade Union.
Article (24) is concerned with the right to rest and leisure, which includes reasonable limitation of working hours and periodic holidays with wages.

Article (25) provides for the right to security in the event of Unemployment, sickness, disability, widowhood, old age. Motherhood and childhood are entitled to special care and assistance.

International Covenants on Economic Social and Cultural Rights, 1966 also provides for the protection of the certain rights and interests of the Women Workers in Construction Industries which are listed below. Article 7 of Covenant provides for the Remuneration, fair wages, protection from discrimination, a decent living for the self and family, safe and healthy working conditions, rest, leisure, limitation of working hours, and public holidays etc. Article 8 provides for the right to join in the trade union. And Article 9 provides for the special protection for the motherhood.

The International Covenant on Civil and Political Rights 1966 is another International Instrument on Human Rights stands as a guardian for the Protection of Rights of Women Workers. The Article 8 abolishes slave or forced labour. The Article 22 confers the right to join and form trade unions.

International labour organization is a distinct labour organization to look at the labour problems at international level. Indian labour organization has been greatly influenced by the ILO. Many convention of ILO had been ratified by India and incorporated in labour laws. ILO has declared the following seven conventions to be the “Basic Workers Rights”. All these rights are directly
applicable to Women Construction workers. The Director General of ILO, Mr Juan Somavio called these core conventions as the slogan of “Decent Work for All in Global Economy” (Juan Somavia, 1999). The Copenhagen Social Summit 1995 viewed the seven core conventions as “Social floor of Globalised Economy” and each of the fundamental standard of Workers rights have received ratifications. Many of these particular conventions has not been ratified by India but has been enacted as equivalent laws to give effect to those conventions. The details are briefly described below.

(1) Freedom of Association convention No 87 is not ratified by India but the Constitution of India guarantees it.

(2) India has not ratified the Freedom to organize and Collective Bargaining convention (Convention No 98) but enacted “The Industrial Disputes Act, 1947” which gives effect to the convention.

(3) India has not ratified the convention No 105 concerning the Abolition of Forced or Compulsory Labour. But the Government of India had enacted “ Bonded Labour System (Abolition) Act 1976 and the Constitution of India also provided for the abolition of the said forced Labour through its Article 24. India had ratified the Convention No Forced Labour Convention (No 29) on 30-11.1954.

(4) India has not ratified the Convention number 138 relating to Child Labour. However to give effect to the convention it had enacted an Act called “The Child Labour (Prohibition and Regulation) Act 1976,
where in Children are prohibited from employment in hazardous occupations in certain industries.

(5) India had ratified the convention No 111 concerning minimum standards in respect of the conditions of work on 03-06-1990 and Convention No 100 on 25-09-1958

ILO has been consistently pressing for the voluntary adherence to the desirable Labour standards. In the eleven basic labour standards formulated by the United States in the North American Free Trade Agreement (NAFTA), India has enacted eleven laws or has constitutional provisions to ensure all eleven. All these laws have its own application for the protection of rights and interest of the tribal workers in construction industries. India is a special case among developing countries, and even between East Asian and Pacific Nations in adherence to and attainment of International Labour Standards. Thus the International instruments on human rights and ILO paves the way for the effective protection of the rights and interests of tribal workers in the construction industries.

Various laws protect women workers in construction industries. Almost 30 existing legislation could apply to tribal construction workers, including Employees State Insurance Act, Employees Provident Fund Act, Payment of Gratuity Act, Workmen Compensation Act etc. The comprehensive ILO Convention No. 102 on Minimum Standards of Social Security lists nine benefits that all workers must receive, namely: medical care, sickness benefit,
unemployment benefit, old age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivor's benefit. Eight of these benefits, except unemployment benefit, are covered in one or other of the existing legislation in India mentioned above.

**Wages**

The tribal workers in construction industries are entitled to receive the minimum rate of wages under the provisions of the Minimum Wages Act, 1948. It is statutory on the part of employer to provide minimum wages to the men and women tribal workers. The Payment Wages Act, 1936 ensures the timely payment of wages. The Payment Wages Act also provides for the mode of payment and mandates the employers to make the payment due to the workers on a fixed day with out deductions except those authorized by law. The tribal construction workers are entitled to receive bonus under the provisions of “The Payment Bonus Act, 1965”. Thus the wages of the tribal workers are protected by the appropriate legislations.

**Equal Remuneration**

Tribal women in construction industries are protected from the discrimination in payments based on sex. The employers are under legal obligation to provide equal pay for equal work for the men and women workers under the provision of the Equal Remuneration Act, 1976.
Workmen Compensation

Tribal construction workers are entitled to receive the Workmen Compensation under the provision of the Workmen Compensation Act 1923 for the occupational diseases and injuries arising in the course of their employment.

Maternity Benefits

The Maternity Benefit Act 1961 provides for the regulation of employment of pregnant workers during certain period of pregnancy. Under this Act provisions are made for the paid maternity leave and for the additional paid leave to the women workers who suffers due illness resulting pregnancy. The tribal women workers in the construction industries are covered under the provision of the Maternity Benefit Act 1961 to receive the benefits conferred under it.

Working Conditions

The Government of India had enacted “The Building and Other Construction Workers (Regulation of Employment and Conditions Service) Act, 1996 to regulate the employment and conditions of building and other construction workers and to provide for their safety, health and welfare measures. The Act applies to every establishment employing 10 or more workers on any day in the preceding 12 months. Provisions are made in the Act for the registration of Building workers as beneficiary. The workers registered as beneficiary under the provisions of Act are entitled to receive pension and other financial assistance. The BCW Act 1996 provides for the

121
fixation of normal working hours, provision of weekly rest day (holiday) with pay, rest intervals, wages for the overtime work, responsibility for the payment of wages to the workmen, provision drinking water at construction sites, latrines and urinals separately for the use of women construction workers, temporary accommodation at construction sites, crèches for the children of the women construction workers, first aid boxes, canteen facilities and safety measures at construction sites. It is a special law enacted exclusively for the construction workers.

The Government of Tamilnadu even before the enactment of the above-discussed central legislation had enacted an Act during 1982 to protect number of Manual Workers employed in scheduled employments in Tamilnadu. The Tamilnadu Manual Workers (Regulation of Employment and Conditions of Work) Act, 1982 was enacted with an object of regulating the employment of manual workers in certain employments in the state of Tamilnadu and the conditions of their work and security of their employments. Construction workers are covered under this legislation to receive legal protection. The Act provides for the regulation of employment of manual workers, employed in Building and other construction works. The terms and conditions of employment, rates of wages, hours of work, welfare, safety, social security, workmen compensation, maternity benefit, overtime payment, leave with wages, and provision for gratuity, and conditions as to weekly and other holidays and pay in respect of the tribal Construction Workers are protected by this Act. The registered manual worker under this Act are eligible for pension after retirement
and other financial assistance under various heads during their service in construction works. The Tamilnadu Manual Workers (Construction Workers) Welfare Scheme, 1994 provides for the establishment of crèches, Group Personal Accident Insurance Scheme, Provident Fund, ESI Scheme and Pension scheme for the construction Workers. Women Construction Workers are eligible under the scheme for the above said social security and other financial assistance. Right to join the trade union is guaranteed under the provisions of the “The Trade Union Act,

1926”. The tribal construction workers subjected to the eligibility of 18 years can enroll themselves as member of a trade union. They are also empowered to function as office bearers of a registered trade union. Effective provisions are made in the “Industrial Disputes Act, 1947 to investigate and the settlement of disputes or difference between workmen and workmen, or between workmen and employers or between employers and employers which is connected with employment or non employment or the terms of employment or conditions of labour on construction industries. Tribal construction workers can settle their disputes under the provisions of the Industrial Disputes Act 1947.

*Protection for the Contract workers in Construction Sector*

In the construction industries majority of the tribal workers are employed as casual workers. Next to casual workers a considerable number are employed as contract labourers in construction industries. The Contract Labour
(Regulation and Abolition) Act, 1970 apply to women construction workers also. The contract labour Act 1970 provides for establishment of canteens, welfare and health of contract labour, provision is made for restrooms, first aid, wholesome drinking water, latrines and urinals. In case of failure on the part of the contractor to provide such facilities, the principal employer is made liable to provide the amenities.

**Protection of Migrant tribal Workers in Construction Sector**

The Migrated tribal Workers employed in Construction industries are covered under the provisions of Interstate Migrant Workmen (Regulations of Employment and Conditions of Service) Act, 1979. Under the provisions of this Act the women construction workers are entitle to payment of equal wages for performing same or similar kind of work in an establishment along with local labourers which should not be less than the minimum wages fixed under the Minimum Wages Act; Payment of displacement allowance, Payment of journey allowance including payment of wages during the period of Journey; provision of suitable residential accommodation, medical facilities and protective clothing, payment of wages, equal pay for equal work irrespective of sex.

**Provision for Abolition of Bonded Labour System in Construction**

The bonded labour system is abolished under the provision of “The Bonded Labour System (Abolition) Act 1976”. Under section 6 of the Act, the
liability to repay the bonded debt to stand extinguished and under section 7 the property of bonded laborers is to be freed from mortgage. Thus the bonded labour system (Abolition) Act 1976 stands as a protector for abolishing the bonded labour and to protect their interest. The Act applies to women construction workers also. Employers are barred from employing the bonded labour in construction industries.

**Prohibition of employment of Child Labour in Construction Sector**

The object Child Labour (Prohibition and Regulation) Act 1986 is to ban the employment of children who have not completed their 14 years in specified occupations and process. To regulate the condition of work of children in employment where they are not prohibited from working. The Act lays down penalty for employment of children in violation of the provision of the Act and other acts which forbids the employment of children. Under the Child Labour (Prohibition and Regulation), Act 1986, employment of children in the occupations set forth in the Part A of the schedule and in any of the process set forth in Part-B of the schedule is prohibited. The Act in the part B included the building and construction industry. Hence the children are prohibited from employment in the process of building and construction industries.

**Social Security Measures**

The Employees State Insurance Corporation, Act 1948 provides certain benefits to the women workers employed in construction industries. Under this Act tribal construction workers are eligible to receive of maternity
benefit which is described as periodic compensation to women who are insured in the event of confinement, miscarriage, sickness related to pregnancy, confinement, premature birth. Compensation is paid if the competent authority certifies that the employee is eligible. In addition, the Act provides for the conditions for the payment of maternity benefits, its rates and the period for which it is to be paid. In order to protect the workers who lose their jobs due to retrenchments, outsourcing and closures due to emergence of new economic process, the Employees State Insurance Corporation has launched a new Scheme known as “Rajiv Gandhi Shramik Kalyan Yojna” for the employees covered under the ESI Scheme. This scheme, first of its kind in the country, provides an unemployment allowance for them in case of losing employment involuntarily due to retrenchment/closure of factory etc. This scheme was launched from 1.4.2005 and the payment of Rs.24.63 lakh has been made in 179 cases up to March, 2006. The tribal workers employed in a Construction Industry are eligible for the Payment of Gratuity under the provisions of “The Payment of Gratuity Act 1972”. The Act provides for payment of gratuity to the employees@ 15 days wages’ for every completed year of service subject to a ceiling of Rs.3.50 lakh.

The tribal Construction Workers are also eligible for Provident fund under the provisions of “The Employees Provident Funds and Misc. Provisions Act, 1952”. The EPF scheme provides for the following benefits. Apart from terminal disbursement of non-refundable withdrawals for Life Insurance Policies,
- House building
- Medical treatment
- Marriage
- Higher education
- Family pension
- Retirement-cum-withdrawal benefits
- Deposit linked insurance amount equal to the average balance in Provident Fund of deceased subject to a maximum of Rs. 25,000/-

After a long, time-taking process, the Unorganised Workers’ Social Security Act came into force in May 2009. The act provides for the definition and the registration of unorganised, self-employed and wage workers. It also offers the formulation of different social security schemes by Central and State governments, the constitution of a National Social Security Board at Central and State levels, and the setting up of workers’ facilitation centers. Social security schemes have been mentioned in the areas of life and disability cover, health and maternity benefits, old age protection, provident fund, employment injury benefits, housing, educational schemes for children, skill upgradation, funeral assistance, and old age homes.

In order to ensure social security and welfare of unorganized workers, the Government has adopted various initiatives through enactment
of legislations, creation of welfare funds, spreading education among the workers and through supporting non-governmental organisations to bring this deprived class into the mainstream of our work force. The legislative measures include the following:

The Minimum Wages Act, 1948

The Workmen’s Compensation Act, 1923

The Maternity Benefit Act, 1961

The Employees State Insurance Act, 1948

The Bonded Labour System Abolition) Act, 1976

The Contract Labour (Regulation & Abolition) Act, 1970

The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979

**Protection from Sexual Harassment at Construction Sites**

Sexual harassment is a serious problem for tribal women in construction works. (Kasinsky, 1992) Various studies reveal the fact the women construction workers are facing serious gender based violence’s at the worksites. The Supreme Court judgment regarding sexual harassment against women at work places observed the following facts. The landmark judgment was delivered by a bench of the supreme court, presided over by Hon. Mr. Justice J.S. VARMA, Chief Justice of India in the case of Visaka Vs State of Rajasthan, 1997 (5)
SCALE 453 dot Aug 13, 1997 offers detailed interpretation of articles 14, 15, 19(109) 21 & 32 of the constitution and lays down detailed guide lines for the protection of fundamental rights of working women. Some highlights of the judgment are given below and the detailed text is also annexed in this study.

The fundamnet right to carry on any occupation, trade, or profession depends on the availability of a safe working environment.

Right to life means life with dignity, Regard must be made to international conventions and norms for construing domestic law when there is no in consistency between them and if there is a void in the domestic law.

Sexual harassment includes such unwelcome sexually determined behavior

(a) Physical contact and advances

(b) A demand or request for sexual favors

(c) Sexually colored remarks

(d) Showing pornography

(e) Any other unwelcome physical, verbal or non-verbal conduct of sexual nature

Gender equality includes protection from sexual harassment and right to work with dignity, which is universally, recognized basic human right. It is the duty of the employer to prevent or deter the commission of acts of sexual harassment.
Appropriate work condition should be provided in respect of work, leisure, health and hygiene to further ensure that there is no hostile environment toward women at work place and no employee women workers should have reasonable grounds to believe that she is disadvantaged in connection with her employment. The Rules / Regulation of Government and Public Sector bodies relating to the conduct and discipline should include rules, Regulation prohibiting sexual harassment and provide for appropriate penalties against the offender. The Tamilnadu Prohibition of Harassment of Women, Act 1998 also prohibits the harassment of women in any place in the state of Tamilnadu. Thus number of International and National Laws protect the Rights and Interests of women construction workers in many ways. The affected workers can seek remedy under the provisions of the concerned Act. The labour legislations of our country have made penal provisions for the violations of the conditions or rules enshrined in the Acts. The tribal women are free to approach the appropriate authorities appointed under various laws in case if any of the provisions or benefits are denied or evaded by the employers.

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

Objective

The object of the Act is to regulate the Employment and Conditions of service of Building and other construction workers and to provide for their safety, health and welfare measures and for other matters
connected there with. The Act came into force on the 1st day of MARCH 1996. It extends to the whole of India and applies to every establishment, which employs or had employed on any day of the preceding twelve-month fifty or more building workers in any building or other construction works. Under section 24 of the Act a fund or board is created for the construction workers welfare. Under section 3 of the Act the central Government shall constitute a committee to be called the Central Building and other construction advisory committee to advise the Central Government on such matters arising out of the administration of the Act. Under section 4, the State Government shall constitute a committee to be called the state building and other construction workers advisory committee to advise the State Government on such matters arising out of the administration of this Act as may be referred to it. Under section 7 of the act, provision has been made to register the establishments.

Registration of Building Workers as Beneficiary Act

Section 12 speaks about the registration of building workers as beneficiaries of the fund and the registered beneficiary is entitled to get the benefits provided by the board from its fund. Every building worker who has completed 18 years of age, but has not completed sixty year of age and who has been engaged in any building or other construction work for not less than ninety days during the preceding twelve months shall be eligible for registration as a beneficiary under this Act
Constitution of State Welfare Boards Act

Every State Government shall with effect from such date as it may, by notification, appoint, constitute a board to be known as Building and other Construction Workers welfare board to perform the following functions.

(1) To provide immediate assistance to a beneficiary in the case of accidents.

(2) Make payment of pension to the beneficiaries who have completed the age of 60 years

(3) Sanction loans and advances to the beneficiary for construction of a house exceeding such amount and on such term as may be prescribed.

(4) Pay such amount in connection with premium for group insurance scheme of the beneficiary as it may deem fit.

(5) Give such financial assistance for the education of children of the beneficiary as may be prescribed.

(6) Meet such medical expenses for treatment of major ailment of a beneficiary or such dependants.

(7) Make payment for maternity benefit to the women beneficiary.

(8) Make provision and improvement of such other welfare measure and other facilities as may be prescribed.
Building and other Construction Workers Welfare Fund Act

Under section 24 of the Act, there shall be constituted by a board a fund to be called the Building and other construction workers welfare fund. All contributions made by the beneficiaries, all the sums received by the board from such other sources and the grants and loans made to the board by the Central Government under section 23 of the Act are credited into the welfare fund. Chapter VI of the act provides for hours of work, welfare measures and other condition of service of building workers. Provision has been made under section 29 of the Act for payment of wages for overtime work. Employment of certain person in Building and other construction work is prohibited under section 31. Under section 38 of the Act every establishments employing 500 or more worker are to constitute a safety committee consisting of such number of representation of the employers and the Building workers. Chapter IX of the Act provides special provision for, adequate supervision of the building and other construction work and responsibility for payment of wages and compensation. Thus the Act is an important measure taken by the Government of India to regulate the Employment and condition of service of the building and other construction workers.

The Tamilnadu Manual workers (Regulation of Employment and condition of work) Act 1982

The Tamilnadu Manual workers (Regulation of Employment and condition of work) Act 1982 was enacted in the year 1982, with an objective
for regulating the employment of manual workers employed in certain establishment in the state of Tamilnadu. The aim of the Act is to regulate the condition of manual workers and to provide social security for certain other matters connected there with.

Under section 6 of the act, the State Government may constitute a board to be known by such name as may be prescribed in the notification for schedule employment. The employment in construction or maintenance of dams, bridges, roads, or in any building operation is included in the schedule under SI. No 10.

Section 8A of the Act is related to the contribution to the fund for benefit of manual workers in the employment in construction or maintenance of dams, bridges.

Application of Workmen Compensation Act, 1923 to Manual Workers Act (Construction Workers) The provisions of the workmen compensation Act, 1923 (Central Act VIII of 1923) and the rules made from time to time there under shall apply to manual workers employed in (Building construction works) scheduled employments to which this Act applies and for that purpose they shall deemed to be the workmen within the meaning of that Act. The workmen compensation act 1923 was enacted in the year 1923 and its objective is to provide workmen and or their dependents some relief on account of accidents arising out of and in the course of employment. To make provision for the payment of compensation by certain class of employers to their
workmen for injury by accidents. To determine, the amount of compensation payable in case of death, the average monthly wages of the deceased workmen and in the case of an injured workmen both in the average monthly wages and the nature of disablement.

**Employers Liability to Pay Compensation to Workmen**

If personal injury is caused to workmen by accident arising out and in the course of employment, his employer shall be liable to pay compensation under section 3(1).

**Application of the Payment of Wages Act 1936 to Manual Workers Act**

Not-withstanding anything in the payment of wages Act, 1936 (Central Act IV of 1936), the Government may by notification direct that all or any part of the provisions of the said Act or rules made there under shall apply to all or any class of workmen employed in any scheduled employment to which Tamilnadu Manual workers Act 1982 applies, with the modification that in relation to employer shall mean where a board make payment of wages to any such worker, the board and in any other case, the employer as defined in this act, and on such application of the provision of the said Act an inspector appointed under the Act shall be deemed to be inspector for the purpose of the enforcement of such provision of the said Act within the local limits of his jurisdiction.
The payment of wages Act 1936

The object of the Act is to regulate the payment of wages to certain classes of employed person. The regulation contemplated by the Act is two folded.

1) The date of payment of wages.

2) Deductions from the wages.

The general purpose of the act is to provide that the employed persons shall be paid wages in a particular form and at regular intervals without any unauthorized deductions. The Act provides for the responsibility for the payment of wages. Fixation of wage period has been made statutory under section 4 and no wage period shall exceed one month. Time limit for the payment of wages is fixed under section 5 of the Act. Section 6 of the Act states that the wages must be paid in current coins or currency notes. Section 7 speaks about the deductions, which may be made from wages in detail. Section 9 deals with fine to be imposed on employers who violate or contravene the provisions of the Act.


Not-with standing anything contained in the maternity benefit Act, 1961(Central Act 53 of 1961) the Government may by notification, direct that all or any of the provision of the said act or rules made there under shall apply to manual tribal workers employed in any scheduled employment
including construction sectors, to which Tamilnadu Manual Workers (Regulation of Employment and condition of work) Act 1982 applies and for that purpose they shall be deemed to be women within the meaning of the said maternity benefit act 1961.

**Important provisions of Maternity benefit Act 1961**

Objective of the Maternity Benefit Act 1961 is to regulate the Employment of women in certain establishments for certain periods before and after childbirth and to provide for maternity benefits and certain other benefits. The act extends to the whole of India. The act applied to every establishment being a factory, mine, or plantation including any such establishment belong to Government and to every establishment where in persons are employed for the exhibition of equestrian, aerobatic and other performances. The Act also applies to every shop or establishments within the meaning of any law for the time being in force in relation to shops and establishments in a state in which ten or more persons are employed or were employed in any day of the preceding twelve months.

Section 4 of the act prohibits employment or work by women during certain period. Under section 4, no employer shall knowingly employ a woman in any establishment during the six-week immediately following the day of her delivery, miscarriage or medical termination of pregnancy. No women shall work in any establishment during the six weeks immediate following the day of her delivery, miscarriage or medical termination of pregnancy. Further, on a
request made by the pregnant women, the employer shall not give during the period of one month immediately preceding the six weeks before the date of delivery, any work which is of arduous native or any work which involves long hour of standing. Such women shall not be employed in any work which involves long hours of standing. Such women shall not be employed in any work which likely to interfere with her pregnancy or normal development of the child or in any way likely to cause miscarriage or affect her health adversely.

Under section 5, the employer shall be liable to pay maternity benefit to every woman workers employed by him at the rate of average daily wages for the period her actual absence immediately preceding and including the day of her delivery and for the six weeks immediately following that day. Condition to be fulfilled before Claiming Maternity Benefit Under the Act is that the woman must have actually worked in an establishment or a factory for a period not less than 80 days, in the twelve months immediately preceding the date of expected delivery.

**MAXIMUM PERIOD OF MATERNITY BENEFIT**

The maximum period for which any women shall be entitled to Maternity Benefit shall be twelve weeks of which, not more than six weeks shall precede the date of her expected delivery. Provided that woman dies during this period, the maternity benefit shall be payable only for the days up to and including the day of her death. Thus the Maternity Benefit Act 1961 is intended to achieve the object of doing social justice to women worker.
The Equal Remuneration Act, 1976

The objective of the Equal Remuneration Act 1976 is to provide for the payment of Equal Remuneration to men and women workers and for the prevention of the discrimination, on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto. Under section 4 of the Act, the employer is under legal duty to pay equal remuneration to men and women workers for the work or work of a similar nature. There shall be no discrimination while recruiting men and women workers. The appropriate Government may by notification appoint such officers, not below the rank of a labour officer to hear and decide the complaints or claims arising out of Non – payment of wages at equal rates to men and women workers for the same work or work of similar nature. Thus equal remuneration Act 1976 serves as an important Act to protect the gender equality in payment of remuneration.

The Bonded Labour System (Abolition) Act 1976

The Bonded Labour System (Abolition) Act 1976 is an Act to provide for the Abolition of bonded labour system with a view to preventing the economic and physical exploitation of the weaker sections of the people and for matters connected there with or incidental thereto. The bonded labour systems has been abolished from 25th October 1975 and every bonded labour has been set free and has been discharged from any obligation to render any bonded labour from the said date. No person is allowed
to make an advance under, or in pursuance of the bonded labour system. No one can compel any person to render any bonded labour or other form of forced labour under section 6 of the liability to repay the bonded debt to stand extinguished and under section 7 the property of bonded laborers is to be freed from mortgage. Thus the bonded labour system (Abolition) Act 1976 stands as a protector for abolishing the bonded labour and to protect their interest.

*The Protection of Human Rights Act 1993*

The object of the Protection of Human Rights Act 1993 is to provide for the constitution of Human Rights Commission, State Human Right Commission in States and Human Rights Court for better protection of Human Rights and for matters connected therewith or incidental thereto.

*Human rights*

Section 2(d) defines Human Rights as right relating to life, liberty, equality, and dignity of the individual guaranteed by the constitution or embodied in the international covenants and enforceable by court in India. National Human Rights Commission (NHRC) & State Human Right Commission (SHRC) Under the provision of the Act, NHRC / SHRC were constituted. The commission shall inquire, Sue motto or on a petition presented to it by a victim or any person on his behalf into complains of violation of human right or abetment there of or negligence in the prevention of such violation. The commission may take any of the following steps up on the completion of enquiry. Where the inquiry discloses the commission of violation
of human right or negligence in the prevention of violation of human right by a public servant, it may recommend to the concerned Government or authority for the initiation of proceedings for prosecution or such other action as the commission may deem fit against the supreme court or the high court for such direction, orders, writs, as that court may deem necessary, recommend to the concerned Government or Authority for the grant of such immediate relief to the victim or the members of his family as it may consider. Thus the Protection of Human Right Act 1993 provides for the production of Human Rights of women workers in work places.

The Minimum Wages Act 1948

The Minimum wages Act 1948 is a welfare legislation enacted for statutorily fixing the Minimum remuneration payable to workers employed in certain employment where the payment was and substantially lower than that of similar industries. Where a person provides labour or services for remuneration, which is less than the minimum wages, such labour is “Forced Labor” hit by article 23 of the constitution of India. The Minimum Wages Act 1948 empowers the appropriate Government to fix minimum rates of wages and there by the said Government is entitled to alter the existing legal conditions between the employee and employer which are non-commensurate with the provision of the Act.

In case where an employer pays less than the minimum wages fixed by the appropriate government, a summary procedure is provided under the
Act for recovering the balance with penalty and the defaulting party is liable to a subsequent prosecution also. Thus the provision of the Minimum Wages Act are intended to achieve the object of doing social justice to workmen employed in the scheduled employment by prescribing minimum rates of wages them.

**The Child Labour (Prohibition and Regulation Act 1986)**

There are number of Act which prohibits the employment of children below 14 years and 15 years in specified employments. However there is no procedure laid down in any law for deciding in which employments, occupation or process the employment of children should be banned. There is also no law to regulate the working condition of children in most of the employment where they are not prohibited from working and are working under exploitative condition. The object of Child Labour (Prohibition and Regulation) Act 1986 is to ban the employment of children those who have not completed their 14 years in specified occupations and process. To regulate the condition of work of children in employment where they are not prohibited from working. The Act lays down penalty for employment of children in violation of the provision of the Act and other acts which forbids the employment of children. On 21st December 1976 the UN General Assembly adopted a resolution proclaiming 1979 as the international year of child with general objective of promoting welfare of children which has once again focused the world attentions on the problem of child labour and thus Act provides for the protection the Rights of children.
Contract Labour (Regulation and Abolition) Act 1970

The contract labour (Regulation and Abolition) Act 1970 regulation the employment of contract labour in certain establishments. The Act applies to every establishment in which 20 or more workmen are employed on any day of the preceding 12 months. The Act shall not apply to establishment in which work only of an intermittent or casual nature is performed.

RIGHT OF CONTRACT LABOURERS

BHEL workers association Vs Union of India (1985) ISCC 630 in the above cited case, it was decided that the contract labour is entitled to same wages, holidays, hours of work and condition of service as applicable to workmen directly employed by the principal employer on the same or similar kind of work. Chapter IV of the Act deals with welfare and health of the contract labourer. Provisions have been made for maintaining canteen, rest rooms, drinking water, latrines, urinals, washing facilities and first aid facilities. Responsibility for making payment to the contract labour is fixed and penal provision has also been made for those who violate the provisions of the act. Thus the Contract Labour (Regulation and Abolition) Act 1970 stands as a guardian for contract labourers.

The Unorganized Workers Social Security Act, 2008

This Act is enacted for the provision of social security benefit to the Unorganised workers. This Act defines “home-based worker” means a person
engaged in the production of goods or services for an employer in his or her home or other premises of his or her choice other than the workplace of the employer, for remuneration, irrespective of whether or not the employer provides the equipment, materials or other inputs; The Act gives an exhaustive definition to “unorganised sector” which means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.; Further “unorganised worker” means a home-based worker, self-employed worker or a wage worker in the unorganised sector and includes a worker in the organised sector who is not covered by any of the Acts mentioned in Schedule II to this Act; and “wage worker” means a person employed for remuneration in the unorganised sector, directly by an employer or through any contractor, irrespective of place of work, whether exclusively for one employer or for one or more employers, whether in cash or in kind, whether as a home-based worker, or as a temporary or casual worker, or as a migrant worker, or workers employed by households including domestic workers, with monthly wage of an amount as may be notified by the Central Government and State Government, as the case may be.

Every unorganised worker shall be eligible for registration subject to the fulfillment of the following conditions, namely:

(a) he or she shall have completed fourteen years of age;
(b) a self-declaration by him or her confirming that he or she is an unorganised worker.

(2) Every eligible unorganised worker shall make an application in the prescribed form to the District Administration for registration.

(3) Every unorganised worker shall be registered and issued an identity card by the District Administration which shall be a smart card carrying a unique identification number and shall be portable.

(4) If a scheme requires a registered unorganised worker to make a contribution, he or she shall be eligible for social security benefits under the scheme only upon payment of such contribution.

(5) Where a scheme requires the Central or State Government to make a contribution, the Central or State Government, as the case may be, shall make the contribution regularly in terms of the scheme.

Under this Act, the State Government may formulate and notify, from time to time, suitable welfare schemes for unorganised workers, including schemes relating to

(a) provident fund;

(b) employment injury benefit;

(c) housing;

(d) educational schemes for children;
(e) skill upgradation of workers;

(f) funeral assistance; and

(g) old age homes.

ILO & INDIA

International labour organization is a distinct labour organization to look at the labour problems at international level. Indian labour organization has been greatly influenced by the ILO. Many convention of ILO had been ratified by India and incorporated in labour laws.

ILO Conventions Ratified by India

1. Hours of work (convention no 1 of 1919) it limits the hours of work to 8 hours in a day and 48 hours in a week in industrial undertaking.

2. The Employment of women during nighttime is prohibited by convention No 4 of 1919.

3. Convention No 15 provides for the fixation of minimum age for Employment with an objective of prohibiting Employment of child labour.

4. Convention No 18 provides for the compensation to workmen on account of occupational diseases.
5. Convention No 26 is related to fixing of minimum wages. The Government of India enacted a separate legislation called the Minimum Wages Act 1948.


CONCLUSION

Many of the unorganized employments are now being brought under protective legislative umbrella. Government is working out a strategy to cover almost all the unorganized sector under social security protection. The biggest problem is to organize the unorganized to identify the numbers and coverage under the Act. Many of the protective labour legislations remain in books rather in practice. The absolute need of the hour is to implement various provisions to cover all the unorganized employments.