Chapter – 7
JUDICIAL ATTITUDE TOWARDS LABOUR WELFARE LAWS

I. INTRODUCTION

Labour jurisprudence owes its origin to the Pre-independence era, where it existed in a rudimentary form but after independence, it is the Supreme Court that has infused new soul in the legislative skeleton of the welfare State. The role of the judiciary in the growth of industrial jurisprudence can be judged by analyzing its trends in decided labour related issues and thereby giving a clear picture of its contribution towards the evolution of the particular branch of Law in the country. India is a welfare state and has enforced many labour welfare legislations. The meaning of welfare state is that system in which the Government undertakes various welfare programmes for its people such as insurance, old age pension and other social security measures. A social system is characterized by such policies.

Justice Bhagwati explained Social Justice in *Muir Mills Co. Ltd. v. Suti Mazdoor Union*, According to him social justice is a very vague and indeterminate expression, and added that whatever it meant, the concept of social justice does not emanate from the fanciful notions of any adjudicator but must have a more solid foundation. On the other hand, Chagla C.J. rejected the submission that the Court should not impose its own ideas of social justice in interpreting statutory provisions by saying that social justice, was an object of the Constitution.

The labour welfare is one which lends itself to various interpretations and it has not always the same significance in different countries. State is an important legal institution as it is a source of all the powers and rights. According to Bosanque, “the ‘state’ is a working

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1  P. Ramanatha Aiyar, Concise Law Dictionary.
2  (1955) I SCR 991.
conception of life as a whole.” In *Chisholms v Georgia*,4 the Supreme Court of America held, “A state is a body, united together for the common benefit, to enjoy peacefully what is their own, and to do justice to other,” According to Salmond, “A state is an association of human beings established for the attainment of certain ends by certain means.” The relationship between state and law is inherent. A state maintains peace and administration in a society through law. By the time the role of the state has been changed. Now the state is a social welfare state. A social welfare state means such a social system whereby the state assumes primary responsibility for the welfare of its citizens, as in matters of health care, education, employment, and social security.5

A welfare state is a concept of government where the state plays a key role in the protection and promotion of the economic and social well-being of its citizens. It is based on the principles of equality of opportunity, equitable distribution of wealth, and public responsibility for those unable to avail themselves of the minimal provisions for a good life. Then general term may cover a variety of forms of economic and social organization.6 There are three main interpretation of the idea of a welfare state.7 These are-

a. The welfare state refers to the provision of welfare services by the state.

b. A welfare state is an ideal model where the state assumes primary responsibility for the welfare of its citizens. This responsibility is comprehensive, because all aspects of welfare are considered. It is universal, because it covers every person as a matter of right.

4 2 Dallas 456.
7 Supra note 5.
c. Welfare states may be identified with general systems of social welfare. In many “welfare states”, welfare is not actually provided by the state, but by a combination of independent, voluntary and government services.

The modern welfare state developed during 19th and 20th centuries in response to Karl Marx’s theory of the inherent instability of capitalism in an attempt to protect the capitalist system from the socialist revolution. Welfare systems were developing intensively since the end of the World War II. At the end of century due to their restricting part of their responsibilities started to be channelled through non-governmental organizations which become important providers of social services.8

At the time of independence, the Constitution makers were highly influenced by the feeling of social equality and welfare of the people. They accepted that this sacrosanct work could only be done by State. For this reason, they incorporated such provisions in the Constitution of India which made the role of state important and went towards social welfare and ideal state.9

Concept of government in which the state plays a key role in protecting and promoting the economic and social well-being of its citizens, is based on the principles of equality of opportunity, equitable distribution of wealth, and public responsibility for those who lack the minimal provisions for the good life. The term may be applied to a variety of forms of economic and social organization. A basic feature of the welfare state is social insurance, intended to provide benefit during periods of greatest need (e.g. old age, illness, unemployment). The welfare state also usually includes public provision of education, health services, and housing.10

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8 Id.
9 Id.
10 Id.
A welfare state strives to achieve many ideals, some of them are—
- Removal of inequalities in distribution of economic resources
- Equality of opportunity for employment
- Equal pay for equal work.
- Elimination of exploitation of labourers
- Establishment of a welfare state
- Initiation of schemes relating to health, education, social security, and other such essential matters.

In *D. S. Nakara v. Union of India*,\(^\text{11}\) the Supreme Court has held that the principal aim of a socialist state is to eliminate inequality in income, status and standards of life. The basic framework of socialism is to provide a proper standard of life to the people, especially, security from cradle to grave. Amongst there, it envisaged economic equality and equitable distribution of income. This is a blend of Marxism and Gandhism, leaning heavily on Gandhian socialism. From a wholly feudal exploited slave society to a vibrant, throbbing socialist welfare society reveals a long march, but, during this journey, every state action, whenever taken, must be so directed and interpreted so as to take the society one step towards the goal.

The Apex Court in *Excel Wear v Union of India*,\(^\text{12}\) held that the addition of the word ‘socialist’ might enable the courts to learn more in favour of nationalisation and state ownership of an industry. But, so long as private ownership of industries is recognised which governs an overwhelming large principles of socialism and social justice can not be pushed to such an extent so as to ignore completely, or to a very large extent, the interest of another section of the public, namely the private owners of the undertaking.

The Indian Constitution set certain values which struck a happy balance between individualism and socialism. It eliminates the vices of unbridled private enterprises, and protects interests by social control

\(^{11}\) (1983)1 SCC 305.
\(^{12}\) AIR 1979 SC 25.
and welfare measures. The value system structured by our Constitution finds its expression in its various provisions and, more particularly, in Part III, Part IV and the Preamble of the Constitution. Our Constitution guaranteeing social justice, liberty and equality to all its citizens. For achieving these objectives, we have three organs of government, the legislature, executive and the judiciary. Each of these is supreme within sphere allotted to it. To interpret the spheres and enforce the rule of law, an independent authority is absolutely essential and this is furnished by the courts of justice. The Supreme Court as the Apex court has been assigned a very important role and constituted as a guardian of the Constitution which is the yardstick of ground norms for other legislation.

Under the Constitution of India, labour is a subject in the Concurrent List, where both the Central and State Governments are competent to enact legislation subject to certain matters being reserved for the Centre. In addition to these, our Preamble has secured social, economic, political justice, equality of status and opportunity to all including fraternity to all. Except the preamble, there are so many other provisions in the Constitution which enable India as a “Social Welfare State”. Fundamental Rights are incorporated in the part IIIrd of the Constitution of India. These Fundamental Rights can be enforced directly by the Supreme Court by virtue of Article 32 and through High Courts under Article226. These Fundamental Rights are essential for the better development of mental, character, and human dignity of every individual. These rights can not be derogated or denied by the state or government.

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13 Entry No. 22-Trade Unions; industrial and labour disputes,
Entry No. 23-Social Security and insurance, employment and unemployment.
Entry No. 24- Welfare of about including conditions of work, provident funds, employers’ invalidity and old age pension and maternity,
Entry No. 55- Regulation of labour and safety in mines and oil fields,
Entry No. 61- Industrial disputes concerning Union employees
Entry No. 65-Union agencies and institutions for “Vocational ...training...”
Under Articles 21, 38, 42, 43, 46 and 48A together the Supreme Court has concluded in *Consumer Education and Research Center v. Union of India*\(^\text{14}\) that right to health, medical aid to protect the health and vigour of a worker while in service, or post retirement is a fundamental right to make the life of the workman meaningful and purposeful with dignity of person.

In *Meneka Gandhi v. Union of India*,\(^\text{15}\) the Supreme Court gave a new dimension to Article 21. It held that the right to ‘live’ is not merely confined to physical existence but it includes within its ambit the right to live with human dignity.

The part IVth of the Constitution of India (Article 36 to 51) is concerned with Directive Principles of the State Policy. This part IV is the foundation of social welfare system. However, these principles are neither enforceable nor binding on the state but are simply guidelines for the state, which the state has to consider at the time of policy making. Part IV is just like a light which shows a path to the state. These Directive Principles are supporters for making state a social welfare state. The Directive Principles are the ideals which the Union and state Government must keep in mind while formulating its policies. They lay down certain social, economic and political principles suitable in peculiar conditions prevailing in India. The idea of welfare state envisaged by our Constitution can only be achieved if the State endeavours to implement them with high sense of moral duty. The Supreme Court has held some Directive Principles as Fundamental Rights through judicial activism, e.g., *In Randhir Singh v. Union of India*,\(^\text{16}\) the petitioner and other driver constables made a representation to the authorities that their case was omitted to be considered separately by the Third Pay Commission and that their pay scales should be the same as the drivers of heavy vehicles in other departments. As their claims for better scales of pay did not

\(^{14}\) AIR 1995 SC 923.
\(^{15}\) AIR 1978 SC 597.
\(^{16}\) AIR 1982 SC 879.
meet with success, the application has been filed by the petitioner for the issue of a writ under Article 32 of the Constitution.

The Supreme Court has held that principle of “equal pay for equal work” though not a fundamental right but it is certainly a constitutional goal, so it can be enforced. It is clear that the Judiciary is playing a pivotal role to promote Indian state as a social welfare state. In addition to these, Public Interest Litigations (PILs) have also played an important role in this field and have maintained social order.

Article 38 provides State to secure a social order for the promotion of welfare of the people. The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which social, economic and political justice shall inform all the institutions of the national life. The State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

Article 41 gives right to work, to education and to public assistance in certain cases. The State shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work, education and public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.

Article 44 directs for Uniform Civil Code for the citizens. The State shall endeavour to secure for the citizens a Uniform Civil Code throughout the territory of India.

II. ATTITUDE OF INDIAN JUDICIARY TOWARDS LABOUR WELFARE LEGISLATIONS

Indian judiciary has played significant role in the enforcement and interpretation of labour welfare and social security laws. It has innovated new methods and devised new strategies for the purpose of
providing access to justice to weaker sections of society who are denied their basic rights and to whom freedom and liberty have no meaning. Indeed the Court assumed the role of protectionist of the weaker by becoming the courts for the poor and struggling masses of the country. Further, the courts at times played a role of legislators where law is silent or vague. Indeed, a number of legislations and legislative amendments have been made in response to the call by the judiciary. The Courts have also enlarged the contours of the fundamental rights and there by gave new dimensions to employment, bonded labourers, right to health through public interest litigation etc.  

In the present economic order, the working class has a dominant role to play because no system can work smoothly by neglecting this important segment of the society. The judiciary too has been an arm of social revolution in many societies. It upholds the rule of law and brings about social readjustment necessary to establish coherent socio-economic order. In the common law it formulated various principles of law and declared judicial legislation. Law confers rights, and rights have no life without remedies provided by judicial system. The social security legislations will have a real meaning only when stress is laid on what is described as 'remedial jurisprudence' through the judicial powers. In interpreting the 'Social security legislation' the judge must avoid mechanical approach and adopt pragmatic one, being guided by socio-economic values and needs of society.  

In interpreting the 'social security legislations' the Indian judiciary, considering it a piece of beneficial legislation, has been benevolent to protect the interest of the down-trodden section of the society and at the same time avoided to become benevolent despot. It always kept in view the broader objective of various enactments of social security and to interpret them within the framework of the ideas  

and principles enshrined in the Supreme Law of the country, the Indian Constitution.\textsuperscript{19}

All this can be noticed, observed and well felt through the various decisions of the High Courts and Supreme Court in judging the Constitutional validity of the several enactments as to provide socio-economic rights to the parties, in determining the coverage and eligibility conditions, in clarifying the judicial nature of various authorities, in viewing benefits with regard to their magnitude and duration, in encouraging the vigorous enforcement of various policies, schemes and programmes in different provisions of relevant enactments and so on.\textsuperscript{20} Following are the cases decided by Indian judiciary dealing with labour welfare, labourer’s rights, social security etc.

\textbf{a. Compensation For Workers}\n
\textbf{i. Compensation For Employment Injury}\n
In \textit{Works Manager Central Railway Workshop v. Vishwanath.}\textsuperscript{21} All legislations in a welfare state are enacted with the object of promoting general welfare, but certain types of enactments are more responsive to some urgent social demands and also have a more immediate and visible impact on social vices, by operating more directly to achieve social reforms.

In \textit{Partap Narain Singh Dev v. Shri Niwas Sabata},\textsuperscript{22} the Supreme Court held that in case employer does not pay any compensation for employment injury, the Workmen Compensation Commissioner is fully justified in imposing interest and penalty.

The Court observed that the measure followed the Workmen Compensation Act in its main principles and in some of its details, but it contained a large number of provisions designed to meet the special conditions in India. This Act was the first step towards social security

\textsuperscript{19} \textit{Id.} \\
\textsuperscript{20} \textit{Ibid} at 179. \\
\textsuperscript{21} (1970) I LLJ 351. \\
\textsuperscript{22} (1976) I LL J 235.
in India. Its most striking feature was its rigidity, designed to prevent vexatious litigation. In respect of the tribunals set up to decide disputes, the Act followed the American model in preference to the British model and special commissioners were appointed with wide powers where required; and although provision was made for appeals to the High Court the right to appeal was severely limited. Honourable court observed that its object has been expressed by Royal Commission that moreover, provision for compensation is not the only benefit flowing from workmen’s compensation legislation, it has important effects in furthering work on the prevention of accidents, in giving workman greater freedom from anxiety and in rendering industry more attractive.23

The Orissa High Court decided in *Steel Authority of India v. Kanchan Bala Mohanty*,24 when the workman returning home from place of work adopting a route which is not normal route, and suffers an accident, the workman would not be entitled to claim compensation. Such injury will not be considered as employment injury.

The Karnataka High Court while deciding on the issue of determination of quantam of compensation observed that Where compensation is required to be paid in respect of an occupational disease contracted in the course of an employment leading to termination of services prematurely, such compensation should be determined on the basis of wages drawn on the date of actual termination of services of the workmen and not on the day of contracting the disease. The principle on which compensation is to be awarded has to be determined in accordance with the provisions of the Act and cannot be departed from on grounds of sentiment. Under the

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24 1994-II LLJ 1167 (Orissa).
provisions of the Act, the amount of compensation depends upon, age, monthly wages and nature of injury.  

There was controversy regarding non scheduled injury. In *New India Assurance Co. Ltd. v. Chittaranjan Samdha*,26 settled this controversy and held that when the injury is a non-scheduled injury, but is an employment injury, the Commissioner shall be the authority to assess compensation.

In *Aryamuni v. Union of India*,27 the employee sustained injury to his eye due to spark. The Company's notice written in English required the use of goggles for such work. Goggles were not provided to the workman nor was asked so by the supervisor. The employee injured did not know English under these circumstances, It was held that the employee was not willfully disobedient as he did not know English and he could not know the contents of the notice nor it was explained to him. It was duty of supervisor to interpret the need of wearing goggles and it was duty of employer to provide it. So employer was held liable to pay compensation.

Controversy regarding procedure explained in Section 8 of Workmen’s Compensation Act was settled in the case of *Oriental Insurance Co. Ltd. v. Dyamavva and Others*.28 According to Apex court section 8 of Act provides that when a workman during the course of his employment suffers injuries resulting in his death, the employer has to deposit the compensation payable, with the Workmen’s Compensation Commissioner. The procedure envisaged can be invoked only by the employer for depositing compensation with the Workmen’s Compensation Commissioner consequent upon such "suo motu" deposit of compensation by the employer with the Commissioner, the Commissioner may summon the dependents of the concerned employee to appear before him under sub-section (4),

25  *Bharat Gold Mines Ltd. v. Hanuman and others*, 1993-II LLJ 313 (Karnataka).
26  1995-II LLJ 1009 (Orissa).
27  (1963)1 LLJ 24.
28  AIR 2013 SC 1853.
Section 8. Having satisfied himself about the entitlement of the dependants to such compensation, the Commissioner is then required to order the rightful apportionment thereof amongst the dependants. As against the aforesaid, where an employer has not suo motu initiated action for payment of compensation to an employee or his/her dependants, in spite of an employee having suffered injuries leading to the death, it is open to the dependants of such employee, to raise a claim for compensation under Section 10 of the Workmen’s Compensation Act, 1923. The procedure under Section 8 is initiated at the behest of the employer “suo motu”, and as such, cannot be considered as an exercise of option by the dependants/claimants to seek compensation under the provisions of the Workmen’s Compensation Act, 1923. Mere acceptance of compensation by the dependent would not disentitle him from filing claim petition.29

The Court held that Sub-sections (1) to (3) of Section 8 reacted above, leave no room for any doubt, that when a workman during the course of his employment suffers injuries resulting in his death, the employer has to deposit the compensation payable, with the Workmen’s Compensation Commissioner. Payment made by the employer directly to the dependants is not recognized as a valid disbursement of compensation. The procedure envisaged in Section 8 of the Workmen’s Compensation Act, 1923, can be invoked only by the employer for depositing compensation with the Workmen’s Compensation Commissioner. Consequent upon such “suo motu” deposit of compensation (by the employer) with the Workmen’s Compensation Commissioner, the Commissioner may (or may not) summon the dependants of the concerned employee, to appear before him under subsection (4) of Section 8 aforesaid. Having satisfied himself about the entitlement (or otherwise) of the dependants to such compensation, the Commissioner is then required to order the rightful apportionment thereof amongst the dependants, under subsections (5)

29 Ibid at 1856.
to (9) of Section 8 of the Workmen’s Compensation Act, 1923. Surplus, if any, has to be returned to the employer.\textsuperscript{30}

As against the aforesaid, where an employer has not suo motu initiated action for payment of compensation to an employee or his/her dependants, in spite of an employee having suffered injuries leading to the death, it is open to the dependants of such employee, to raise a claim for compensation under Section 10 of the Workmen’s Compensation Act, 1923. Sub-section (1) of Section 10 prescribes the period of limitation for making such a claim as two years, from the date of occurrence (or death). The remaining sub-sections of Section 10 of the Workmen’s Compensation Act, 1923 delineate the other process requirements for raising such a claim. Having perused the aforesaid provisions and determined their effect, it clearly emerges, that the Port Trust had initiated proceedings for paying compensation to the dependants of the deceased Yalgurdappa B. Goudar “suo motu” under Section 8 of the Workmen’s Compensation Act, 1923. For the aforesaid purpose, the Port Trust had deposited a sum of ₹3,26,140 with the Workmen’s Compensation Commissioner on 4.11.2003. Thereupon, the Workmen’s Compensation Commissioner, having issued notice to the claimants (dependants of the deceased Yalgurdappa B. Goudar), fixed 20.4.2004 as the date of hearing. On the aforesaid date, the statement of the widow of Yalgurdappa B. Goudar, namely, Dyamavva Yalgurdappa was recorded, and thereafter, the Workmen’s Compensation Commissioner by an order dated 29.4.2004 directed the release of a sum of ₹3,26,140/- to be shared by the widow of the deceased and his daughter in definite proportions.\textsuperscript{31}

The Court has observed that, “the issue to be determined by us is, whether the acceptance of the aforesaid compensation would amount to the claimants having exercised their option, to seek

\textsuperscript{30} Ibid at 1859.
\textsuperscript{31} Ibid at 1860.
compensation under the Workmen’s Compensation Act, 1923. The procedure under Section 8 aforesaid (as noticed above) is initiated at the behest of the employer “suo motu”, and as such, in our view cannot be considered as an exercise of option by the dependants/claimants to seek compensation under the provisions of the Employee's Compensation Act, 1923. The position would have been otherwise, if the dependants had raised a claim for compensation under Section 10 of the Workmen’s Compensation Act, 1923. In the said eventuality, certainly compensation would be paid to the dependants at the instance (and option) of the claimants. In other words, if the claimants had moved an application under Section 10 of the Workmen’s Compensation Act, 1923, they would have been deemed to have exercised their option to seek compensation under the provisions of the Workmen’s Compensation Act. Suffice it to state that no such application was ever filed by the respondents-claimants herein under Section 10 aforesaid. In the above view of the matter, it can be stated that the respondents-claimants having never exercised their option to seek compensation under Section 10 of the Workmen’s Compensation Act, 1923, could not be deemed to be precluded from seeking compensation under Section 166 of the Motor Vehicles Act, 1988."

*Anand Bihari v. RSRT Corporation* is another landmark decision in the quest for compensatory relief for employment injury. Here the Rajasthan State Transport Corporation employed a number of drivers who were required to drive the heavy motor vehicles in the sun, rain, dust and dark hours of night. They were thus exposed to the glaring and blazing sun light and beaming and blinding lights of the vehicles coming from the opposite direction. The drivers' who had put in service with the corporation for long periods and were above 40 years of age, developed a weak or sub-normal eye-sight or lost their

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32 *Id.*
33 1991 Lab. IC 494.
required vision. The Corporation, therefore, terminated the service of 30 such drivers.

The Court was called upon to decide (i) whether the termination of service of the drivers are covered by sub-clause (c) of section 2(00) of the Industrial Disputes Act, 1947 and (ii) are drivers entitled to compensation for occupational injury under the Employees State Insurance Act, 1948. Regarding the availability of benefits under the ESI Act, the court held that the present case would not be covered by item 4 of part I and items 31, 32 and 32A of part II of the second Schedule of the Act, as no provision is made there for compensation for a disability to carry on a particular job. In order to fill the gap left by the legislature and to provide compensatory relief to workmen who are disable to carry on a particular job but not incapable of taking any other job, the Court directed the Corporation that:

- It should in addition to giving each of the retried workmen his retirement benefits, offer him any other alternative job which may be available and which he is able to perform.
- In case no such alternative job is available, each of the workmen shall be paid along with his retirement benefits, an additional compensatory amount as follows:
  - Where the employee has put in five years or less the amount of compensation shall be equivalent to seven days' salary per year of the balance of his service;
  - Where the employee has put in more than 10 years but less then 15 years service, the amount of compensation shall be equivalent to 21 days' salary per year of the balance of his service;
  - Where the employee has put in more than 15 years’ service but less than 20 years’ service, the amount of compensation shall be equivalent to one month’s salary per year of the balance of his service.
ii. Retrenchment, Lay off, Transfer and Closure of Undertaking

1. Compensation for Lay-Off

Industrialisation has demonstrated the vital role of labour laws as an instrument of social justice. It is estimated that nearly one-sixth of litigations in the Supreme Court pertains to industrial law matters and a substantial portion of legislative activity at Centre and States covers subjects of industry and labour.

The freedom of contract theory, emerged out of the *Laissez-faire* principle, authorised the employer to discharge his workmen due to breakdown of machinery or such other reasons beyond the control of the employer. This invariably exposed the workmen to frequent risk of involuntary unemployment. This absolute power of the employer to discharge his workman gradually began to disappear with the erosion of the *Laissez-faire* philosophy and the introduction of more state interventions in industrial relations.

The case of compensation of lay-off position is quite different from compensation for injury. This issue raised in the case of *Workmen v. Firestone Tyre and Rubber Co.* The Apex Court while resolving it held that if the terms of contract of service or the statutory terms engrafted in the standing orders do not give the power of lay-off to the employer. The employer will be bound to pay compensation for the period of lay-off which ordinarily and generally would be equal to the full wages of the concerned workmen. If, however, the terms of employment confess a right of lay-off on the employer, there in the case of an industrial establishment which is governed by chapter V-A, compensation will be payable in accordance with the provisions contained therein.

It is an action by the workman against the employer. Under this, the workman has the opportunity to work and earn wages. The employer is, therefore, required to pay compensation to the workman.

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who is laid off, as the workman’s case falls within the provisions of section 25C of the Act which entitles a workman to lay-off compensation equivalent to fifty percent of the total of the basic wages and dearness allowance for the period of his lay-off. For Compensation a workman should be fulfilled the following conditions-

a. His name should be borne on the muster rolls and not have been retrenched.
b. He should not be ‘badli’ workman or a casual workman;
c. He should have completed not less than one year of continuous service under the employer.  

The Supreme Court in *Payment of Wages Inspector v. Suraj Mal Mehta*\(^36\), has held that the payment of compensation under section 25-F, 25-FF, 25-FFF is wages within the meaning of S. 2 (vi) (d) of the Payment of Wages Act. The same principles will apply to lay off compensation of section 25-C. Court held that employer is duty bound under the provisions of Act to pay compensation to the laid off workers.

Looking to the whole scheme of chapter V-A of the industrial Disputes Act the power of employer to lay-off is implicit. It determines not merely the right of the workmen to receive compensation but also the wider rights and liabilities with regard to lay-off itself. So it is a statutory right available to the workers.  

2. Compensation in Case of Retrenchment

Retrenchment compensation used to be awarded on equitable considerations by the tribunals before section 25-F was inserted in 1953 the Industrial Disputes Act, 1947. Provisions of section 25F cannot apply to retrenchment effected prior thereto. This section, for the first time gave legislative recognition to the principle of awarding retrenchment relief. It was inserted because of the then impending large scale closures in the textile industry, particularly in the then

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\(^36\) (1969) I LLJ 762 SC.
\(^37\) Veiyra M.A. v. Fernadez, (1956) I LLJ 547 (Bom.).
Bombay State. It was the intention of the legislature to prevent such closures and where that was not possible to ensure payment of some compensation to retrenched workers so as to enable to tide over the difficult days of unemployment.\(^3\)\\

Retrenchment generally means "discharge of surplus labour or staff" by the employer on account of a long period of lay-off or rationalisation or production or improved machinery or automation of machines or similar other reasons. It is adopted as an economy measure. The subsisting employer-workmen relationship is, however, terminated in cases of retrenchment.\(^4\)

Chief Justice Chagla and Justice Dixit of the Bombay H.C. held that the workmen who had been retrenched by the Railway Co., was liable to pay compensation to them in *Barsi Light Railway Co. v. K.N. Joglekar*,\(^4\) while considering the meaning and scope of the definition of retrenchment. In this case under an agreement dated Aug. 1, 1895 between the Secretary of the State for India and Railway Company, the President of India gave notice to the Railway Company would be taken over with effect from Jan 1, 1954. Consequently, the Railway Co. served a notice to its workmen that the services of all the workmen of the Railway Company would be terminated with effect from the afternoon of Dec. 31, 1953. It was also stated therein that the Government of India intended to employ those staff of the Company who would be willing to serve the railways on terms and conditions fixed by the Government. Majority of the Staff of the Railway Co. were reemployed on the same scales of pay. However, 23 percent of the staff were re-employed on some what lower scales though the pay which they actually drew at the time of re-employment was not affected. Only about 24 of the former employees of the Railway Co. were not taken back by the Government. Soon after Railway Union filed 61 applications under the Payment of the Wages

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38 Supra note30at 123.
40 (1957) SCR 121.
Act, 1936 before the Payment of Wages Authority for payment of retrenchment compensation under section 25F.

The Authority held that it had no jurisdiction to deal with the application but held that the workers were entitled to compensation as these had been retrenched. After this order Railway Union moved to the Bombay High Court for a writ under Art. 226 and 227 of the Constitution for quashing the order of dismissal passed by the authority.

In *Bharat Sanchar Nigam Limited v. Man Singh*41 The respondent workmen worked with the appellant as casual labourers on daily wages during the year 1984-1985. Due to non-availability of work, their services were terminated in the year 1986. No notice or retrenchment compensation was given to them before terminating their services. After about five years, they raised an industrial dispute in the year 1991. The appropriate government referred the dispute to the labour court for adjudication. The award of reinstatement given by the labour court was challenged by the department filing writ petition before the High Court. The respondent workmen were engaged as "daily wagers" and they had merely worked for more than 240 days, High Court considered view, relief of reinstatement cannot be said to be justified and instead, monetary compensation would meet the ends of justice.

The High Court as also the award dated 27-05-2005 passed by the labour court were set aside by Supreme Court. Bharat Sanchar Nigam Ltd. was directed to pay Rs.2 Lakh to each of the respondents in full and final settlement of their claim, with in six weeks from today. In case the payment is not made within the aforementioned stipulated time, the amount shall carry interest at the rate of 12% per annum.

41 (2012) 1 SCC (L&S) 207.
3. Compensation for Transfer of Undertaking

Section 25-FF was originally introduced in chapter V-A of Industrial Disputes (Amendment) Act, 1956. The Supreme Court in *Hari Prasad Shiv Shankar Shukla v. A.P. Divelkar*42 and *Barsi Light Railway Co. v. K.N. Joglekar*,43 held that no retrenchment compensation under section 25-F was payable to workmen whose services were terminated by the employer on a real and bonafide closure of business or when termination occurred as a result of transfer of ownership from one employer to another. The original section 25 FF was negative in nature. The above decisions of the Supreme Court demanded amendment to section 25-FF. Hence, Section 25-FF was recast to its present form by the Industrial Disputes (Amendment) Act, 1957. The amended section has made it clear that the employer is liable to give notice and pay compensation in case of transfer of undertaking to workmen.

In *New Horizon Sugar Mills Limited v. Ariyur Sugar Mills Staff Welfare Union and Others*,44 the assets of new Horizon Sugar Mills were seized and sold by an auction under the Provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 by Indian bank, a secured creditor. The writ petition was dismissed and the court held that the workmen of New Horizon will be entitled to the benefits under Section 25-FF of the Industrial Disputes Act, 1947 from the employer New Horizon. A special judge directed the authority to compute the claims of the workmen and submit a report to the Court. Court also directed Indian Bank which had the sale proceeds in respect of sale of the assets of New Horizon to deposit initially a sum Rs.6,00,00,000 (Six Crores) for being disbursed to the workmen. The said amount was ordered to be placed in a non-lieu account in Pondichery main branch of the said Bank. Appeal was disposed by a Division Branch of the

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42 AIR 1957 SC 121.
43 (1957) I LLJ 243 SC.
Madras High Court. New Horizon then filed appeal by special leave. The main issue was that who should be made liable to pay the compensation under Section 25-FF of the Industrial Disputes Act, 1947 and the appeal was dismissed by the Supreme Court and held that Indian Bank will now transfer the sum of rupees six crores as directed by the High Court, from the sale proceeds, without prejudice to its contentions to a no lieu account in its Pondicherry main branch which shall be operated by the commissioners, who shall endeavour to complete the exercise of verification, qualification and payment of the employees dues within three months. The balance, if any, remaining in the no-lieu account after such settlement of workers dues, shall be paid to New Horizon without prejudice to the contentions of the Bank. If the amount of 6 crores is found to be insufficient by the commissioner, the commissioner may apply to the Madras High Court for release of further funds, from the amount in deposit with it.

The Honorable Supreme Court awarded compensation to workers in the case transfer of workers in *State of Maharashtra and another v. Sarva Shramik Sangh, Sangli and Others*.\(^{45}\) The Government of Maharashtra established a Corporation named as the Irrigation Development Corporation of Maharashtra Limited, in December 1973. This Corporation was a Government of Maharashtra undertaking. It set up 25 lift irrigation schemes to provide free services to farmers. The Corporation was established in the aftermath of a terrible drought which afflicted the State in the year 1972. Some 256 workmen were employed to work on the irrigation schemes of the said Corporation. Though it was claimed that the workmen were casual and temporary, the fact remains that many of them had put in about 10 years of service when they were served with notices of termination. The notice sought to terminate their services w.e.f. 30.6.1985, and offered them 15 days compensation for every completed year of service. The retrenchment was being effected because according to the appellants the lift irrigation schemes, on

\(^{45}\) AIR 2014 SC 61.
which these workmen were working, were being transferred to a sugar factory viz. Vasantdada Shetkari Sahakari Sakhar Karkhana, Sangli.\textsuperscript{46}

These 163 workmen and the other 10 workmen viz. Pandurang Vishnu Sandage and others were working on the same lift irrigation schemes. Those 10 workers also got award of reinstatement with 25\% backwages. That award was dismissed by the Bombay High Court. The Special Leave Petition and the Curative Petitions there from also came to be dismissed, although on the ground of gross delay. The fact, however, remains that as far as those 10 workmen are concerned, the order of relief in their case viz. reinstatement with 25\% backwages and continuity in service was left undisturbed. Therefore, a question arises should the Government having been lethargic in the case of those 10 workmen, where it suffered an order of reinstatement with 25\% backwages, be now permitted to insist that when it comes to these 163 workmen, who are similarly situated, they may be denied a comparable relief.\textsuperscript{47}

In the facts and circumstances of the present case also, accepting that the termination did result on amount of transfer of the undertaking, the relief to be given to the workmen will have to be moulded to be somewhat similar to that given to the other group of 10 workmen. It will not be just and proper to restrict it to the rigours of the limited relief under Section 25FF read with 25F of the Industrial Dispute Act. Prior to the termination of their services on 30.6.1985, many of the workmen concerned had put in a service of about 10 years. In as much as so many years have gone since then; most of them must have reached the age of superannuation. In the circumstances, there cannot be any order of reinstatement. How- ever, they will be entitled to continuity of service, and although they have been receiving last drawn wages under section 17B of the Industrial Disputes Act, 1947, they will be entitled to 25\% backwages and

\textsuperscript{46} Ibid at 64.
\textsuperscript{47} Ibid at 69.
retirement benefits on par with the other 10 workmen. Award of 25% backwages in their case will be adequate compensation.48

4. Compensation for Closure

Closure means the permanent closing down of a place of employment or part thereof49. It is a permanent discontinuance of the business. The reasons or motive behind the closure is immaterial. Section 25-FFF makes it clear that a closure for any reason what sooner imposes liability on the employers or company with the notice and compensation under section 25F.

Section 25-FFA inserted by the 1972 amendment requires an employer who intends to close down an undertaking to give at least sixty day's advance notice in the prescribed manner to the appropriate Government. The notice shall clearly state the reasons for the intended closure of the undertaking. Where the factum of closure is admitted or established, a tribunal shall not go into the question as to the motive of the management to close down the establishment50.

When the terms of reference are limited to the narrow question as to whether the closure was proper and justified, the tribunal by the very terms of the reference, had no jurisdiction to go beyond the fact of closure and inquire into the question whether the business was in fact closed down by the management51.

Section 25-FFF was substituted in 1957 by the Industrial Disputes (Amendment) Act, 1957 to override the decision of the Supreme Court. The Section is focussed to provide some relief to the workmen whose services stand terminated consequent to the closing down of an undertaking except on certain situations.

Where an undertaking is closed down, every workman, who has not less than one year's continuous service in that undertaking before

48  Ibid at 70.
49  Industrial Disputes Act, 1947, Sec. 2 (CC).
the closure, is entitled to notice and compensation\textsuperscript{52}. If the closing down of the undertaking is on account of unavoidable circumstances beyond the control of the employer\textsuperscript{53}, then the compensation under section 25-F (2) shall not exceed the workmen's average pay for 3 months.

The Supreme Court in \textit{M.C. Mehta v. Union of India}\textsuperscript{54}, while directing the closure of 168 industries laid down various norms for the purpose. The 168 industries cannot be permitted to operate and function in Delhi. These industries may shift themselves to any other industrial estate in the NCR. These industries had to close down and stop functioning and operating in the city of Delhi with effect from November 30, 1996. The concerned Deputy Commissioner of Police had to affect the closure of the industrial units with effect from November 30, 1996 and file compliance report in this Court within 15 days thereafter. The allotment of plots, construction of factory buildings, etc. and issuance of any licenses/permissions etc. was to expedited and granted on priority basis. The shifting industries on their relocation in the new industrial estates were given incentives in terms of the provisions of the Master Plan and also the incentives which were normally extended to new industries in new industrial estates. The closure order with effect from November 30, 1996 was unconditional. Even if the re-location of industries is not complete, they had to stop functioning in Delhi with effect from November 30, 1996.\textsuperscript{55}

The workmen employed in 168 industries were entitled to the rights and benefits, the workmen would have continuity of employment at the new town and place where the industry is shifted. The terms and conditions of their employment shall not be altered to their detriment. The period between the closure of the industry in

\textsuperscript{52} Supra note 49, Section 25F.
\textsuperscript{53} Ibid Section 25-FFF (i).
\textsuperscript{54} AIR 1996 SC 2231.
\textsuperscript{55} Ibid at 2233.
Delhi and its restart at the place of relocation shall be treated as active employment and the workmen shall be paid their full wages with continuity of the service. All those workmen who agree to shift with the industry would be given one year's wages as "shifting bonus" to help them settle at the new location. The workmen employed in the industries which fail to relocate and the workmen who were not willing to shift along with the relocated industries would be deemed to have been retrenched with effect from November 30, 1996 provided they had been in continuous service for not less than one year in the industries concerned before the said date. They should be paid compensation in terms of Section 25-F (b) of industrial Disputes Act, 1947. These workmen would also be paid, in addition, one year's wages as additional compensation. The "shifting bonus" and the compensation payable to the workmen in terms of this judgment was to be paid by the management before December 31, 1996. The gratuity amount payable to any workmen shall be paid in addition.56

Enforcement of any legislation is as important as the law itself. Without proper enforcement a law is a paper piece and a dead letter. Therefore to make law a meaningful phenomenon, the effective enforcement is necessary. Coming to the enforcement of social security legislation, apart from administrative and quasi judicial apparatus for the purpose, the judiciary has played an active role for securing an effective enforcement of social security legislation. This is clear from the analysis of various cases where the judiciary has been particular for the enforcement of various enactments of social security by justifying the penalties imposed on contravention of the relevant law.57

iii. Compensation for Disability of Workers

The Supreme Court gave this landmark judgement, while awarding compensation to a young worker. In Govind Yadav v. New

56 Ibid at 2235.
57 Supra note 18 at 246.
India Insurance Company Ltd.⁵⁸ the appellant was 24 years of age when he met with an accident resulting in amputation of his one leg and awarded compensation of ₹1,78,500 treating his income as ₹1500 per month, disability to be 70% and by applying a multiplier of 17. In appeal, the High Court enhanced the compensation to ₹3,06,000 with interest at the rate of 7% per annum at treating his income as ₹2000 per month.

The Highest Court held that both the Tribunal and the High Court over looked that at the relevant time minimum wages payable to a worker were ₹3000 per month. In the absence of any cogent evidence, the Tribunal and the High Court should rationally have determined the appellant’s income to be ₹36,000 per annum and loss of earning with 70% disability at ₹25,200 per annum. As the appellant was 24 at the years at the time of accident, multiplier of 18 was considered. Therefore, compensation payable to the appellant for loss of earning would be ₹4,53,600.

Considering increase in the cost of living, cost of artificial limbs the honorable court awarded a sum of ₹2,00,000 to the appellant for future treatment. As it is not possible to make precise assessment of compensation for pain on suffering, the appellant must be awarded a sum of ₹1,50,000 in lieu of pain, suffering and trauma caused due to the amputation of leg.

The appellant can be expected to live for at least 50 years and during the period he would not lead and enjoy life like a normal man. Prospects of his marriage had also considerably reduced. Hence a sum of ₹1,50,000 must be awarded towards loss of amenities and enjoyment of life. Thus, overall compensation of the appellant must be enhanced to ₹9,53,600 with interest @7% per annum from the date of filing the claim petition till the date of realization.

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⁵⁸ CIVIL APPEAL No.9014 OF 2011 (Arising out of S.L.P. (C) No.30556 of 2009).
In *K.K. Nair v. The Regional Director, ESI Corporation and Another*, it was held that the benefit is payable to an insured person in case of his sickness certified by a duly appointed medical practitioner or by any person in case possessing such qualifications as the corporation may specify. During the corresponding contribution period weekly contribution in respect of him were payable for not less than 13 weeks. Sec. 70 (a) a claim for benefit or for disablement benefit for temporary disablement for any period, on the date of the issue of the medical certificate in respect of such period.

The Act provides for disablement benefit to insured persons suffering from disablement due to employment injury sustained to an employee in a factory or establishment to which the Act applies. Employment injury means personal injury to an employee caused by accident or occupational disease arising out of and in the course of his employment which is an insurable employment whether the accidents occur or the occupational disease is contracted within or outside the territorial limits of India.

b. Judicial Protection to Workers Right of Provident Fund and Employee’s State Insurance Act

This is another piece of social security legislation. These are consistent with the constitutional guarantee for social, economic justice, to secure freedom from want and security against economic fear. The Scheme under the Employees State Insurance Act and Provident Fund Act were framed by the central government in 1948 and 1952. In 1971, The Act was extended to comprehend family pension and life insurance benefit also. It is designed to provide for some retirement benefit.

Karnataka High Court held in *ESI Corp, Banglore v. Swarva Saw Mills*, even though some of the benefits like sickness benefit and maternity benefits contemplated by section 49 and 50 of

59 AIR 2008 SC 1726.
61 1979 Lab IC 1335 (Karnataka).
Employee’s State Insurance Act, 1948 will not be available to casual employees, but other important benefits like disablement, dependant’s and medical benefits are made available even to casual employees. Sec. 38 demands that all employees on wages, whether casual or otherwise, who are employed in factories or establishments coming under the purview of the Act are required to be insured and under section 39, the contribution becomes payable the moment a person is employed even for a day in a week. This means that casual employees are also covered by the Act. Thus, it covers cases of employees who are employed for a part of the week or employed under two or more employers during the same week.

In *Heavy Engineering Corporation v. Regional Director, ESI Corporation*, the appellant did not make contribution as required by Section 73-A of Employee’s State Insurance Act, 1948. Consequently, the respondent issued a notice demanding special contribution which was not complied with. The Corporation proceeded to assess the contribution itself and it was communicated to the collector for realisation. Consequently, the appellant moved the ESI Court alleging that the special contribution imposed by the respondent was illegal and arbitrary since it covered the employees of their head office also and that the assessment was made behind their back without ascertaining the facts and giving them any opportunity of being heard etc. The matter reached the High Court finally which held that in case of dispute regarding number of employees, etc, the authorities must settle such disputes first and then only determine the question of special contribution. Further, it was held that when determining the real question between the parties and making a valid assessment, the steps be taken by the respondent for recovery of the disputed amount. The court observed that the question of contribution in social security system has assumed relevance with the increasing emphasis on social insurance technique of financing the

62 1979 Lab IC 771 (Patna).
social security schemes, are generally of compulsory bipartite contributory character.

In India Employees Provident Fund and Employees State Insurance Schemes, the contribution is the main resource to keep the Scheme financially viable and administratively effective. In *Alluminium Corporation of India v. R.P.F. Commissioner*, stating that neither section of the EPF Act nor paragraph 29 of the Provident Fund Scheme framed there under permits an option to employee to pay or not to pay their contribution.

At times the social security legislation had been challenged on the ground of violation of fundamental rights. The Constitutional validity of Sec. 73-A of the ESI Act, 1948 was challenged in Assam High Court. In case of *K.C. Sharma v. Regional Director Employees State Insurance Corporation*, it was contended that provisions of Section 73-A of ESI were violative of Articles 14 and 19 of the Constitution. It was held that when the Act is taken as a whole, the restriction placed on the right of the petitioners, if any, cannot be regarded as unreasonable. The whole object of the Act is to provide for benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto. In order to work out the scheme it is essential to have a fund and in a welfare state the employers who get profits as a result of the employees, have to contribute towards the maintenance of the health of their employees.

In a case an employer filed the petition seeking to challenge the order for recovering a sum of ₹2,15,280 together with interest on account of their liability arising out of the order passed by the Workmen’s Compensation Commissioner. In the normal circumstances, an order passed by the Workmen’s Compensation Commissioner has to be challenged only under Section 30 of the

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63 AIR 1958 Cal. 570.
64 AIR 1962 Assam 120.
Workmen’s Compensation Act before this Court in a regular appeal. In the present case, the objection raised by the petitioner was that Section 53 of the Employees State Insurance Act is a bar against receiving money or recovery of compensation or damages under any other law including the Workmen’s Compensation. In the light of the statutory bar, court permitted the amendment.65

In *Regional Provident Fund Commissioner v. Hooghly Mills Company Limited and others,*66 the Supreme Court held that the Employees Provident Fund and Miscellaneous Provisions Act, 1952 granted exemption to the respondent Company from the operation of all the provisions of the EPF Scheme, 1952 subject to the conditions specified in the Scheme which were in addition to the conditions mentioned in the Explanation to Sec. 17(1). After the grant of execution, the respondent company framed a scheme and created a trust and appointed a Board of trustees for the management of the said trust fund and was thus enjoying exemption under Sec. 17 (1-A) (a) of the EPF Act.

However, there were defaults on the part of the respondent company in making timely payment of dues towards the provident fund. Therefore, proceedings were initiated against the respondents and after affording an opportunity to the respondent to represent their case, as contemplated under Section 14 and 13 hearing, the Regional Provident Fund Commissioner by a detailed order directed the respondent company to remit a specified amount by way of damages, failing which, it was stated that further action as provided under the Act and the Schemes framed there under shall be initiated. The Supreme Court held that there is a large volume of legislation enacted with the purpose of introducing social reform by improving the conditions of certain class of persons who might not have been fairly treated in the past. These statutes are normally called remedial

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66 (2012) 1 SCC (L&S) 449.
statutes or social welfare legislation, The normal canon of interpretation is that a remedial statute receives liberal construction. If there is any doubt, the same is resolved in favour of the class of persons for whose benefit the statute is enacted.

The court observed that the EPF Act is a beneficial social welfare legislation to ensure benefits to the employees. It effected the economic message of the Constitution as articulated in the Directive Principles of State Policy. Under the Directive Principles of the State Policy has the obligation for securing just and humane conditions of work which includes a living wage and decent standard of life.

Constitutional validity of EPF was discussed by Supreme Court in *Mohammad Adali v. Union of India*. The Supreme Court observed that the Act does not suffer from the vice of discrimination and, therefore, does not infringe Article 14 of the Constitution. The underlying principles of the Provident Fund Act is to bring all kinds of employees within its ambit as when the central Government might think fit after viewing the circumstances of different classes of establishments. The general rule as to the application of the Act is laid down in Sec. 1(3) of EPF. By way of exception to that general rule, the appropriate Government is authorised by section 17 to exempt any establishment from the operation of all or any of the provision of any Scheme framed under the Act. The exemption is with a view to avoid duplication and permit the employees concerned the benefit of the pre-existing Scheme which, presumably has been working satisfactorily so that the exemption is not meant to deprive the employees concerned of the benefit of a provident fund but to ensure to them the continuance of the benefit which is not less favorable to them. Hence, Section 1(3), read along with section 17 cannot be said to have conferred an uncontrolled power on the appropriate Govt.

67 AIR 1964 SC 980.
Bombay High Court imposed prohibition on employer in *Consolidated corp. Protection Ltd. v. Hemachandra Rao.* The Court held that Section 12 prohibits the employer from reducing the wages of employees by reason of his liability to pay the contribution or any charges to the fund, or from reducing the total quantum of benefit in the nature of old age pension, gratuity, provident fund or life insurance to which the employee is entitled under terms of his employment, express or implied. The employer shall not have the right to reduce his contribution even if the exemption granted earlier under section 17 has been cancelled and the factory or establishment fell within the provisions of the statutory Scheme.

In the case of *Employees Provident Fund Commissioner v. Official Liquidator of ESSKAY Pharmaceuticals Limited,* the EPF Commissioner filed the special leave was whether the priority given to the dues payable by an employer under section 11 of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 is subject to section 529-A of the Companies Act 1956 in terms of which the workmen’s dues and debts due to secured creditors are required to be paid in priority to all other debts. The Court held that the EPF Act is a social welfare legislation intended to protect the interest of a weaker section of the society i.e. the workers employed in factories and other establishments who have made significant contribution to the economic growth of the country. The workers and other employees provide services of different kinds and ensure continuous production of goods, which are made available to the society at large. Therefore, a legislation made for their benefit must receive a liberal and purposive interpretation keeping in view the Directive Principles of State Policy contained in Articles 38 and 43 of the Constitution.

The government servant cannot approach any of the Forum under the Act for any of the retiral benefits. In *Dr. Jagmittar Sain*

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68 1977 Lab 1C 251.
69 (2012)1 SCC (L&S) 14.
Bhagat v. Director Health Services, Haryana and Others\textsuperscript{70} the appellant joined Health Department, of the respondent State, as Medical Officer on 5.6.1953 and took voluntary waiver retirement on 28.10.1985. During the period of service, he stood transferred to another district but he retained the government quarter. Appellant claimed that he had not been paid all his retiral benefits, and penal rent for the said period had also been deducted from his dues of retiral benefits without giving any show cause notice to him. Appellant made various representations, the appellant preferred a complaint before the District Consumer Disputes Redressal Forum, Faridabad on 5.1.1995 and the said Forum dismissed on merits observing that his outstanding dues i.e. pension, gratuity and provident fund etc. had correctly been calculated and paid to the appellant by the State authorities.\textsuperscript{71}

The appellant approached in appeal to the State Commission. The State Commission dismissed the appeal the order dated 31.1.2007 observing that though the complaint was not maintainable as the District Forum did not have jurisdiction to entertain the complaint of the appellant he was not a “consumer” and the dispute between the parties could not be redressed by the said Forum, but in view of the fact that the opposite party (State) neither raised the issue of jurisdiction before the District Forum nor preferred any appeal, order of the District Forum on the jurisdictional issue attained finality. However, there was no merit in the appeal.\textsuperscript{72}

It is evident that by no stretch of imagination a government servant can raise any dispute regarding his service conditions or for payment of gratuity or GPF or any of his retiral benefits before any of the Forum under the Act. The government servant does not fall under the definition of a “consumer” as defined under Section 2(l)(d)(ii) of the Act. Such government servant is entitled to claim his retiral benefits

\textsuperscript{70} AIR 2013 SC3060.
\textsuperscript{71} Ibid at 3064.
\textsuperscript{72} Ibid at 3065.
strictly in accordance with his service conditions and regulations or statutory rules framed for that purpose. The appropriate forum, of redressal of any his grievance, may be the State Administrative Tribunal, if any or Civil Court but certainly not a Forum under the Act.\textsuperscript{73}

\textbf{c. Maternity Benefit For Women Workers}

Time and idea are not static. They change and, therefore, the life of a nation, society and its people is dynamic, living and organic; its social, economic, political and legal conditions change continuously. Consequently social moves and ideas also change from time to time creating new problems and altering the complexion of old ones. It is therefore, quite possible that rules made for governing the society and its individuals in one era, and a particular context may be found inadequate in another era and another context. The ideas upon which the people are governed in one generation may be spurned as old fashioned in the next generation. It therefore becomes necessary to change old laws and introduce new in their place. In the present system of government, the legislature enacts new legislations for regulating and controlling the conduct of the people so that they may live peacefully in the society. For governing the conduct of people in society law plays an important role and becomes the instrument of social change.\textsuperscript{74}

The Supreme Court of India, in case of \textit{Dhanwatey v. Commissioner of Income Tax},\textsuperscript{75} has formulated that the law is a social mechanism to be used for the advancement of the society. It should not be allowed to be a dead weight on the society. While interpreting ancient texts, the courts must give them a liberal construction to further the interest of the society. Our great commentator in the past bridged the gulf between law as enunciated

\textsuperscript{73} \textit{Id.}
\textsuperscript{75} AIR 1968 SC 683.
in the Hindu law texts and the advancing society by wisely interpreting the original texts in such a way as to bring them in harmony with the prevailing conditions.....

The present system of government in India is based on the principle of shaping it into a 'Welfare State'. The government is therefore striving to transform India into a progressive society. From time to time the government has introduced laws aimed at social reformation and efforts are being made to bring about a social change. Law in such a Welfare State is conceived not only as an instrument to preserve law and order to assure rights of the individual, but also to achieve a society where justice-social, economic and political prevails. The concept of 'social justice' and 'social engineering' are thus a part of the wider concept of a welfare state.76 So established in the Maternity Benefit Act, 1961. The Apex Court held in this case that a just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. Women who constitute almost half of the segment of our society have to be honoured and treated with dignity at places where they work to earn their livelihood. Whatever be the nature of their duties, their avocation and the place where they work, they must be provided all the facilities to which they are entitled.77

The Court observed that the purpose of Maternity Act is to protect dignity of motherhood by providing for the full and healthy maintenance of the women and her child when she is not working. Since number of women employees grows, maternity leave and other maternity benefits are becoming, increasingly common in employment today. The Maternity Benefit Act has been of great value in social justice oriented welfare state in securing adequate rest and financial assistance to factory women workers. Maternity Act gives a special protection to the women and increase the dignity of motherhood.

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76 Ibid at 689.
77 (2000) 1 LLJ 847 SC.
The Apex Court introduced the concept of reasonableness, in interpreting Article 14 of the Constitution in *Air India v. Nargesh Meerza*,78 Air India Employees Service Regulations were in contradiction to Article 14 and 16. Having regard to the circumstances prevailing in India and the effects of marriage the bar of pregnancy and marriage is undoubtedly a reasonable restriction placed in public interest. If the bar of marriage or pregnancy is removed it will lead to huge practical difficulties as a result of which very heavy expenditure would have to be incurred by the Corporations to make arrangements. The court held that the impugned provisions appear to be a clear case of official arbitrariness. As the impugned part of the regulation is severable from the rest of the regulation, it is not necessary to strike down the entire regulation. The last portion of regulation 46 (i) (c) is struck down. The provision 'or on first pregnancy whichever occurs earlier' is unconstitutional, void and violative of Article 14 of the Constitution and will, therefore, stand deleted. It will, however, be open to the Corporation to make suitable amendments. There is no unreasonableness or arbitrariness in the provisions of the Regulations which necessitate that AHS should not marry within four years of the service failing which their services will have to be terminated.

Having taken the Air Hostess in service and after having utilised her services for four years to terminate her service by the Management if she becomes pregnant amounts to compelling the poor AH not to have any children and thus interfere with and divert the ordinary course of human nature. The termination of the services of an AH under such circumstances is not only a callous and cruel act but an open insult to Indian womanhood the most sacrosanct and cherished institution. Such a course of action is extremely detestable and abhorrent to the notions of a civilised society. Apart from being grossly unethical, it smacks of a deep rooted sense of utter selfishness at the

78 AIR 1981 SC 1829.
cost of all human values. Such a provision is not only manifestly unreasonable and arbitrary but contains the quality of unfairness and exhibits naked despotism and is clearly violative of Art. 14.79

The rule could be suitably amended so as to terminate the services of an AH on third pregnancy provided two children are alive which would be both salutary and reasonable for two reasons. In the first place, the provision preventing third pregnancy with two existing children would be in the larger interest of the health of the AH concerned as also for the good upbringing of the children. Secondly it will not only be desirable but absolutely essential for every country to see that the family planning programme is not only whipped up but maintained at sufficient levels.80

The Court held that Whether the woman after bearing children would continue in service or would find it difficult to look after the children is her personal matter and a problem which affects the AH concerned and the Corporation has nothing to do with the same. These are circumstances which happen in the normal course of business and cannot be helped. In these circumstances, the reasons given for imposing the bar are neither logical nor convincing. The factors to be considered must be relevant and bear a close nexus to the nature of the organisation and the duties of the employees. Where the authority concerned takes into account factors or circumstances which are inherently irrational or illogical or tainted, the decision fixing the age of retirement is open to serious scrutiny.81

In Municipal Corporation of Delhi v. Female Workers(Muster Roll),82 it has been observed that the Maternity Benefit Act, 1961 aims to provide all the facilities to a working woman in a dignified manner, so that she may overcome the state of motherhood honourably, peacefully, undeterred by the fear of being victimized for forced

79 Ibid at 481 G-H, 482 A-C.
80 491 C-F.
81 Ibid at 492 E-F.
82 (2000) 1 LLJ 846 SC.
absence during the pre or post-natal period., it has been observed that provisions of the Act entitle maternity leave even to women engaged on casual basis or on muster roll basis on daily wages and not only those in regular employment and this is in consonance with the Directive Principles of State Policy contained in Articles 39, 42 and 43 of the Constitution of India.

The maternity benefit legislation in different States is neither uniform nor universal so that there were gaps here and there which were not fair to the workers. Besides, many women workers do not claim maternity benefits on account of their ignorance or due to the fear of losing a permanent job. If any woman of a registered trade union or of a registered voluntary organization has been denied of any of the benefits of the Act, then she has the right to file a complaint in any court of competent jurisdiction. But this right is subject to applicability of the Act to that establishment under which she works.83

**d. Compensation Relating to Gratuity**

Gratuity was originally an ex-gratia or voluntary payment or a gift for long and meritorious services. With the passage of time and march of progressive social philosophy, it became a matter of constant industrial strife, and like bonus, it was accepted as a right of labour. Statutory regulation of gratuity schemes started with ‘Working Journalists (Conditions of Services and Miscellaneous Provisions) Act, 1955. Gratuity is a retiral benefit to employees for their long and continuous service. It was designed to help the workers on their retirement, whether it is due to superannuation, physical disability or otherwise. The principle underlying gratuity is that by virtue of the length of their services, the workmen are entitled to claim certain amount as retirial benefit. It is one of ‘efficiency devices’ and is considered necessary for an orderly and humane elimination from the industry of superannuated or disabled employees, who but for such

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83 Thomas Eapen v. Assistant Labour Officer, 1993 LLR 800 (Kerla).
retiring benefits could continue in employment even though they function inefficiently. It is paid not gratuitously or as a matter of boon, but for long and meritorious services rendered by the employees to their employer.\textsuperscript{84}

The Apex Court, in the case of \textit{Lalappa Lingappa and Others v. Laxmi Vishnu Textiles Mills Ltd.},\textsuperscript{85} emphasized the purpose of giving the comprehensive coverage to the Payment of Gratuity Act, 1972. The Act is enacted to introduce a scheme for Payment of Gratuity for certain industrial and commercial establishments, as a measure of social security. It has now been universally recognized that all persons in society need protection against loss of income due to unemployment arising out of incapacity to work due to invalidity and old age etc. For the wage earning population, security of income, when the worker becomes old or infirm, is of consequential importance. The provisions of social security, retirement benefits like gratuity, provident fund and pension are of special importance. In bringing the Act on the Statute book the intention of the legislature was not only to achieve uniformity and reasonable degree of certainty, but also to create and bring into force a self contained, all-embracing, complete and comprehensive code relating to gratuity.\textsuperscript{86}

The Court observed that social security and labour welfare legislation helps to achieve the value goals set by the Constitution and, hence, they are to be enacted and amended according to the principles enshrined and, procedure prescribed in the Constitution. Social security legislation derives its vis (force) and, validity from the Constitution. In other words, they are to be enacted and amended according to the scheme of distribution of legislative powers in the Constitution and, according to the procedure prescribed for the purpose, without infringing fundamental rights and also, within the

\textsuperscript{84} \textit{Indian Hume Pipe Co. Ltd. v. Workmen}, (1959) II LLJ 830 SC.

\textsuperscript{85} \textit{AIR} 1981 SC 852.

\textsuperscript{86} \textit{Ibid} at 855.
framework of the spirit of broad goals and ideals set in the Constitution.  

Many a times the Constitutional validity of the various social security legislations has been challenged in the Courts of Law to protect against arbitrary legislation. Such challenges seen to he prompted by certain interests of business and traditional attitudes of individual liberties.

In *Chairman Cum Managing Director, Mahanadi Coalfields Ltd. v. Rabindranath Choubey*, the respondent was working as Chief General Manager (Production) since 17-02-2006 at Rajmahal area under Mahanadi Coalfields Ltd. A memo containing articles of charge was issued to him on 01-10-2007 alleging that there was shortage of stock of coal in Rajmahal Group of mines which was under his management and enquiry was proposed to be conducted under Rule 29 of the Conduct, Discipline and Appeal Rules.

During the pendency of the departmental proceeding, the Respondent was allowed to retire on 31.7.2010 on attaining the age of superannuation. The Respondent submitted an application on 21.9.2010 to the Director (Personnel) for payment of gratuity. On the same date, he also submitted an application before the Controlling Authority under Payment of Gratuity Act- cum-Regional Labour Commissioner for payment of gratuity. Notice was issued to the Appellant to appear. The appellant appeared and stated that the payment of gratuity was withheld due to reason that disciplinary case is pending against him. The controlling authority held that the claim of the Respondent was pre-mature.

The respondent challenged the order by filing the writ petition. The single Judge dismissed the writ petition holding that in view of the existence of an appellate forum against the order passed by the

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87 *Supra* note 18 at 180.
88 AIR 2014 SC 234.
89 *Ibid* at 235.
90 *Ibid* at 238.
authority, the respondent may file an appeal before the Appellate Authority within 21 days from the date of passing of the impugned order. The Respondent then filed Intra Court Writ Appeal. The Division Bench of the High Court has held that writ petition was maintainable. On merits, it ruled that the disciplinary proceedings against the respondent were initiated prior to attaining the age of superannuation. The respondent retired from service on superannuation and hence the question of imposing a major penalty of removal or dismissal from service would not arise.

As per the decision of the Supreme Court in *Jaswant Singh Gill v. Bharat Coking Coal Ltd. and Others*, the High Court held that the power to withhold payment of gratuity as contained in Rule 34(3) of the Rules, 1978 shall be subject to the provisions of the Act of 1972. Therefore, the statutory right accrued to the respondent to get gratuity cannot be impaired by reason of the Rules framed by the Coal India Ltd. which do not have the force of a statute. On that basis, direction is given to the appellant to release the amount of gratuity payable to the respondent. Thus for invoking Clause (a) or (b) of sub-section 6 section 4 necessary pre-condition is the termination of service on the basis of departmental enquiry or conviction in a criminal case. This provision would not get triggered if there is no termination of services.

It is the case of the appellant that in the charge-sheet served upon the respondent herein, there are very serious allegations of misconduct alleging dishonestly causing coal stock shortage amounting to Rs. 3 1.65 crores, and thereby causing substantial loss to the employer. If such a charge is proved and punishment of dismissal is given thereupon, the provisions of Section 4(6) of the Payment of Gratuity would naturally get attracted and it would be within the discretion of the appellant to forfeit the gratuity payable to

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91 *Id.*
92 (2007) 1 SCC 663.
93 *Ibid* at 667.
the respondent. As a corollary one can safely say that the employer has right to withhold the gratuity pending departmental inquiry. This issue needs to be considered authoritatively by a larger Bench. Therefore, the opinion that present appeal be decided by a Bench of three Judges.\textsuperscript{94}

e. Miscellaneous Cases

Although the legal jurisprudence developed in the country in the last five decades is somewhat precedent based. The judgements which have a bearing on socio-economic conditions of citizens and issues relating to compensation payable to the victims of motor accidents, those who are deprived of their land and similar matters need to be frequently visited keeping in view the fast-changing societal values, the effect of globalisation on the economy of the nation and their impact on the life of the people.\textsuperscript{95} There are a number of cases in which the Supreme Court helped to advance the labour laws and strike down those laws or practices that were discriminatory.

It is extremely difficult to fathom any rationale for the observation made in the judgement in \textit{Sarla Verma v. Delhi Transport Corporation}\textsuperscript{96}, that where the deceased was self-employed or was on a fixed salary without provision for annual increment, etc., the Courts will usually take only the actual income at the time of death and a departure from this rule should be made only in rare and exceptional cases involving special circumstances.

The Highest court observed in the case of \textit{Centre for Environment and Food Security v. Union of India and Others},\textsuperscript{97} that “the majority of the Indian population is residing in rural areas and unemployment was the greatest challenge before any state or the central government, Parliament decided to enact law to provide rural employment to restrict persons as stated in such law. It was an

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\textsuperscript{94} Ibid at 241.
\textsuperscript{96} (2009)6 SCC 121.
\textsuperscript{97} (2011)2 SCC (L&S) 62.
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enactment ‘MGNREGA’ to provide for enhancement of livelihood security of households in the rural areas of the country by providing at least hundred days of guaranteed wage employment in every financial year to every household whose adult members volunteer to do unskilled manual work and for matters connected therewith and incidental threats.”

The Court observed that the paramount feature of the Act was that if an eligible applicant is not provided worse as per the provisions of this legislation within the prescribed time-limit, it will be obligatory on the part of the state government to pay unemployment allowance at the prescribed rate who is self-employed or who is employed on a fixed salary without provision for annual increment, etc., would remain the same throughout his life. Although the wages/income of those employed in unorganised sectors of the economy has not registered a corresponding increase and has not kept place with the increase in the salaries of the government employees and those employed in the organised private sector but it cannot be derived that there has been incremental enhancement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. Rather, it would be reasonable to say that a person who is self-employed or is engaged on fixed wages will also get 30% increase in his total income over a period of time and if he/she becomes victim of accident then the same formula deserves to be applied for calculating the amount of compensation.

The Supreme Court took serious note of social security of the unorganized sector workers in National Compaign Committee for Central Legislation on Construction Labour v. Union Of India and Others98, the court held that object of the the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 is to confer various benefits to the construction workers, like fixing hours for normal working days, weekly paid rest

98 (2011)2 SCC (L&S) 110.
day, wages for overtime, basic welfare amenities at site, temporary living accommodation near site, safety and health measures, etc. Every State is required to constitute a State Welfare Board to provide assistance in case of accident, to provide pension, to sanction loans, to provide for group insurance to provide financial assistance for educating children, medical treatment etc. Though the welfare board was to be constituted with adequate full-time staff, many states have not constituted the welfare boards. In some states, even though the boards are constituted, they are not provided with necessary staff or facilities. As a result, welfare measures to benefit the workers have not been taken.

In *Dewan Chand Builders and Contractors v. Union Of India and Others*, Justice D.K. Jain and A.K. Ganguly, held that the Scheme of the The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 is that it empowers the Central Government and the State Government to Constitute Welfare Boards to Provide and monitor social security schemes and welfare measures for the benefit of the building and other construction workers. It is thus clear from the Scheme of the BOCW Act that its sole aim is the welfare of building and construction workers, directly relatable to their constitutionaly recognised right to live with basic human dignity, enshrined in Art. 21 of the Constitution of India. It envisages a network of authorities at the Central and State levels to ensure that the benefit of the legislation is made available to every building and construction worker, by constituting welfare boards and clothing them with sufficient powers to ensure enforcement of the primary purpose of the BOCW Act. The means of generating revenues for making effective the welfare provisions of the BOCW Act is through the Cess Act. Its sole object is to provide for their safety, health and other welfare measures to exploited sections of the society.

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99 (2012)1 SCC (L&S) 1.
Court took note of corruption in social security schemes for workers of unorganized sector. Under this two aspects concerned one relating to corruption in the implementation of the NREGA Scheme and other implementation of the guidelines issued by the Central Government under Sec. 27 of the 2005 Act. There are certain States in which serious irregularities exist as per the extracts of CAG Report as well as the report of the National Institute of Rural Development. If what is stated in those reports is true then not only the guilty should be punished but also the monies lost should be retrieved. The Central Government is considering whether CBI should be appointed to examine the case of misappropriation of grants for that purpose, are giving to the central government four weeks time and implement the guidelines issued by the Central Government with regard to muster rolls, maintenance of job cards, applications and transfers to the account of the beneficiaries and given the four weeks time to look into the matter.

In *Jaipur Zila Sahakari Bhoomi Vikas Bank Ltd. v. Ram Gopal Sharma and Others*,\(^{100}\) Section 33(2)(b) of Industrial Disputes Act, 1947 was in controversy. The provision of this section was challenged before the Supreme Court. The controversy in this case revolved around the dicisions of different three judges Bench regarding the interpretation of Section 33(2)(b). The two Benches consisting of three learned Judges in (1) *Strawboard Manufacturing Co. v. Gobind*\(^{101}\) and (2) *Tata Iron & Steel Co. Ltd. v. S.N. Modak*\(^{102}\) have taken the view that if the approval is not granted under Section 33(2)(b) of the Industrial Disputes Act, 1947 (for short 'the Act'), the order of dismissal becomes ineffective from the date it was passed and, therefore, the employee becomes entitled to wages from the date of dismissal to the date of disapproval of the application. Another Bench of three learned Judges in *Punjab Beverages Pvt.*

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101 1962 Suppe. (3) SCR 618.  
102 1965 (3) SCR 411.
has expressed the contrary view that non-approval of the order of dismissal or failure to make application under Section 33(2)(b) would not render the order of dismissal inoperative; failure to apply for approval under Section 33(2)(b) would only render the employer liable to punishment under Section 31 of the Act and the remedy of the employee is either by way of a complaint under Section 33A or by way of a reference under Section 10(1)(d) of the Act. It may be stated here itself that there was no reference in this decision to the two earlier decisions aforementioned.\textsuperscript{104} A Bench of two learned Judges in \textit{S.Ganapathi and Others. v. Air India and Another}\textsuperscript{105} has followed the view taken in Strawboard and Tata Iron & Steel Co.

The material and relevant portion of section 33 "Conditions of service, etc. to remain unchanged under certain circumstances during pendency of proceedings. During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with standing orders applicable to a workman concerned in such dispute or, where there are no such standing order, in accordance with the terms of the contract, whether express or implied, between him and the workman for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman; Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer."\textsuperscript{106}

Constitution Bench of this Court in the case of \textit{P.H. Kalyani v. M/s. Air France Calcutta}\textsuperscript{107} referring to Strawboard has observed thus "The main point which was raised in this appeal is now

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\textsuperscript{103} 1978 (3) SCR 370.
\textsuperscript{104} Supra note 100 at 836.
\textsuperscript{105} JT 1993 (4) SC 10.
\textsuperscript{106} Supra note 100 at 836.
\textsuperscript{107} 1964 (2) SCR 104.
\end{flushleft}
concluded by the decision of this Court in the *Straw Board Manufacturing Co. Limited, Saharanpur v. Govind*.\(^{108}\) This Court has held in that case that "the proviso to Section 33(2)(b) contemplates the three things mentioned therein, namely, (i) dismissal or discharge, (ii) payment of wages, and (iii) making of an application for approval, to be simultaneous and to be part of the same transaction so that the employer when he takes the action under Section 33(2)(b) by dismissing or discharging an employee, should immediately pay him or offer to pay him wages for one month and also make an application to the tribunal for approval at the same time.\(^{109}\)

In the case of Tata Iron and Steel Co. it is reiterated and stated thus "It is now well-settled that the requirements of the proviso have to be satisfied by the employer on the basis that they form part of the same transaction; and stated generally, the employer must either pay or offer the salary for one month to the employee before passing an order of his discharge or dismissal, and must apply to the specified authority for approval of his action at the same time, or within such reasonably short time thereafter as to form part of the same transaction.\(^{110}\) "If the approval is not granted under Section 33(2)(b) of the Industrial Disputes Act, 1947, whether the order of discharge or punishment, by dismissal or otherwise of workman during pendency of industrial dispute proceedings, for alleged misconduct not connected with such dispute, said order becomes ineffective from the date it was passed. Not making application for such approval or with drawing. It is clear case of contravention of statutory requirement (proviso to section 33(2)(b)).\(^{111}\) Thus prior approval of authority is a must under this section.

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\(^{108}\) *Supra* note 100.

\(^{109}\) *Supra* note 100 at 837.

\(^{110}\) *Id*.

\(^{111}\) *Ibid* at 834.
III. CONCLUSION

It is clear from the above discussion that Indian judiciary has played constructive role in interpretation of legal provisions and has directed from time to time for the implementation of these labour welfare laws. Judiciary has given landmark judgements relating to social security, payment of compensation for employment injury and disability etc.

The principles contained in Articles 39(a) and 41 must be regarded as equally fundamental in the understanding and interpretation of the meaning and content of fundamental rights. If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life. The State may not, by affirmative action, be compellable to provide adequate means of livelihood or work to the citizens. The Articles 21, 38, 39, 41, 42, 43, 43-A and 47 of the Constitution, are calculated to give an idea of the conditions under which labour can be had for work and also of the responsibility of the Government, both Central and State, towards the labour to secure for them social order and living wages, keeping with the economic and political conditions of the country.

While these cases demonstrate the instances in which the Supreme Court stepped in to safeguard the fundamental human rights of workers there are several instances where such rights are brazenly violated. The workers most vulnerable to this are those working in the unorganized sector of the economy like agriculture, forestry, livestock, textile and textile products, construction etc. In these sectors workers, generally, tend to be employed in the lowest paid, most menial tasks using the least technology. Workers
often work in labour intensive sectors. They are working different segments of the labour market in unorganized sector getting the lowest wages. There are even instances in some sectors of workers being paid less than work they do for example in the tea plantations, construction, agriculture etc., as compared to the minimum wages fixed by the state.