CHAPTER – VI

NEW CHALLENGES TO SOCIAL SECURITY SYSTEMS

6.1 Introduction

The existing Social Security Systems including all its forms of Social Insurance and Social Assistance could not do complete justice for the purpose for which they have come into existence evident from the fact that there are millions of people in the country who could not be brought under the ambit of Social Security. Facing the present situation caused due to various reasons and factors including Globalisation and overcoming it successfully is the New Challenge before us.

It is an established fact that Judiciary is the third organ of the Government in any democracy. The Judiciary is the guardian of the Fundamental Rights of the people. Truly, the Supreme Court has been called upon to safeguard the rights of the people and play the role of guardian of the social revolution.\(^1\) It is the great tribunal which has to draw the line between individual liberty and social control.\(^2\) It is also the highest and final interpreter of the general law of the country. It is the highest Court of Appeal in civil and criminal matters.

The Judiciary in India under it policy for attainment of social justice has been very attantant to give effect the rights of unorganized labour. The role of

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Supreme Court in protecting poor and the weakest of the weak, unorganized labour is very appreciating. A scanning of numerous rulings reveal that, the issues of juvenile justice, labour welfare, minimum wages, freedom from bondage, ensuring dignity, Social Security, health have been effectively addressed by the Judiciary.

6.2 Social Security and Human Rights

Human Rights are defined under the Protection of Human Rights Act, 1993 as the right relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution which also justifies the need for legislation in favour of workers who are not yet covered by existing legislation.

The rights that the Universal Declaration of Human Rights talks of include the Right to Work; to Free Choice of Employment; to Just and Favourable Conditions of Work and Protection against Unemployment (Article 23); Right to Life; Liberty and security of a Person (Article 3); Right against Slavery and Servitude (Article 4); Right to Freedom; Peaceful Assembly and Association (Article 20); Right to Social Security (Article 22); Right to Rest, Leisure Period, Holiday with Pay and Limitation on Working Hours (Article 24); and Right to Standard of Living adequate for the health and well being (Article 25).

India as a member has accepted and ratified many of the ILO’s Conventions and accepted many of the standards set by it; these have acquired the
status of inviolable commitments. Any law that we make in our country should not be such as violate or dilute the solemn commitments made by us.

The right to Social Security has extensive recognition within the corpus of the so-called “second-generation”\(^3\) rights, both at the international and regional levels and to vary degrees, at domestic levels. The term Social Security encompasses both “Social Insurance” and “Social Assistance”, the first deals with contributory medical aid scheme, life insurance and pension funds, while the other entails child maintenance grant and disability grant.

Since the primitive time to the present day, right from womb to tomb, human life depends on one another to ensure physical survival. Historical scanning reveals that Laissez-Faire policy in its peak days give birth to labour exploitation and victimization. In the absence of justice at the hands of resource full employees the position of workers drifted bad to worse in providing at least little opportunity to have limited period when they find themselves in great difficulty while there earlier power is affected by sickness, accident, maternity, old age or unemployment.

Due to the emergence of Industrial Jurisprudence, the Laissez-Faire policy died at the end of the 19\(^{th}\) century and was buried in 20\(^{th}\) century.\(^4\) The new branch of Industrial Jurisprudence restrained the right of an employer to hire and fire his


workmen at his will which ultimately resulted in giving rise to the concept of social justice to redeem and protect the industrial masses from economic exploitation. The aim of social justice is to eliminate inequality of income and status with a view to provide a decent standard of life to the working class. Thus Social Justice has occupied an indispensable part of industrial law to overcome all kinds of exploitative labour practices. The Constitution of India guarantees social justice to its entire citizen through specific provisions in the form of Articles 39, 41, 42, 43 and 47 which specifically deal with labour and have sent the goals so as to provide living wage, better nutrition, old age, maternity benefit and sickness benefit etc., for workers and also to minimize inequalities in income. The idea of Social Security is to substitute income whenever the earning of a worker is interrupted due to certain risk such as sickness’, maternity, employment injury and in addition to provide medical care and financial help in bringing up the dependents of the workers. Thus it is clear that social justice and Social Security both are two side of the same coin which aims for human dignity as the common denominator. As Social Justice leads to Social Security, the State gives security to its citizens as condition of human existence because; the ideology of State is to obviate all types of economic fear and economic deprivation which is the fundamental objective of the Welfare State.

An individual has to face evils which may be in the form of sickness, insecurity of job, disablement or death of the breadwinner that cause social discomfort and imbalance in the society which impairs the ability of the working
men to support himself and his dependents in health and decency. If the only bread winner of the family dies then this family would definitely experience anyone of the extended forms of social evils like destitution, beggary, child labour, low wages and exploitations, when there is no provision for Social Security measures. Moreover the concept of employer’s liability was pressed to provide the workers to achieve some sort of security by way of getting compensation only in the event of accidents at work (during and in the course of employment). However, other aspects of the workers were continued to be unprotected and struggled to find accrue to promote the economic security and welfare of the workers crying for protection against the five giants such as want disease, ignorance, squalor, idleness as described by Sir William Beveridge.\(^5\) It is to meet this type of need that the concept of Social Security has developed. In this critical analysis of the present scenario the status of Human Rights of labour to secure its means of security against the risk is explored.

An ideal State to its citizen is like a mother–infant bonding a kin to, so it should help in procuring the right of Social Security by giving confidence to the workers that their standard of life will never be eroded during spells of risks.

Today the right of Social Security throughout the world is a recognized Human Right to provide protection to all persons against economic insecurity.

\(^5\) In Great Britain, Sir William Beveridge was appointed to make recommendations for the reconstruction of better Britain in the post war period. In his report on “Social Insurance and called services” which was published in 1942, he suggested that Social Security should be designed to combat the five grants –want, disease, ignorance, squalor and idleness.
The Universal Declaration of Human Rights recognized Social Security as the significant human right in the following words:

“Everyone as a member of society has right to Social Security and is entitled to realization through national effort and international co-operation and in accordance with the organization and resources of each state of economic, social and cultural rights indispensable for his dignity and the development of his personality”.  

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

6.3 Women and Social Security

Man and women are created as equal. But with the development of society the condition and position of women has been changed completely. Women have been neglected and exploited by the men throughout the ages. In Vedic period the status of women was equal, both husband and wife are joint owners of family property and women were closely associated with men in every socio-religious

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6 Article.22 of the ‘Universal Declaration of Human Rights, 1948’
7 Article.25 of the ‘Universal Declaration of Human Rights, 1948’
rituals and ceremonies. In Smriti period the status of women reduced and was confined to domestic work and child-bearing. Manu was very rough and tough towards women. But Manu Smriti raised the status of women in religious matters only. In social status Manu differentiated between man and women. Manu was completely against giving independent status to women. According to Manu, “where women were honoured, there the gods are pleased, but where they are not honoured, no scared rites yield rewards. During her whole life, she should be appendage to male. Father should protect her during childhood, husband during covertures and sons during widow hood and old age thus women should never be free”.

In earlier times the women was completely dependent on man and wholly at the mercy of male, on socio-economic problems. This type of exploitation and dependence on man deprived women to education, equality, status and Social Security and women were completed to stay within the four wall of the home. Ultimately this type of situation continued for many years and resulted in many social evils like child marriage, polygamy, female infanticide, sati-sahagamana, dowry, destitution, pardah system etc. many social reformers also worked against these social evils and social crime and women consistently tried to improve the social and economic status of women.

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8 Sharma R.N. 'Fundamental Rights, Liberty and Social Order 1992.'
9 Manu Smriti.II 66.
The social reformers have discussed about the position of women in British Government and pressed for making legislation relating to the eradication of social evils. The legislation introduced for the benefit of women in eradicating social evils could not be implemented due to lack of political will on part of Britishers. That is why the exploitation of women and complete dependency of women on men continued in socio-economic life till independence. The status of women in west in earlier period was discouraging. There were movements for the emancipation of women and a wave for liberation of women which spread throughout the world. But in spite of many efforts by social workers and philanthropists the position of women was not improved on par with their male companions in socio-economic and politico-cultural life.

The advent of globalization in India has seen an increasing information of employment, including home based, contract and casual labour. Coupled with this is the complete absence of any widespread system for Social Security in this sector. Unorganized sector accounts for over 96 percent of the women workers. Women are concentrated in the lower end of the spectrum-their work is insecure, law paid, irregular and often unrecognized. They balance between children, home and work and more often than not, their income is not commensurate with their work.

Social Security for all citizens has always been a priority in India. The concept of Social Security is derived from the provisions of Article 38 of the Constitution of India, which requires that the state should promote the welfare of
the people by securing and protecting a social order in which justice-social, economic and political-shall inform all institutions on national life. Article-41 requires that within the limits of its economic capacity the state make effective provision for securing the right to work, education and public assistance in case of unemployment, old age, sickness, disablement, etc., Article 42 states that the State should make provisions for securing just and humane conditions of work and maternity relief while Article 47 requires that the State should regard the raising of the level of nutrition and the standard of living of its people, and improvements of public health, as among its primary duties. Also, since independence, there have been a number of schemes and programmes designed to provide basic Social Security coverage. Crores of rupees have been allocated and various mechanisms have been experimented with so as to facilitate implements.

Over the years, the organized sector in India has been shrinking and the unorganized sector has been growing. Today the informal sector accounts for nearly 93 percent of the workforce. Women particularly are confined to unorganized sector employment, with 96 percent of all female workers being in this sector. Women are concentrated in the lower end of the spectrum, in low paying and insecure jobs. Their work is insecure, irregular and often exploited.

The main concerns of a woman worker centres on her family, especially her children. She sacrifices continually for her children and for the family. She takes full responsibility of the children, sick and the old, for feeding the family and for carrying on the family obligations like rituals and ceremonies. She works
for long hours for money and for subsistence. She does all this with only one aim—better life for her family. However, it should be recognized that her work is very much a part of the national economy. Her work contributes not only to her own family but also to the development of her village and town and to the country as a whole. The question is what society and particularly the economy gives her in return.

There can be no two opinions that we need urgently to develop Social Security systems for this vast segment of our population. The main issue is how this can be achieved ensuring appropriate, efficient and quality services and timely disbursement, preferably at their very doorsteps. Extending Social Security to the unorganized sector, particularly for the women workers is not merely a matter of extending existing organized sector schemes to new groups. The size and nature of the unorganized sector including the diversity of employment and the geographically dispersed nature of the workplace, pose real challenges. First, employment relations vary considerably, and are in any case, very different from those of the organized sector. Second a major obstacle to introducing contributory Social Insurance schemes for the unorganized sector is the difficulty in identifying the employer. Third, unlike the organized sector where steady and regular employment is a given fact, unorganized sector workers need employment security, income security and Social Security simultaneously. Fourth, the needs of women workers may vary, for example, child-oriented needs are a priority for the majority of women workers.
6.3.1 Identifying Needs of Social Security of Women workers

a. Child Care

The women worker plays the triple role of a worker, a housewife and a mother and child care is often considered as the sole responsibility of the mother. The working mother is often bogged down by the burden of child care. This leads to the decline in the productivity of the mother as well as negative impact on the health of both the mother and the child. Besides, the assumption that young children are taken care of in traditional family arrangements no longer holds true. Today there are over 15 crore women living below the poverty line and five to six crore children under six years belong to the group where mothers have to work for sheer survival.

A woman worker works for long hours, often seven days a week. She often has to walk long distances by foot or travel in crowded public transport to reach her place of work. A working mother remains exhausted and often very anxious about her child's welfare. Child care provisions relieve the women of one of her multiple burdens, creates time and space and work opportunities for women and support her empowerment.

In the absence of adequate child care facilities, a working mother has no option but to leave the child with a slightly older sibling. A large part of sibling caregivers are girl-children - many of them not above the age when they need care.
and nurturing themselves. Provisions of child care facilities enable the girl child to attend school and enjoy their own childhood.

The coverage of existing state-sponsored programmes is extremely limited and does not reach even a fraction of the children in this age group. Only 12 per cent of children in the age group 0-6 take part in some form of early child care programme. In addition, such provision as exists caters largely to the 3-6 age groups. The younger and more vulnerable 0-3 group is largely untouched. Also Child care services which are available for only 3-4 hours in a day do not cater to the needs of the working mother and are of not much help in lessening the burden of a working mother.

b. Maternity Entitlements

The most productive years of a women's life are also the reproductive years of her life. In the absence of any provision for maternity leave, a women worker often has to leave her job to have a child. Poor health, additional medical expenses along with loss of employment make the women worker economically vulnerable during the period of childbirth, plunging tier into a crisis of borrowing and high interest expenses. Often, she does not take adequate rest and starts working soon after childbirth with adverse effect on her health and also effect on the child.

Neglecting of a women's health during pregnancy and childbirth manifests itself into a high maternal mortality rate, anemia, and poor health of the women worker.
As far as the present framework of the Indian Constitution is concerned, maternity benefit is an undisputed entitlement under the law. Mainly, two Acts govern the question of entitlements: The Maternity Benefit Act, 1961 and the Employees State Insurance Act, 1948.

c. **Sickness**

The lives of women workers in the unorganised sector involve different kinds of risks including personal, occupational and family risks, derived from sickness. Sickness of herself or of immediate family member—may result in loss of employment. It also entails additional expenses in terms of medicines or hospitalization. With an increasing privatization of the health care services, the woman worker is forced to extra financial burden in times of illness or injury. She, thus, has to meet these expenses by either spending her savings, borrowing from moneylenders or by selling, mortgaging or pledging her ornaments. As a result, the woman suffers reduction in her income and savings and a simultaneous rise in interest expenses. The reduction in assets eventually leads to a depletion of tier income, borrowing and consequent indebtedness, thus trapping her inexorably in the vicious circle of poverty.

Besides, women often put a low premium on personal health and in a scenario where resources are scarce, health of the children and other family members take precedence - debilitating her already fragile health and having a
negative impact on her productivity as a worker. A strong body is the only capital that a women worker has.

d. Old Age

Traditionally, the elderly were taken care of by the family. However, with the breaking up of the joint family, changes in the employment pattern and exodus from the rural areas, the Social Security needs of the elderly have become crucial. An old women worker who has no support and is totally dependent on the other for survival is very vulnerable. Widowhood further adds to her vulnerability. Social Security for her has many facets. Income security is only one aspect; she is often forced to work for long hours even when her age does not permit. However, old age not only means loss or diminution of her income, it also means loss of her health and rise in the cost of medical care.

e. Risks and Crisis

It is usually a crisis - personal, social or natural, which drives a family into the downside towards destitution. It could be natural contingencies like Hoods, droughts, cyclones or a personal loss like the death of the husband or the breadwinner of the family or events such as market crash, crop failure or cattle loss through disease. Each crisis leaves the woman worker and her family weaker and more vulnerable. The main reason for such a strong negative impact is the high expenditure incurred at such times, and the lack of facilities for the poor to save for such eventualities. In the absence of micro-insurance, there is no
opportunity for the worker to spread the risks over long period and provide coverage during times of financial risks.

6.3.2 Human Rights Perspective

Today not only the Women Rights Commission, the Human Rights Commission is also playing importance role to securing the rights and interests of the Women in the society. The National Commission for Women estimates that 94 percent of the total female workforce is to be found in the unorganized sector.\textsuperscript{10}

The presence of a vast magnitude of women as workers and producers in the unorganized sector, where earnings are low, employment is seasonal and insecure, supportive services are woefully inadequate or even nonexistent, growth opportunities few and the collective organization weak, has brought into sharp focus the failure of the mainstream to alleviate their predicament. While it is true that workers, irrespective of sex, are exploited in the unorganized sector, women suffer more by the fact of their gender. Critical questions have been raised concerning the life-styles of labouring women, their state of consciousness and, even more importantly, the impact of attempts at motivating them in self-help.\textsuperscript{11}

The Recent attempts at National and International levels to bring to light the nature of their work and the relations of production that influence it have set a debate in motion.

The changing patterns of economic development in the liberalization era have put a heavy burden on women, which is reflected in their health status. The small farmers, landlessness, forced migration both temporary and permanent, have undoubtedly affected women’s health, nutritional and emotional status. The growth of small and cottage industries has depended heavily on female labour. These industries do not come under the purview of any kind of safety legislation. Women work in industries like tanning, tobacco, cashew, coir, textiles, garment, fish processing, canning, construction and domestic work etc. In all these industries, they toil long hours at low paid, skilled or unskilled workers. As a result they face serious health problems related to work place, hazards of pollutants on women who work during adolescence, and pregnancy have serious consequences. There is very little information about the safety levels of these harmful substances and more often the damage done includes. T.B. Allergies, abortions, bronchial disorders, death of unborn child, anemia, toxicity, disfiguration etc., Therefore, women have in the last decade become exposed to new kinds of health hazards.

Human Rights are recognized as inalienable rights to be realized by all human beings. Therefore it is necessary to understand how the unorganized workers generally, and women workers in particular, who are regarded as most
vulnerable section of India’s human resources, realize their human rights. The ILO report on “More and Better Job for Women-As Action Guide” states that more than 45% women all over the world in the age group of 15 to 64 are contributing to the economy in a significant way.\footnote{12} In South Asia about 40% of women work outside home compared to the figure 20 years ago. In Asia and Africa most women workers are found in the agricultural sector-where wages are the lowest and ½ of the women in the non-agricultural activities are in the organized sector. In this view an attempt has been made to study the human rights of women workers of the unorganized sector.

The unorganized sector is too vast to remain within the confines of any conceptual definition. Hence, descriptive means are used to identify the Women in unorganized sector. Its main feature can be identified through this sector and process where unorganized Women labour is used. Despite existence of labour laws, the Women workers in this sector do not get Social Security and other benefits for various reasons and there is hardly any trade union or constitutional mechanism to fight for them.

The Indian Constitution, the ILO Conventions that we have ratified and the existing laws together guarantee some rights to the workers. The Universal Declaration of Human Rights, proclaimed by the General Assembly of the United Nations on 10 December, 1948, is an assertion of the universal right to freedom

and life with dignity. The declaration proclaims that all human beings are born free and equal in dignity and are entitled to all rights and freedom set forth therein without any discrimination as to sex. Article 7 of the International Covenant of Economic and Cultural Rights, 1966 provides interalia that there shall be equal remuneration for work of equal value without distinction of any kind in particular women being guaranteed conditions of work not inferior to those enjoyed by men with equal pay for equal work. To implement the provisions of Article 39 of the Constitution of India and also to provide social justice, the National Committee on the Status of Women published its report entitled “Towards Equality”\textsuperscript{13} in 1975, to remove the anomalies of wage rates between men and women, which led to the enactment of the Equal Remuneration Act, 1976. Article 23(1) of the Universal Declaration of Human Rights states that everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. This Declaration has become a standard setter for peoples, communities and nations.

The preamble of Charter of United Nations 1945, expressly declare its determination to reaffirm faith in fundamental rights, in the dignity and worth of the human person, in equal right of man and women. One of the objectives of the U.N. Charter is to achieve international co-operation in promoting and encouraging respect for human rights and the fundamental freedom for all without distinction as to race, sex, language or religion. Article 55 envisages U.N. to

\textsuperscript{13} Ibid.
promote higher standard of living, employment and development. The Universal Declaration of Human Rights, adopted by the United Nations has set in motion the universal thinking that human rights are supreme and ought to be preserved at all costs. This was followed by a series of Conventions. On 18th of December, 1979, the United Nations adopted the ‘Convention on the Elimination of All Forms of Discrimination against Women’. Article 11 of the Convention requires the States parties to take all appropriate measures to eliminate discrimination against women in the field of employment on a basis of equality of employment in order to ensure, on a basis of equality of men and women. Some of the rights are:

a. The right to work as an inalienable right of all human beings.

b. The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment.

c. The right to free choice of profession and employment the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and re-training, including apprenticeships, advanced vocational training and recurrent training.

d. The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value as well as equality of treatment in the evaluation of the quality of work.
e. The right to Social Security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave, and

f. The right to protection of health and to satisfy in working conditions, including the safeguarding of the function of reproduction.

In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, various States Parties shall take appropriate measure such as:-

a. To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

b. To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

c. To encourage the provision of the necessary supporting social services to enable parents to combine family obligations, with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child care facilities; and

d. To provide special protection to women during pregnancy in types of work proved to be harmful to them.
Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repeated or extended as necessary.

Fundamental Rights under the Constitution of India include the right to equality, the protection against discrimination, the right to freedom of speech and expression, protection against traffic in human beings and protection from forced labour. These rights are constitutionally binding. Besides, these we have a very large number of Directive Principles of State Policy recognised under Part-IV of the Constitution. These principles are not enforceable by courts but are nevertheless fundamental in the governance of the country and it is the duty of the state to apply these principles in law making. Directive Principles of State Policy also spell out the concept of Social Security. Article 38 of the Constitution requires the state to strive and promote the welfare of the people by securing justice-social, economic, and political, and minimize inequalities in income land status between individuals, groups and regions. Article 39(a), (b) and (c) of the Constitution requires that the citizens have the rights to adequate means of livelihood, that the material sources are so distributed as best to serve the common good, that the health and strength of workers and the tender age of children are not abused, and that citizens are not forced by economic necessity to enter avocation

15 Id., Arts. 15 and 16.
16 Id., Art.19.
17 Id., Art.23.
18 The Relevant Articles are 38, 39, 39A, 41, 42, 43 and 43A.
unsuited to their age or strength. Article 41 requires that within the limits of its economic capacity and development, the state shall make effective provision for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement, and in other cases of undeserved want. Article 42 requires that the state should make provisions for securing just and humane conditions of work and maternity relief. Article 43 requires that the state shall endeavour to secure work a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. Article 47 requires that the state should regard the raising of the level of nutrition and the standard of living of its people and improvement of public health, as among its primary duties.

The Protection of Human Rights Act, 1993 defines human rights as the right relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution. This Act also justifies the need for legislation in favour of workers who are not yet covered by existing legislation.

The ILO Declaration on Fundamental Principles and Right at Work, adopted by the International Labour Conference in June, 1998, declares interalia that all member states whether they have ratified the relevant conventions or not have an obligation to respect, to promote land to realize the principles concerning the fundamental rights which are the subject of those conventions viz.,
1. Freedom of association and the effective recognition of the right to collective bargaining.

2. The elimination of all forms of forced or compulsory labour.

3. The effective abolition of child labour, and

4. The elimination of discrimination in respect of employment and occupation.

The primary goal of the ILO today is to promote opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity. The goal is not just and creation of jobs but the creation of jobs of acceptable quality. Government of India has ratified the Convention 122 on Employment and Social Policy, 1998, Article 1 of the Convention lays down with a view to stimulating economic growth and development, raising levels of living meeting manpower requirements and overcoming unemployment and under employment, each Member shall declare and pursue, as a major goal an active policy designed to promote full, productive and freely chosen employment.

The Employment and Social Policy, 1998 aims at ensuring the following:

1. Availability of work for all who are available for and seeking work

2. Productivity for the work, and

3. Freedom of choice of the employment and the fullest possible opportunity for each worker to qualify for and to use their skill and the endowments in a job for which he is well suited, irrespective of
race, colours, sex, religion, political opinion, national extraction or social origin.

The said policy shall take due account of the state and the level of economic development and mutual relationships between employment objectives and other economic and social objectives and shall be pursued by methods that are appropriate to national conditions and practices.

This Convention was ratified by India at a time when unemployment levels are high. One, therefore, has to presume that the Government is now committed to pursue an active policy designed to promote full, productive and freely chosen employment. From the commitments of the Government of India, it can be deduced that various rights of workers viz., Right to work of one’s choice; Right against discrimination; Right to just and humane conditions of work; Right to Social Security; Right to guaranteed wages; Right to redress of grievances; Right to organize and form trade unions; Right to collective bargaining; Right to participation in management etc. have been recognized as inalienable rights and must therefore be ensured and protected.

Keeping all these in view it would appear that perhaps the safest approach, in the context of coverage under labour laws, would be to define the organized sector as consisting of establishments which have a minimum employment limit. Whatever be the employment limit, there are certain provisions like maternity benefit, child care, workmen’s compensation, medical benefits and other elements.
of Social Security and safety which must be applicable to all workers, irrespective of the employment size of that establishment, or the nature of its activity.

ILO Conventions are codification of universally applicable labour standards and have led many countries to accept labour rights as basic rights. The Conventions protect children from labour, women from night shifts, and all workers from forced labour. In 1998, the ILO adopted the ‘Declaration on the Fundamental Principles and Right at Work’.

Labour laws do not offer protection and welfare to workers in the unorganized sector. Whatever exists is inadequate. Our Constitution and the international agreements we have entered into give us the mandate to secure their protection. The unorganized sector which includes the agricultural sector accounts for more than 92 percent of the total workforce i.e., around one third of India’s population.

Much of the work that women perform as part of family labour or as self-employed and home based producers are either not recognized as work or is dubbed as subsistence and therefore, a subsidiary activity. The all-round neglect of women’s labour finds reflection in various poverty alleviation programmes and social legislation. The majority of labour laws are unmindful such as the Plantations Labour Act of 1951 and the Mines Act of 1952, which incorporate special provisions relating to hours of work for women. The Equal Remuneration Act of 1976 and the Maternity Benefit Act of 1961 are among the few laws enacted specifically to protect the interest of women.
It is pertinent to comment in this context on the Bidi and Cigar Workers Act, 1966, the only piece of legislation which is applicable to home based workers. This legislation enjoins upon the principal employer to pay minimum wages, register women workers in his books and issue them an identity card and a logbook. The Bidi Workers Welfare Cess Act, 1976 and the Bidi Workers, Welfare Fund Act, 1976, further aim at promoting the welfare of the work force. Despite this, employers have quickly learnt to circumvent the law by adopting a contract system. Between the principal employer and the workers is a long chain of contractors, adept at manipulation.

The Mines Act, the Factories Act, 1948 and the Plantation Labour Act make it obligatory for employers to open crèches if the number of women in their employment exceeds a certain number.

An important aspect of encouragement of women’s employment is their treatment and welfare in the labour market while they are employed. Here the government in consonance with its legislative approach has adopted the methodology of regulation as well as adoption of the International Labour, Organization’s Convention for giving women legal safeguards at the place of work.

The Employees State Insurance Act, 1948 provides equal benefits for sickness and medical disability to make and female workers as well as maternity benefits to women. The Factories Act 1948, the Mines Act 1952, and the Plantation Labour Act 1951 prohibit the employment of women between
7.00 p.m. and 6.00 a.m. in factories, mines and plantations. These enactments also authorize the government to fix the maximum load to be carried by women workers. The employers are also made responsible for giving women labour crèche facilities for their children.

Besides ensuring women’s welfare at the work place, an equal treatment in earning income from the same type of work was ensured through the passing of the Equal Remuneration Act, 1976. The state and central machineries of labour departments, undertake inspections in this regard.

The Contract Labour Act 1978 was passed to regulate the working conditions of contract labour, which includes a very large number of women workers. The law has provisions for payment of wages, provision of welfare facilities and looking after their role as mothers, by insisting employers to provide crèches for the children.

Women engaged in construction work, are mostly exploited. They are employed on casual basis. Unstable employment/earning and shifting of work places are the basic characteristics of construction workers. In most cases safety norms are violated. They are often not given maternity benefits, though obligatory.

Though 51 percent of the working women are engaged in farm labour, their contribution is not recognized. Women involved in seasonable agriculture, should be helped to diversify into horticulture, fruit processing, vegetable growing animal
husbandry and dairying. As per available estimates there are about 50 lakhs scrap collectors in the country. Illiterate, unskilled persons and poorest of poor person are pushed into this occupation. A study shows that about 92 percent of scrap collectors are women in the age group of 19-50 with the minimum age of entry between 9-10 years. The total working population in fisheries (marine and inland) is estimated around 6 million. Women dominate the handling and processing activity accounting for about 70 percent of the work force. According to one estimate, women constitute 50 percent of the total work force in brass-ware industry. Home based workers fall within a gray area between the employed and unorganized workers, Home based workers are those who are otherwise unemployed, intending to but not absorbed by the organized sector, with skills limited to certain job which have economic value. Article 4 of the ILO Convention No.177 of 1996 on home based workers, calls for promotion of quality of treatment for home workers including right to organize, to protection against discriminations, to occupational safety and health, remuneration and Social Security, access to training etc., There is no reliable estimate of number of persons engaged as domestic works. Though somewhat visible in urban area, they are also engaged in households all over the country even in most distant and intractable areas. As estimate made by College of Social Work in Mumbai claims that 80 percent of domestic workers are women. The work does not require any special skill. The persons employed, as domestic workers are extremely poor,

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20 Id., p. 112.
illiterate and come mostly from rural areas. There is no system of Social Security on which the domestic workers can fall back. They work for long hours and do variety or workers, but do not get minimum humane treatment and acceptable level of Social Security.\textsuperscript{21}

They also run the risk and sexual harassment and exploitation in many houses. The Apex Court ruling in \textit{Asiad case}\textsuperscript{22} had added an important dimension to the definition of forced labour when the court ruled that the force arising out of the economic compulsion to make one volunteer to work below minimum wages, is a forced labour.

The Court held that where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words, forced labour under Article 23. Such a person would be entitled to come to the court for enforcement of his fundamental right under Article 23 by asking the court to direct payment of the minimum wage to him so that the labour or service provided by him ceases to be “forced labour” and the breach of Article 23 is remedied.

Article 23 prohibits “forced labour” that is labour or service which a person is forced to provide and force’ which would make such labour or service, ‘forced labour’ may arise in several ways. It may be physical force which may compel a person to provide the force exerted through a legal provision such as a provision for imprisonment or fine in case the employee fails to provide labour or service or

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\textsuperscript{21} Id., p.106. \\
\textsuperscript{22} Peoples ‘Union for Democratic Rights v. Union of India, A.I.R. 1982 S.C.1472.
\end{flushright}
it may even be compulsion arising from hunger and poverty, want and destitution. Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action many properly be regarded as ‘force’ and if labour or service is compelled as a result of such ‘force’. It would be ‘forced labour’, There is no reason why the word “forced” should be read in a narrow and restricted manner so as to be confined only to physical or legal ‘force’. The word ‘force’ must therefore be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage.

In absolute terms, this sector contributes more to the economy and employment in India. National Accounts Statistics Report of 1995 confirms that nearly the unorganized sector contributes 65 percent of the national income. These workers, particularly women, have not been able to organize themselves, and are further discriminated against. The existing labour laws do not define most of them, as workers because a principal employer is not easy to identify in these kinds of work. If properly conceived and effectively implemented, a law for unorganized sector workers will make a definite contribution to the eradication of poverty. The unorganized sector cannot be wished away. The National ‘divide’ between the organized sector and the unorganized sector of the country’s economy, and the workers engaged in them, is unreal because these sectors
workers are engaged in them, is unreal because these sectors are interdependent. Legislation cannot be effective unless it integrates their needs for protection and welfare with those of the rest of our society and economy.

Workers in this sector are entitled to protection and welfare not only because they are citizens, but also because they are the main contributors to the wealth of the Nation. Today, even without these entitlements they contribute their labour, skill and entrepreneurship to the economy. When provided with entitlements, their productivity as well as their purchasing power will grow. They will add to the country’s goes national product, strengthen the economy and help fight economic crisis. If their economic contribution is not recognized and enhanced, they will continue to be poor beneficiaries, living constantly on welfare schemes and subsides.

Workers in the unorganized sector are not recognized as workers. The first measure should be the recognition of their workers by including them in official list. To achieve recognition as a worker each person who is actually working should be given an official identity card. The identity card gives the worker a definite legal identity and recognition.

This also means that the right to work would have to be viewed as necessary concomitant of the right to Social Security. Social Security must contain at least healthcare (including maternity, injury), childcare, shelter and old age support that strengthens productivity.
The Commission on Self-Employment for Women (Shram Shakti) enlarged its scope to include women workers in the unorganized sector and looked into the status of self-employed women with special reference to their employment, health, education and social status, and constraints that affect productivity, the impact of various labour laws, especially those on maternity benefits and health insurance, on self-employed, women, gaps in training, credit, up gradation of skills and marketing, employment partners including production relations and their impact on wages, and the effect of micro level policies on the health, and productive and reproductive role of self employed women.

The Second National Commission on labour has noted the flagrant violation of statutory provisions regarding payment of wages, safety regulations, provisions of housing and medical facilities, accident compensation etc., In the context of non observance of these laws, the Commission recommended simplification of judicial procedures, particularly to enable unorganized workers to obtain legal redress.

The main International Convention covering maternity benefits is the ILO’s Maternity Entitlement Convention, 2000. It is universally acknowledged that there are inadequacies in both the ESI and Maternity Benefit Acts at the national level. These Acts only cover workers in the organized sector. There is a need to extend maternity benefit measures to women workers in the unorganized sector. Just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. When almost half of the segment of our
society has to work to earn their livelihood whatsoever be the nature of their duties, their vocation and the palace where they work, they must be provided all the facilities to which they are entitled. To become a mother is the most natural phenomena in the life of a woman. Whatever is needed to facilities the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realize the physical difficulties which a working woman would face in performing her duties at the work place while carrying a baby in the womb or while raring up the child after birth. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honourably, peaceably, undeterred by the fear of being victimized for forced absence during the pre or post natal period.

The provisions of the Act which have been set out above would indicate that they are wholly in consensus with the Directive Principles of State Policy, as set out in Articles 39 and 42. A women employee, at the time of advanced stage of pregnancy cannot be compelled to undertake hard labour as it would be detrimental to her health and also to the health of the foetus. It is for this reason that it is provided in the act that she would be entitled to maternity leave for certain periods prior to and after delivery. We have scanned the different provisions of the Act, but we do not find anything in the Act which entitles only regular women employees to the benefit of maternity leave and not to those who are engaged on casual basis of on muster roll on daily wage basis.
Since Article 42 specifically speaks of ‘just and humane conditions of work’ and ‘maternity relief’, the validity of an executive or administrative action in denying maternity benefit has to be examined on the anvil of Article 42 which, though not enforceable at law, is nevertheless available for determining the legal efficacy of the action complained of. In Municipal Corporation of Delhi. V/s Female Workers (Master Roll) and another, the Supreme Court has held that though these Acts provide no work protection for women, there is no justification for denying the benefit of this Act to casual workers or workers employed on daily wage basis.

The existing laws do not cover or adequately cover the workers in the unorganized sector generally and women workers in the unorganized sector particularly. As woman workers in the unorganized sector include a significant percent of work force the only alternative is to extend the minimum protection and security by amending the existing laws or by providing an umbrella legislation that provides minimum protection, access to Social Security, and redressal of grievances while retaining the existing sub-sectoral laws and sub-sectoral system. It is therefore, necessary to ensure that the proposed umbrella legalization for workers in the unorganized sector incorporates the core rights that have been enshrined in the Constitution of India, UN Covenants and ILO Convention.

The umbrella legislation for unorganized sector would guarantee a minimum of protection and welfare to all workers in the unorganized sector,

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leaving it opens to the government to bring in special law for different employments or sub sectors if experience indicates the need for it. The scheme will not suffer from paucity of funds because the Central Government has agreed to bear the expenses. For those more than 35 years of age the amount will be slightly higher. In the case of self-employed persons, the employer’s share will also be paid by the government. There is provision in the draft Bill for establishing workers facilitation centres, for registering workers. The Employees Provident Fund Organization will provide each registered worker with a unique Social Security number free of cost. Also workers in the 36-50 age groups are not eligible to become members after initial five years.24

The Central Cabinet gave approval on 7th January 2004, to the long pending issue of Social Security to the unorganized sector. The Government of India announced a pilot project to over one million workers in the unorganized sector for providing them with insurance, hospitalization benefits and pension. The Government will give it a statutory shape after experiencing the pilot project functions.25 The scheme covered a medical plan Rs.30,000 per annum would be given for a family of five in case of any hospitalization. In the event of death or total disability of a worker. Rs. 1 Lakhs would be given as insurance. Apart from this, the spouse would be entitled for a life-long pension of Rs.500/- On retirement, a worker would be entitled to Rs.500/- as monthly pension.

6.4 Judicial Contribution for promotion of Social Security In India

Several Rights of workers in unorganised sector have been recognised by Supreme Court of India in its various judicial decisions. In *Crown Aluminium Works v. Their Workmen*\(^\text{26}\) the Supreme Court observed - “It is quite likely that in underdevelopment countries, where employment prevails on a very large scale, unorganised labour may be available on starvation wages, but the employment of labour on starvation cannot be encouraged or favoured in a modern democratic welfare State. If an employer cannot maintain his enterprise without cutting down the wages of his employees below even a bare subsistence or minimum wage, he would have no right to conduct his enterprise on such terms.”

In *People’s Union for Democratic Rights v. Union of India*\(^\text{27}\) case the apex court made an epoch-making judgement which has not only made a distinct contribution to labour law but has displayed the creative attitude of judge to protect the interests of the weaker sections of the society. The Court has enlarged the contours of the fundamental right to equality, life and liberty, prohibition of traffic in human being and forced labour and prohibition of employment of child labour provided in the Constitution.

The case arose out of the denial of minimum wages to workman engaged in various Asiad Projects and Non-enforcement of The Minimum Wages Act 1948, Equal Remuneration Act 1976, Article 24 of the Constitution, Employment of children Act, 1938, Contract Labour (Regulation of Employment and

\(^{26}\) (1958), 1.L.L.J. 1.
\(^{27}\) (1982), 2.L.L.J.454
Conditions of Service) Act 1979. The Court’s attention was drawn by a public-spirited organisation by means of a letter addressed to Bhagawathi, J. of the Supreme Court. The Supreme Court had accepted locus standi of the organisation to file the writ petition and converted the letter into a writ petition and observed that when legal wrong or legal injury is caused to a person or determinate class of persons and such person or persons are unable to approach the Court for relief due to poverty, helplessness of disability or social and economic backwardness, they may be represented by any other person or organisation.

The Court has further held that employment of children below the age of 14 years in the constructing work of the Asiad Project is violation or fundamental right and non-observance of the provisions of The Equal Remuneration Act, 1976 would amount to breach of Article 14. Further, the violation of Contract Labour (Regulation and Abolition) Act, 1970 and Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 intended to ensure basic human dignity to workman is clearly in violation of Article 21. It was also held that non-payment of minimum wage to the workers engaged in construction work would amount to not only violation of Minimum Wages Act, but also Article 23 of the Constitution, which intends to prevent forced labour and beggar. Thus, the Supreme Court has championed the cause of several people engaged in construction work of Asiad Project and rendered justice.
In *Sanjit Roy v. State of Rajasthan*,\(^{28}\) it has been held that the payment of wages lower than the minimum wages to the persons employed in Famine Relief Work is violative of Article 23. Whenever any labour or service is taken by the State from any person who is affected by brought in scarcity condition, the State cannot pay him less wage than the minimum wage on the ground that it is given them to help to meet famine situation. The State cannot take advantage of their helplessness.

In *Salal Hydro Electric Project v. State of Jammu & Kashmir*\(^{29}\) judicial intervention by means of Public Interest Litigation has yield positive results for the benefit of the workmen employed in the Salal Hydro Electric Project. The litigation started on the basis of a news in Indian Express dated 26 Aug, 1982 that a large number of workmen from different States including the State of Orissa were working on the Salal Hydro Electro project in difficult conditions and they were denied the benefits of various labour laws and were subjected to exploitation by the contractors to whom different portions of the work were entrusted by the Central Government. The Peoples Union for Democratic Rights thereupon addressed a letter to Mr. Justices D.A Desai enclosing a copy of the news report and requested him to treat the letter as a writ petition so that justices may be done to the poor labourers working in Salal Hydro Electro Project. The letter was treated as a writ petition and the Court directed Labour Commissioner, Jammu to visit the site of the project and thereupon submitted a report to the Court. Pursuant

\(^{28}\) AIR 1983 S.C. 1155.
to the order of the Court, the Labour Commissioner, Jammu visited the site of the project and made an interim report on Oct 11, 1982 followed by a final report dated Oct 15, 1982. The Court pointed out that since the report made by the Labour Commissioner, Jammu disclosed that the Project was being carried out by the Government of India, the Court directed that the Union of India in the Labour Ministry as also the Chief Labour Commissioner (Central) also be added as respondents to the writ petition. Because of the direction given by the court, the Central Government immediately with a view to secure compliance with the various directions given by the Court in an interim judgement, issued a circular to all the engineers in charge of the project who were principal employers as also to all the contractors and sub-contractors or piece wages, directing them to make immediate compliance with the direction regarding implementation of the labour laws applicable to the workmen. The Labour Commissioner finally reported to the Court that due compliance had been made with the provisions of labour legislations, by all the parties concerned. The court was also satisfied that the welfare amenities required to be provided under these statues were being made to available to the workmen employed on the Salal Hydro Electro Project.

Further, in Bandhu Mukti Marcha v. Union of India, the Supreme court held that when an action is initiated in the court through Public Interest Litigation alleging the existence of bonded labour system exists and as well as to take appropriate steps to eradicate that system. This is the constitutional obligation of

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the Government under Article 23 which prohibits “forced labour” in any form. Article 23 has abolished the system of bonded labour but unfortunately no serious effort was made to give effect to this Article. It was only in 1976 that the Parliament enacted the Bonded Labour System (Abolition) Act, 1976 providing for the abolition of bonded labour system with a view to preventing the economic and physical exploitation of the weaker section of the society.

In Neeraja Chaudhury case,31 a writ petition was filed by a journalist in the form of a letter to Supreme Court complaining that about 135 bonded labourers within the meaning of Bonded Labour System (Abolition) Act 1976, working in the stone quarries if Faridabad, had been released by the Supreme Court’s order and had been brought back to M.P. with a promise of rehabilitation even after six months of their release and were living in conditions to dire poverty. Giving suitable directions of the State of M.P. for implementation of the Bonded Labour Act, The Supreme Court observed, “It is plainest requirement of Article 21 and 23 of the Constitution that bonded labourers must be indentified and released and on release, they must be suitable rehabilitated freedom from bondage without effective rehabilitated freedom from bondage without effective rehabilitation would frustrate the entire purpose of the Act, for, in the event, the freed labourers will slide back into bondage again to keep body and soul together.”

The Indian judiciary to a certain extent has taken lead in security socio-economic justice to children. In *M.C. Mehta v. State of Tamil Nadu*, it has been held that the children cannot be employed in match factories which are directly connected with the manufacturing process as it is a hazardous employment within meaning of Employment of Children Act, 1938. They can, however, be employed in packing process but it should be done in area away from the place of manufacture to avoid exposure to accidents. Every children must be insured for a sum of Rs.50,000/- and premium to be paid by the employer as a condition of service.

In *M.C. Mehta v. State of Tamil Nadu*, the Supreme Court while discussing statutory provisions relating to prohibition of child labour enumerated legislative enactment in force in different occupations in India clearly referred to provisions of Section 45 of the Mines Act and observed that no child shall be employed in any mine, nor shall any open cast working in which any mining operation is being carried on, After such date as the Central Government may, by notification in the Official Gazette, appoint in this behalf, no child shall be allowed to be present in any part of a mine above ground where any operation connected with or incidental to any mining operation is being carried on. After considering other legislative enactment in this regard further observed that the legislature has strongly desired prohibition of child labour. The Child Labour (Prohibition and Regulation) Act, 1986 is. Ex facie, a bold step.

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32 AIR 1991 SC 417.
33 1997 SCC (L and S) 49.
After the commencement of the *Contract Labour (Regulation and Abolition) Act, 1970*, *The Air India Case*\(^{34}\) of 1997 is the landmark judgement given by the Apex Court. In this case the Court noted that there is no express provision under Section 10 of the CLRA Act for absorption of contract labour on abolition of the contract labour system. In the absence of such a provision the Supreme Court has played a creative role by bridging the gap left open by the legislature. Thus, in *Air India Statutory Corp. V. United Labour Union case*, in the majority judgement Ramaswamy, J. Observed as under:

a. Though there is no express provision in the CLRA Act for absorption of the contract labour when engagement of contract labour stood prohibited on publication of the notification under Section 10 (1) of the Act, from that moment the principal employer cannot continue contract labour and direct relationship gets established between the workmen and the principal employer;

b. The Act did not intend to denude the contract labour of their source of livelihood and means of development throwing them out from employed; and

c. In a proper case the court as sentinel on the qui-vive is required to direct the appropriate authority to submit a report and if the finding is that the workmen were engaged in violation of the provisions of the Act or were continued as contract labour despite prohibition of

\(^{34}\) *Air India Statutory Corp. V. United Labour Union*, 1997 LLR 288.
the contract labour under Section 10 (1), the High Court has constitutional duty to enforce the law and grant them appropriate relief of absorption in the employment of the principal employer.

In a separate concurring judgement, Majmudar J. observed: If it is held that on abolition of contract labour system, the erstwhile contract labourers are to be thrown out of that establishment lock stock and barrel, it would amount to throwing the baby out with the bath water. It was added that implicit in the provision of Section 10 is the legislative intent that on abolition of contract labour system, the intent that on abolition of contract labour system, the erstwhile contract workmen would become direct employees of the employer on whose establishment they were earlier working and were enjoying all the regulatory facilities on that very establishment under the abolition of such contract labour system. In this case it was held that the contract workers have a right to automatic absorption upon abolition.

In *Steel Authority of India Ltd. v. National Union Water Front Workers and Others*, the Constitutional Bench of the Supreme Court delivered a momentous judgement having a bearing on contract labour system and ruled:

“Neither Section 10 of the Contract Labour (Regulation and Abolition) Act nor any other provision in the Act, whether expressly or by necessary implication. Provides for automatic absorption of contract labour on issuing a notification by appropriate  

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35 2001,111 LLR 349.
employment under Sub-Section (1) of Section 10, prohibiting employment of contract labour in any process, operation or other work in any establishment, consequently the principle employer cannot be required to order absorption of contract labour working in the concerned establishment.\footnote{Ibid.}

Thus in this case Supreme Court has changed the law laid down in the case of Air India Statutory Corporation v. United Labour Union and Other and denied the right of contract labour to be absorbed on abolition of contract labour system, a right earlier created by another three judge bench by judicial legislation. The SAIL judgement, however, said that the Air India Case has been wrongly decided and stated that the contract workers would have no right to automatic absorption upon abolition. But the only right available to them is they would have right to preference in employment if permanent workers were to be employed to fill in the vacancies create by the removal of the contract workers upon abolition.\footnote{Sanjay Singhvi: “A Raw deal for Contract Labour”, Labour file Dec 2001.}

However, in the present scenario the Court’s ruling in SAIL case in effect has succeeded in satisfying the management’s desire to give them free hand to employ contract labour without imposing any liability to absorb them on abolition of the contract labour system in order to compete in the international market. Indeed, the decision is in conformity with the recommendations of the Fifth Pay Commission that in certain jobs the Government of India should also engage contract labour besides meeting some of the view points of the Finance Minister in his budget.
speech of the year, 2000-2001, namely, to facilitate outsourcing of activities to contract labour. In this case the Supreme Court applied the theory of hire and fire. The principles evolved in the judgement are pregnant with tremendous liability and would bring anomalous results. In the era of globalization, privatization and liberalisation the effect of this judgment is far reaching. Neither can the judiciary intervene to regulate contract labour in industrial establishment, nor can a set of contract labour/workers seek protection under the Contract Act for the purpose of becoming permanent workers in the job they were engaged in on contract.

The judgement given in Sail case was followed in Promod Kumar and others v. National Aluminium Company Ltd. And others, in which the High Court dismissed the petition seeking a declaration of petitioners to be regular workmen as security guards, sergeants and cooks and give direction to opposite parties to pay them remuneration equal to that paid to regular employees. The High Court observed that the contract labour was continuing in the establishment with due permission of the competent authority.

Further by virtue of a notification under Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970, employment of contract labour in the establishment had not been prohibited.

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While relying upon the decision of SAIL case Court further held that there could be no automatic absorption of contract labour on issuing notification under section 10(1) of the Act as it does not provide any such relief.

The principle of law laid in SAIL case was followed in various recent cases also in *Cipla ltd. v/s. Maharashtra General Kangar Union* \(^{40}\) and *Food Corporation of India v. The Union of India and Others*,\(^{41}\) while supporting the judgement of SAIL case held that workers has no right of automatic absorption on abolition of contract labour system.

The court has taken a holistic view regarding health and labour welfare. In *Calcutta Electro Supply Corporation v. Subbhash Chandra Bose*,\(^{42}\) Justice K. Ramaswamy in his dissenting opinion absorbed that health and strength of the workers is an integral facet of right to life. Thus speaks the court.

To the tiller of the soil, wage earners, labourers, wood cutters, rickshaw pullers, scavengers and hut dwellers, the civil and political rights are mere cosmetic rights. Social, economic and cultural rights are their means and relevant to them to realise the basic aspirations of meaningful right to life.\(^{43}\)

The juristic formulation regarding health as an investment which not only boosts productively but also augurs good industrial relation is in the right direction, investment in workers’ health is ‘like gift-edged security; as it would

\(^{40}\) 2001 LLR 305.
\(^{41}\) 2003 Lab, IC p. 166.
\(^{43}\) Ibid. 585.
yield immediate return in the ‘increased production’. While dwelling upon health, environment and industrial relation the learned judge proceeded to observe that Medical care and health facilities not only protect against sickness but also ensure stable man power for economic development. The medical facilities are, therefore, part of Social Security and like gift edged security, it would yield immediate return in the increased production or at any rate reduce absenteeism on ground of sickness, etc. Just and favourable conditions to the work imply to ensure safe and healthy working conditions to the workmen. The periodical medical treatment invigorates the health of the workmen and harnesses their human resources.\textsuperscript{44} It was concluded that prevention of occupational disabilities generates devotion and dedication to duty and enthuse the workmen to render efficient services which is a valuable asset for greater productivity to the employer and national production to the State.\textsuperscript{45}

The copious reference to health, productivity and industrial relation manifest the passing of judiciary. In Consumer Education and Research Centre v. Union of India,\textsuperscript{46} the Apex Court was called upon to hear a writ petition by way of Public Interest Litigation praying for maintenance of compulsory health records, adoption of membrane filter as one of the measures of environ-health protection and compulsory monetary compensation to the workmen of asbestos industry, in order to relieve the poor from handicaps, penury and distress, and to make their

\textsuperscript{44} Ibid.
\textsuperscript{45} Ibid.
life liveable for greater good of society. The social justice is to be attained with substantial degree of social economic and political equality. The Court went to the extent of declaring Right to health as a part of Right to livelihood and life under Article 21 read with Article 39 (e), 41,43,38-A of the Constitution.

The expression ‘life’ assured in Article 21 of the Constitution does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard of life, by hygienic condition in work place and leisure.\(^{47}\)

The Court held that the State, be it Union or State Government or an industry, public or private is enjoyed to take all such action which will promote health, strength and vigour of the workmen during of employment and leisure and health even after retirement as basic essential to life with health and happiness. Health of the worker enables him to enjoy the fruit of his labour. Medical facilities to protect the health of workers are, therefore, the fundamental human rights to make the life of woman meaningful and purposeful with dignity of person.

The Courts have dealt with the issue whether the workers employed by the contractor in canteen may be treated as employees of the principal employer or not in various cases. In Saraspur Mills Co. Ltd. V. Ramanlal Chimanlal,\(^{48}\) the Supreme Court held that workers employed in a canteen even if run by a

\(^{47}\) Ibid, at 8-39.

\(^{48}\) (1973) 3 SCR 967.
cooperative society were ‘workers’ as the occupier of the factory is under a mandatory obligation to maintain and run a canteen under Section 46 of the Factories Act, 1948.

This question was more elaborately dealt with in *M.M.R. Khan v. Union of India*. In this case, the Supreme Court was concerned with run by Railway Establishment falling under three different categories:

Firstly, statutory canteens-these canteens are provided compulsorily in view of the provisions of Section 46 of the Factories Act 1948. Since the Act admittedly applies to the establishments concerned and the employees working in the said establishment exceed 250. Secondly, non-statutory recognised canteens-these canteens are run in an establishment which may or may not be governed by the Act but which admittedly employ 250 or less employees and hence, it is not obligatory on the employer to maintain. However, they are set up as a staff welfare measure where the employees exceed 100. These canteen are established with the prior approval and recognition of the employer as per the procedure contemplated under the rules and Regulations of the Establishment; and thirdly, non-statutory and non-recognised canteens- these canteens are run at establishment under the second category but employ 100 of less than 100 employees and are established without the prior approval of or recognition of the employer.

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49 1990 (Supp) SSC 191.
Again in *All India Railway Institute of Employees Association v. Union of India*,\(^{50}\) the Supreme Court dealt with this question. The Court held that the employee in the Railway Institute or Clubs were not employees of the Railway Establishment.

In *Parimal Chandra Raha v. Life Insurance Corporation of India*\(^{51}\) is a leading case on the subject. Here the Supreme Court ruled as under:

1. There is a statutory obligation to provide for welfare of the workers. For example, under Factories Act, 1948 there is a statutory obligation on part of the employer to provide and maintain a canteen for the use of the employees. Therefore canteen becomes the part of the establishment and the workers employed in such canteen are to be considered as the employees of the employer.

2. Where there is no statutory obligation but there is otherwise obligation on employer to provide a canteen such as part of service condition, the canteen becomes the part of the establishment and the worker employed in such canteen are the employees of the management.

3. Where there is no obligation to provide a canteen but there is an obligation to provide facilities to run canteen, the canteen does not become a part of the establishment.

\(^{50}\) (1991) 2 Lab LJ 265. \\
\(^{51}\) 1995 Supp (2) SCC 611.
In *Indian Petrochemical Ltd. and another v. Shramic and others*,\(^{52}\) a new gloss was given to this decision by stating that the presumption arising under the Factories Act in relation to such workers is available for the purpose of the Act and no further. The Supreme Court held that the Factories Act, 1948 does not govern the right of employee with respect to (i) recruitment (ii) seniority (iii) promotion (iv) retirement benefits, etc. these are governed by other statues, rules, contracts or polices. Therefore, employees of the statutory canteen cannot or polices. Therefore, employees of the statutory canteen cannot ipso facto become the employees of the establishment for all purpose. The Court added that (i) It should be borne in mind that the initial appointment of these workmen are not in accordance with the rules governing appointments; (ii) Rules governing establishment; (iii) Rules governing policy of recruitment of the management; (iv) The aforesaid recruitments could also be in contravention of the various statutory orders including reservation policy; (v) Further as an instrumentality of the State has an obligation to conform to the requirements of Articles 14 and 16 of the Constitution; (ii) In spite of the same, the services of the workmen are being regularized by the Supreme Court not as a matter of right of workmen but with a view to workmen but with a view to eradicate unfair labour practices and bring equity to undo social injustice.

\(^{52}\) 1999 (6) SCC. 439.
The Supreme Court again in *Indian Overseas Bank v. I.O.B Staff Canteen Workers’ Union and another*,\(^53\) while considering the effect of *Parimal Chandra Raha and Others v. L.I.C. of India and Others* and *Indian Petrochemical Corp. Ltd. And another v. Shramic Sena and Others* ruled that the workers of a particular canteen statutorily obliged to be run a canteen render to more than to deem them to be workers for limited purpose of the Factories Act and nor for all purpose and in cases where it is a non-statutory recognized canteen the Court should find out whether the obligation to run was implicit or explicit on the facts proved in that case and the ordinary test of control, supervision and the nature of facilities provided were taken note of to find out whether the employees therein are those of the main establishment.

In *Bharat Fritz Werner Limited v. State of Karnataka*,\(^54\) the Supreme Court ruled that the workers working in canteen even if employed through the contractor have to be treated as “workers” and no restricted meaning can be given even where the Factories Act, 1948 is not applicable to an establishment but canteen facility is provided as a condition of service.

In *Hari Shankar Sharma and Ors, v. Artificial Limbs Manufacturing Corporation and others*,\(^55\) the Supreme Court held that the employees of a statutory set up, or of any other facility, provided, by the establishment in discharge of statutory mandate need not necessarily be employees of the

\(^{53}\) 2000 (4) SCC 245.
\(^{54}\) 2001 LLR 285.
\(^{55}\) 2002(1) SCC 387.
establishment as Section 46 of Factories Act leaves it to the discretion of establishment to resort to direct employment or to employ a contractor and their status depends upon the manner of discharge of statutory obligations. There it was further held that the condition in the agreement between the contractor and the establishment that the new contractor should retain the employees who had served under the earlier contractors would not necessarily mean that such employees were employees of the establishment.

In *Mishra Dhattu Nigam Ltd. v. M Venkataiah and Ors.*\(^{56}\) the Supreme Court held since the management was required by the Factories Act, to provide canteen were the employees of the principal employers, and the canteen workers engaged through the contractors were entitled to regulation of their services.

In *Gopalakrishnan and Others v. Cochin Port Trust,*\(^{57}\) the only question that arose in this petition was whether petitioners, who were employees of the canteen established by Cochin Port Trust, were entitled in regulation in the service of the Port Trust. The high Court held they were so entitled and allowed the petition. It observed the canteen in question was a statutory canteen establishment under Section 46 of the Factories Act, 1948. The port Trust was having over all control, including financial over the functioning of the canteen.

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\(^{56}\) 2003-III LLJ 897.

\(^{57}\) 2004-II-LLJ 486.
The petitioners were therefore held entitled to be treated as employers of the Port Trust subject to their eligibility at time of appointment as to age limit, health standard, educational qualification etc.

In *Haldia Refinery Canteen Employees Union and Another v. Indian Oil Corporation Ltd. and others*, settling a lingering debate, the Supreme Court has ruled that even if management of an organisation exercises control over the types of workers to be engaged in its canteen run by a contractor, they do not become employees of the office concerned.

The ruling was given by a bench comprising Justice Ashok Bhan and Justice A.K. Mathur, while dismissing and appeal filed by Haldia Refinery Canteen Employees Union Challenging a Calcutta High Court Judgement. In this cast the appellant are working in the statutory canteen run by the respondent through contractor in its factory at Haldia, District Midnapore, and West Bengal. Respondent was treating the appellant as the employees of the contractor. Aggrieved against this the appellant field the writ applications in the High Court.

Appellant-Employees Union, despite initial success before single judge, could not retain it when the respondent cooperation took the manner up in appeal before a Division Bench. It held the appellants were not entitled to regularisation as the employees of the respondent, since they were employees of the contractor.

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58 2005 II LL.J.115.  
who ran the canteen, albeit statutory, in the factory of respondent. Aggrieved against the aforesaid judgement of the Division Bench, the present appeal has been filed in Supreme Court by appellant-Employee Union.

The Supreme Court, after going through the conditions of the contract, observed the control that the respondent exercised over the contractor, was only to ensure that the canteen was run in efficient manner. It did not mean the canteen employees (by virtue of such control) became the employment of the management.

Workmen in a statutory canteen such as the appellants became workers of the establishment for the purpose of the Factories Act, 1948 only and not for any other purpose, the Supreme Court pointed out.

The Supreme Court referred also certain facts which rendered the claim of the appellants not tenable. Firstly, the management was not reimbursing to the contractor the wage of the workmen. Secondly, two settlements had been made between the contractor and the canteen workmen. The respondent was not a party to either of them. So the appeal dismissed.

This ruling assumes significance since the Apex Court had, in its earlier judgment held that the workers in a canteen attached to an office would be treated as employees of that office if the management exercised control over the selection of the canteen workers and payment of their salaries, even if they were being engaged by a contractor.
An analysis of the various cases reveals that the Judiciary have done a good job for the protection of the rights of unorganised labour. In the *Crown Aluminium Works case, People’s Union for Democratic Rights case, Sanjit Roy case, Salal Hydroelectric Project case, Bandhua Mukti Morcha case, Neeraja Chaudhary case* landmark decisions were rendered by the Supreme Court in the interests of Social Security and its importance, thus making it a part of the Government’s policy to provide for such Social Securities. There by seeing to it that various rights of the individual especially the workers in the unorganised sector have been upheld and safeguarded.

In the present scenario the judgement of Steel Authority of India is not appropriate as it left the workers in void while providing the employers a free hand to appoint more contract labourers without any responsibility to absorb them on abolition. The principles evolved in the judgement are pregnant with tremendous liability and would bring anomalous results. In the era of globalization, Privatisation and Liberalisation the effect of this judgement is far reaching. Neither can the judiciary intervene to regulate contract labour in industrial establishment, nor can a set of contract workers seek protection under the Contract Act for the purpose of becoming permanent workers in the job they were engaged in on contract.
6.5 Conclusion

The Judiciary, one of the three organs of the Government and more important organ has been doing tremendous work for ensuring and enforcement of fundamental human rights and of the fundamental duties on part of the government bodies in providing for and ensuring Social Security measures to both organised and unorganised sectors.

While the Legislature enacts the Law and the Executive enforces the Law it is the work of Judiciary to ensure the reasonableness of the law and their effective implementation. Hence, the role of Judiciary in any economy assumes more importance and significance.

In case of benefits, one of the major defects in the scheme of Workmen’s Compensation Act is complete lack of medical care to the victims of employment injury. All employment accident is not only disabling the workmen from employment but also cause physical suffering and psychological shock. Lack of medical care destroys chances of rehabilitation and restoration. Medical facilities are therefore part of Social Security and like quilt Social Security, it would yield immediate returns to the employer in the form of increased production and would reduce absenteeism on ground of sickness etc., it would thus save valuable man power and reserve human resources.

Many decisions rendered by the Supreme Court in the interest of Social Security have been converted into Government’s policy to provide for such Social
Securities. There by sought to it that various rights of the individual especially the workers in the unorganised sector have been upheld and safeguarded.