CHAPTER-IV

INDIAN SUPRME COURT’S CONTRIBUTION TOWARDS A NEW AND DYNAMIC LABOUR LAWS SYSTEM
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"Many of the Judges of England have said that they do not make law. They only interpret it. This is an illusion which they have fostered. But it is a notion which is now being discarded everywhere. Every new decision - on every new situation- is a development of the law. Law does not stand still. It moves continuously. Once this is recognised, then the task of the Judge is put on a higher plane. He must consciously seek to mould the law so as to serve the needs of the time. He must not be a mere mechanic, a mere working mason, laying brick on brick, without thought to the overall design. He must be an architect- thinking of the structure as a whole - building for society a system of law which is strong, durable and just. It is on his work that civilised society itself depends”.

- Lord Denning.¹

The Supreme Court of India over the last five-decades has played an active role in legal social change. The decisions of the Supreme Court of India have made inroads into the

¹ Quoted by Justice V.R. Krishna Iyer in “The Indian Judiciary To Be or Not To Be” (1987) p 38
socio-economic structure of the country. The wealth of industrial jurisprudence consists of the decisions of the Supreme Court. The court has responded to the pathetic plight of peasants, plantation workers, construction workers, agriculture workers, and the whole lot of the unorganised workers. The decisions of the Supreme Court of India have far reaching consequences not only upon the individuals and society but many a time have compelled the government to modify its laws.

The Supreme Court of India with the assistance of social activists and through the instrument of public interest litigation has vindicated the commitment of the government to the welfare and relief of the oppressed. The Court has provided an umbrella of protection to the sweated labour. The Supreme Court is the guardian angel of the liberties and the fundamental rights of the citizens of India. The court can declare a law passed by a legislature null and void if it encroaches upon the fundamental rights guaranteed under the constitution. In this chapter certain decisions of the Supreme Court on various labour laws have been analysed which have proved landmark in industrial jurisprudence.
1. Law, Courts and the Constitution

India has one of the oldest legal systems in the world. Its law and jurisprudence stretches back into the centuries, forming a living tradition, which has grown and evolved with the lives of its diverse people. India's commitment to law is created in the Constitution which constituted India into a Sovereign Democratic Republic, containing a federal system with Parliamentary form of Government in the Union and the States, an independent judiciary, guaranteed Fundamental Rights and Directive Principles of State Policy containing objectives which though not enforceable in law are fundamental to the governance of the nation.

1.1 Sources of Law

The fountain source of law in India is the Constitution which, in turn, gives due recognition to statutes, case law and customary law consistent with its dispensations. Parliament, State Legislatures and Union Territory Legislatures enact statutes. There is also a vast body of laws known as subordinate legislation in the form of rules, regulations as well as by-laws made by Central and State Governments and local authorities like Municipal Corporations, Municipalities, Gram Panchayats and other

http://supremecourtofIndia.nic.in/new_s/constitution/
local bodies. This subordinate legislation is made under the authority conferred or delegated by either Parliament or state or Union Territory Legislature concerned. The decisions of the Supreme Court are binding on all Courts within the territory of India. As India is a land of diversities, local customs and conventions that are not against statute, morality, etc. are to a limited extent also recognized and taken into account by Courts while administering justice in certain spheres.

1.2 Judiciary

One of the unique features of the Indian Constitution is that, notwithstanding the adoption of a federal system and existence of Central Acts and State Acts in their respective spheres, it has generally provided for a single integrated system of Courts to administer both Union and State laws. At the apex of the entire judicial system, exists the Supreme Court of India below which are the High Courts in each State or group of States. Below the High Courts lies a hierarchy of Subordinate Courts. Panchayat Courts also function in some States under various names like Nyaya Panchayat, Panchayat Adalat, Gram Kachheri, etc. to decide civil and criminal disputes of petty and local nature. Different State laws provide for different kinds of jurisdiction of courts.
Each State is divided into judicial districts presided over by a District and Sessions Judge, which is the principal civil court of original jurisdiction and can try all offences including those punishable with death. The Sessions Judge is the highest judicial authority in a district. Below him, there are Courts of civil jurisdiction, known in different States as Munsifs, Sub-Judges, Civil Judges and the like. Similarly, the criminal judiciary comprises the Chief Judicial Magistrates, Judicial Magistrates of First, and Second Class.

2. Constitution of Supreme Court

On the 28th of January, 1950, two days after India became a Sovereign Democratic Republic, the Supreme Court came into being. The inauguration took place in the Chamber of Princes in the Parliament building, which also housed India’s Parliament, consisting of the Council of States and the House of the People. It was here, in this Chamber of Princes that the Federal Court of India sat for 12 years between 1937 and 1950. This was to be the home of the Supreme Court for years that were to follow until the Supreme Court acquired its own present premises.

The original Constitution of 1950 envisaged a Supreme Court with a Chief Justice and seven puisne Judges - leaving it to
Parliament to increase this number. In the early years, all the Judges of the Supreme Court sat together to hear the cases presented before them. As the work of the Court increased and arrears of cases began to cumulate, Parliament increased the number of Judges from 8 in 1950 to 11 in 1956, 14 in 1960, 18 in 1978 and 26 in 1986. As the number of the Judges has increased, they sit in smaller Benches of two and three - coming together in larger Benches of five and more only when required to do so or to settle a difference of opinion or controversy.

The Supreme Court of India comprises the Chief Justice and not more than 25 other Judges appointed by the President of India. Supreme Court Judges retire upon attaining the age of 65 years. In order to be appointed as a Judge of the Supreme Court, a person must be a citizen of India and must have been, for at least five years, a Judge of a High Court or of two or more such Courts in succession, or an Advocate of a High Court or of two or more such Courts in succession for at least 10 years or he must be, in the opinion of the President, a distinguished jurist. Provisions exist for the appointment of a Judge of a High Court as an Ad-hoc Judge of the Supreme Court and for retired Judges of the Supreme Court or High Courts to sit and act as Judges of that Court.
The Constitution seeks to ensure the independence of Supreme Court Judges in various ways. A Judge of the Supreme Court cannot be removed from office except by an order of the President passed after an address in each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two-thirds of members present and voting, and presented to the President in the same Session for such removal on the ground of proved misbehaviour or incapacity. A person who has been a Judge of the Supreme Court is debarred from practicing in any court of law or before any other authority in India. The proceedings of the Supreme Court are conducted in English only. Supreme Court Rules 1966 are framed under Article 145 of the Constitution to regulate the practice.

The following pages in this chapter is an attempt to highlight the various decisions of the Supreme Court of India on some of the provisions of various labour laws which have shaped a new thinking in those laws. Eight important enactments are chosen to assess the extent to which the Supreme court, decision have helped in giving a new direction to the labour laws in the country.
3. The Supreme Court of India and the Trade Union Law

It is now an accepted principle that trade unions have an important role to fulfil in the modern industrial state. They are the instrumentalities through which employees seek to get a fair share of the fruits of their labour. Trade Unions, portray the aspirations of the working class, that is, to assert the avowed and inalienable rights of the workers, to enjoy the dignity and status as human beings, to demolish the myth that labour is a commodity, a cog in the machine, to establish that they are equal partners in production and that while shareholders may contribute only the capital, the labour invests its sweat and blood.

The Supreme Court of India on numerous occasions has not only recognised and upheld the collective rights of the workers but also has helped preserve the democratic institutions of trade unions.

In the case of T.T. Devastanam v. Commissioner of labour,\(^3\) the question before Supreme Court was whether persons

\(^3\) 1979 ILLJ (AP) 448
working in a temple trust would fall within the
definition of workmen and the activity would be covered
as an industrial activity? The specific question that
came up before the court was whether the electricity and
water departments of the Tirumala Tirupathi Devasthanam
and the employees in those departments would be workmen
or not? The Court held that,

"In order to understand the meaning
of workmen one has to look into
section 2(g) of the Trade Unions Act
which not only defines what a trade
dispute is but also defines in the
later part who is a workman. Though
from the reading of the section it
indicates that the definition is
only for the purpose of that sub
section, in the absence of any other
definition of the expression
workmen, it would be reasonable to
adopt this definition even where
that expression occurs in other
parts of the Act. Hence, they are
workmen".

As regards to the other question which is, whether the
persons employed in the above referred departments are
industry or not the Court held that, the institution in
which workmen have been employed should be in the nature
of industry is clear from section 22 of the Trade Disputes Act. However, the expression trade or industry is not defined in the Trade Unions Act. Therefore, the meaning of the term industry as used in the Industrial Disputes Act, 1947, has been held to be equally relevant for the purpose of the Trade Unions Act, 1926.

The Court after referring to a host of its earlier decisions the viz., Hospital Mazdoor Sabha Case2, Nagpur Corporation Case3 and Madras Gymkhana Club Case4, held that the Electricity and Water Departments of the Tirumala Tirupthi devastanam will be an industry and the employees in those departments would be workmen.

Traditionally the persons working in temple trusts are viewed as people engaged in the service of god, however, the above decision of the Court proved to be a boon to the workmen working in temple trusts, as they could claim various benefits under the Industrial laws.

The concern of the Supreme Court in protecting the interest of the workmen and at the same time protecting the industrial economy was answered in the case of


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Indian Oxygen Ltd v. Their Workmen\textsuperscript{3}. The Supreme Court in this case addressed one important question. The question was whether members of the union have a right to attend various meetings and conventions during the working hours? The Court opined,

"In considering such a demand the first question which strikes one is as to why the meetings of the executive committee of the union cannot be held outside the hours of work. Even it is to be said that it may not be possible to do so if emergency arises, it remains to be said that emergencies are not of regular occurrence and if there be one, one of the earned leave can be sacrificed. Therefore, too much absenteeism harms both the employers and employees in as much as it saps industrial economy. Therefore, the demands of the union cannot be justified for asking the company to grant special leave for attending the meeting".

Too many absenteeism leads to loss in production and this in turn effects the economy. The above decision of the court comes as a relief to the employers.

\textsuperscript{3} 1969 I LLJ 235
With regard to the question, when an individual dispute can be treated as Trade Dispute, the Supreme Court in *Newspapers Ltd v. State Industrial Tribunal U.P.* observed that an individual dispute cannot per se be a trade dispute unless the cause is sponsored by a Trade Union or by a substantial number of workmen. Later in *Associated Cement Companies Ltd v Their Workmen,* the Supreme Court speaking on the binding effect of the award made by it on an industrial dispute raised by a group of workmen who may not represent all or even the majority of workmen it was held that,

"such an award not only binds the parties to the dispute or other parties summoned to appear but all persons who were employed in the establishment or who would be employed in future are also governed by the award".

It can be observed from the above decisions that the court was not interested in the minority disturbing the industrial peace.

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7 AIR 1957 S.C. 532
8 AIR 1960 S.C. 777
In another important decision of the Supreme Court in *M.T. Chandersenan v. Sukumaran* it was held that if subscription is not paid in accordance with the bye laws of the Trade Union, persons who have failed to pay cannot be considered as members of the Union. But subscription should not be refused under some pretext, which results in denial of membership. However in *G.S. Dhara Singh v E.K. Thomas* the Supreme Court has held that any amount received for and on behalf of members of trade union is liable to be refunded on resignation from the Trade unions.

The question as to whether a right to grant recognition to trade unions is a fundamental right within the meaning of Art 19(1) (c) the Constitution has been answered by the Supreme Court in *All India Bank Employees Association v. National Industrial Tribunal*. In this case it was held that right to form association does not carry with it the concomitant right that the association should be recognition of the union nor the discontinuance of recognition infringes the fundamental rights guaranteed under article 19(1) (c) the Constitution.

9 AIR 1974 S.C. 1789  
10 AIR 1988 S.C. 1829  
11 AIR 1962 S.C.171
Section 17 of the Trade Unions Act provides immunity to office bearers or members of a registered trade union from criminal conspiracy. In one of the important decisions of the Supreme Court in *Caltex (India) Ltd.* v. *E.Fernandes* the Supreme Court observed that the immunity from criminal conspiracy should be confined to trade disputes only. In the above case, the union secretary absented for his duty for several months without application to leave or without intimating the management. Therefore, the court held that on this occasion the immunity from criminal conspiracy could not be claimed.

4. The Supreme Court of India and the Industrial Disputes Law

The legislation dealing with Industrial Disputes in India is perhaps the only labour legislation, which lays down categorically the mutual rights and liabilities of employees and employers. The Supreme Court through its decisions has helped resolve conflicts and has allowed the progress of industry by bringing about harmony and cordial relationship between the parties. There have been landmark judgments of the Hon'ble court, which have

*A.I.R. 1957 S.C. 326*
checked the abuse of power by the employer under the Act. The decisions of the Supreme Court touching upon various provisions under the Industrial Disputes Act have broadened the range of rights available to an industrial worker. The concept of industrial worker itself has been so much broad based thanks to the Court, that today practically every activity falling within the sphere of employer and employee relation is covered under the term industry. Significant judgments have been delivered on the rights of the employer to close down an undertaking and on the rights of retrenched workmen.

The term "appropriate government" has given rise to many disputes among the contestants. The significance of the definition or meaning of the term appropriate government lies in the fact that it is only the specific government that is, the State or Central Government that has the power to refer an industrial dispute for adjudication to various bodies or authorities under the Act. The Act very specifically lays down certain industries with respect to which the Central Government is the appropriate government and in relation to any other industry which is not controlled, owned or managed by the Central Government or its agency, it is the State

13 Section 2 (a) of the Industrial Disputes Act, 1947
Government which is the appropriate government. The area of controversy in the above definition is with regard to the determination of the appropriate government in the case of an industry, which is located in more than one State. This question came directly before the Supreme Court in the case of *Lipton Ltd. v Their Employees*. The Delhi office of Lipton Ltd., apart from the employees working in Delhi territory, controlled the salesmen and other employees employed in the company in Punjab, Rajasthan, and U.P States also. An industrial dispute relating to fixation of grades and scales and bonus was referred to an Industrial Tribunal for adjudication at Delhi by the Delhi Administration which apart from the workmen employed in Delhi office also included the employees working in other States under the control of the Delhi office. The employer company raised a preliminary objection before the Tribunal that it had no jurisdiction to make an award in respect of the employees who were employed outside the State of Delhi. The Industrial Tribunal as well as the Labour Appellate Tribunal rejected this objection, as all the workmen were under the control of Delhi office whether they worked in Delhi or not, received their salary from Delhi

14 1959 I LLJ. 431 (436) (SC)
office and they were controlled from the Delhi office in the matter of leave, transfer, supervision etc. In these circumstances it was held that the Delhi State was the "appropriate government" not only with respect to the workmen employed in the Delhi office but in other offices as well which were controlled by the Delhi office. The Supreme Court in an appeal against the award held that the Industrial Tribunal had jurisdiction to adjudicate on the dispute between Lipton ltd., and its workmen of the Delhi office.

The definition of the term "industry" has generated a lot of case material. The term industry is the focal point of the Act. The rights and duties of the employers and employees centres around the meaning of the above term. The definition of industry is based on Section 4 of the Commonwealth Conciliation and Arbitration Act, 1904. In spite of various interpretations of the term, the definition has remained unchanged in the Act. (The 1982 amendment to the definition has not yet been notified)

One of the earliest cases which started the process of judicial interpretation by the Supreme Court was the
case of *D.N. Banerjee v P.K. Mukharjee*\(^{15}\). In this case Chief Justice Patanjalli Sastri along with brother judges B R Mukherjee, Chandrasekhara Aiyar, Bose & Ghulan Hasan set out on the task of clarifying the meaning of the term "industry."

Facts of the Case: Praful Chandra Mitra was the Head Clerk, and Phanindra Nath Ghose, the Sanitary Inspector of the Budge Budge Municipality and they were also members of the Municipal Workers’ Union. On receipt of complaint against them for negligence, insubordination and indiscipline, the Chairman of the Municipality suspended them on 13.7.1949 drew up separate proceedings and called for an explanation with in a specified date. After the explanations were received they were considered at a meeting of the commissioners confirmed the order of suspension and directed the dismissal of the two employees.

The cause of these two employees was espoused by the Union and therefore the State of West Bengal referred the matter for adjudication to the Industrial Tribunal under the Industrial disputes Act, 1947. The Tribunal made its Award on 13.2.1950 that the suspension and

\(^{15}\) A.I.R. 1953 S.C. 58
punishment of the two employees were cases of victimization and it directed their reinstatement in their respective offices.

The matter when taken before the High Court at Calcutta by means of a writ petition by the Municipality for quashing the orders of the Tribunal was rejected by the Court. Special leave was granted for the matter to be heard by the Supreme Court of India.

The important question that the Court was to answer was whether the Municipality in discharging it normal duties connected with local self-government is engaged in any industry as defined in the Industrial Disputes Act, 1947. The Court very closely examined some of the provisions of the Act to ascertain their true scope and meaning. The Court observed that,

"The limited concept of what an industry meant in early times must now yield place to an enormously wider concept so as to take in various and varied forms of industry, so that disputes arising in connection with them might be settled quickly without much dislocation and disorganization of the needs of society and in a manner
more adapted to conciliation and settlement..."

The Court referred to the Australian case where a similar question came up for decision in the case of *Federated Municipal and Shire Council Employees, Union of Australia v. Melbourne Corporation*,\(^1\) and held that "profit making may be important from an income tax point of view" but from the point of an industry it is not. The court submitted that the municipal activity couldn't be truly regarded as business or trade. But it held that the municipal activity would fall within the expression "undertaking" and as such would be an "industry".

Later in *Baroda Municipality v Its Employees* \(^2\) the Supreme Court reaffirmed the decision in the above case (supra) and held that those branches of work, which are analogous to trade, or business would fall within the definition of industry.

Again in *Corporation of City of Nagpur v its employees*\(^3\) the Supreme Court brought the activities of Municipal Corporation within the words business or trade and made a distinction between regal and municipality...\(^3\)

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\(^1\) 26 Com WLR 508  
\(^2\) A.I.R. 1957 S.C. 121  
\(^3\) A.I.R. 1969 S.C. 675
function. The Court said that non-regal function would fall within the expression business or trade.

The question whether hospital is an industry or not came for determination by the Supreme Court on a number of occasions. In State of Bombay v. Hospital Mazdoor Sabha, the services of two of the members of the union were terminated by way of retrenchment by the government. The union claimed for their reinstatement. But it was claimed by the state that the hospital did not come within the meaning of industry.

Upon this contention the Supreme Court held that the hospital was an industry. However later in Safdar Jung Hospital Case and Dhanraj Giri Hospital Case, hospital was held as not an industry.

But later as an effect of the decision in the Bangalore Water Supply case, the decision in the Hospital Mazdoor Sabha Case has been upheld. Thus, all hospitals fulfilling the test laid down in that case will be industry.

19 A.I.R. 1960 S.C. 610
21 A.I.R.1975 S.C. 2032
23 A.I.R. 1960 S.C. 610
The Supreme Court in a number of cases has also dealt the question whether Educational Institutions would come within the meaning of industry elaborately. In University of Delhi v. Ram Nath24 the Supreme Court has ruled that the work of imparting education is more a mission and a vocation than profession or trade or business and therefore University is not an industry. Again in Osmania University v. Industrial Tribunal Hyderabad25 also the university was considered as not an industry.

However, in Ahmedabad Textile Industry Research Association v. State of Bombay26 an association was formed for funding a scientific research institute. The Supreme Court held that,

"Though the association was established for the purpose of research its main object was the benefit of the members of the association hence for the above reason the association is an industry".

24 A.I.R. 1963 S.C. 1873
25 1960 I LLJ 593
26 A.I.R. 1961 S.C. 484
In *Cricket Club of India case* 27 and *Madras Gymkhana Club* 28 case, which are two, leading cases on the point as far as the clubs are concerned. The decision in the above two cases has been over ruled by the *Bangalore Water Supply Board case.* 29

However, the decision of the Supreme Court of India in the case of *Bangalore Water Supply and Sewerage Board v. A. Rajappa* 30 on the concept of industry still ranks as the landmark judgment. The court had travelled a long distance before rendering judgment in this case.

In this case, the workers filed an application under section 33 C (2) of the Industrial Disputes Act, 1947 against the Bangalore Water Supply and Sewerage Board. The Board raised a preliminary objection that it being statutory body performing the regal functions of the State was not an "industry" under the Industrial disputes Act, 1947. The objection having been overruled by the labour court the management appealed to the Supreme Court, by special leave from the order of the labour court. The three judge bench who initially heard the petition found it necessary to refer the question to

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27 *Cricket Club of India v. Labour Union* A.I.R. 1969 S.C. 276
29 *Supra* n 22
30 *Ibid*
a larger bench. This led to the constitution of seven-member bench to enter into a detailed examination of earlier decisions with a view to finding out a rational basis of determining the true meaning and scope of the term industry. Justice V.R. Krishna Iyer delivered the majority judgment. The Court observed,

"A look at the definition, dictionary in hand decisions in head and Constitution at heart, leads to some sure characteristics of an industry narrowing down the twilight zone of turbid controversy. An industry is a continuity, is an organized activity, is a purposeful pursuit - not any isolated adventure, desultory excursion or casual, fleeting engagement motivelessly undertaken. Such is the common feature of a trade, business, calling, manufacture, mechanical or handicraft based, service, employment, inductile occupation or avocation."

The Court further observed that,

"The sovereign functions of the State cannot be included although what such functions are has been
aptly termed "the primary and inalienable functions of a constitutional government"...if there are industrial units severable from the essential functions and possess an entity of their own it may be plausible to hold that the employees of those units are workmen and those undertakings are industries. A blanket exclusion of every one of the host of employees engaged by government in departments falling under general rubrics like justice, defence, taxation, legislature, may not necessarily be thrown out of the umbrella of the Act."

The Court during the course of the judgment laid down a working principle, which become the testing point for all future clarifications on the definition of industry. The Court observed,

"Industry as defined in section 2(j) has a wide import. Where (i) systematic activity, (ii) organized by co-operation between employer and employee (iii) for the production and or distribution of goods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss
i.e. making on large scale prasad or food) prima facie, there is an industry in that enterprise.

(a) Absence of profit motive or gainful objective is irrelevant, (b) be the venture in the public, joint, private or other sector. (c) The true focus is functional and the decisive test is the nature of the activity with special emphasis on the employer-employee relations. (d) If the organization is trade or business, it does not cease to be one because of philanthropy animating the undertaking..."

Thus, any activity, which full fills the test, laid down in the above case shall fall within the meaning of industry.

The definition of "industrial dispute" is of great importance under the Act. The Act provides for a set of authorities to settle industrial dispute and not other dispute. The appropriate government is also empowered to refer only industrial dispute for adjudication. Therefore it becomes very important to figure out an industrial dispute. The definition as contained in the Act has itself laid down the limitations to subject
matter and parties to the dispute. The definitions of the term industrial dispute as contained in the Act had been subject to numerous decisions of the courts. However, the controversy surrounding the term "any person" as used in the definition gave an opportunity to the Supreme Court of India to clarify its meaning and scope. In this regard the decisions of Supreme Court in the case of Workmen of Dimakuchi Tea Estate, v. Management of Dimakuchi Tea Estate\(^1\) ranks as the most comprehensive in clarifying the meaning of the term "any person" as used in the definition.

The Supreme Court in the above case very briefly summarized the objects of the act as: -

1. The promotion of measures for securing and preserving amity and good relations between the employers and workmen;
2. An investigation and settlement of industrial disputes between employers and employers, employers and workmen, or workmen and workmen with a right of representation by registered trade unions or federation or trade unions or association of employers or a

\(^1\) A.I.R. 1958 SC 353
federation of associations of employers;

(3) Prevention of illegal strikes and lockouts;

(4) Relief to workmen in the matter of layoff and retrenchment; and

(5) Collective bargaining.

The facts of the case related to one Dr. K.P. Banerjee, who was appointed as an assistant medical officer of the Dimakuchi tea estate with effect from November 1, 1950. He was appointed subject to a satisfactory medical report and on probation for three months. Dr. Banerjee was given an increment of Rs. 5/- per mensem in Feb. 1951, but on April 21, he received a letter wherein it was stated that his services is terminated with effect from 22 April 1951. No reasons were given in the notice of termination. The cause of Dr. K.P. Banerjee was espoused by the Assam Chah Karmachari Sangha. When the matter was referred to a Board consisting of the labour commissioner, Assam, it recommended the reinstatement of Dr. K.P. Banerjee from the date of discharge. Meanwhile, Dr. Banerjee received a sum of Rs. 306/- on May 22, 1951 and left the tea garden in question.
The Government of Assam in December 23, 1953 referred the matter for adjudication to a tribunal. The tribunal came to the conclusion that Dr. Banerjee not being a workman, his case is not one of an industrial dispute under the Industrial Disputes Act and his case is therefore beyond the jurisdiction of the tribunal. The Labour Appellate Tribunal of India, Calcutta also affirmed the decision of the tribunal.

The matter came before the Supreme court of India by way of special leave and the only question for determination was "whether a dispute in relation to person who is not a workman falls within the scope of the definition of industrial dispute contained in section 2(K) of the Industrial Disputes Act, 1947?" The Supreme Court proceeded on the hypothesis that Dr. K.P. Banerjee was not a workman with in the meaning of the Act and then decided the question if the dispute in relation to the termination of his services still fell within the scope of the term "any person" as used in section 2(k). Relying upon the decision delivered by Chief Justice Chagla, in the case of Narendra Kumar Sen v. Sall India
Industrial disputes (Labour Appellate Tribunal), the Court stated that,

"It seems fairly obvious to us that if the expression "any person" is given its ordinary meaning, then the definition clause will be so wide as to become inconsistent not merely with the objects and other provisions of the Act, but also with other parts of that vary clause."

It can be seen here that the Court here was guided by the objectives of the Industrial Disputes Act, 1947, in ascertaining the meaning of the term "any person".

The Supreme Court of India while answering the question as to who is the employer in labour law in the case of Hussainbhai v. Alath Favgory Thozhilali Union and others observed that,

"If the livelihood of the workmen substantially depends on labour rendered to produce goods and services for the benefit and satisfaction of an enterprise, the absence of direct relationship or the presence of dubious

32 A.I.R. 1953 Bom 325 p 326 (a)
33 II L.J 1978 SC 397
intermediaries or the make-believe trappings of detachment from the management cannot snap the real life bond."

In this case the petitioner, owner of a rope-making factory, had engaged a number of workmen, through contractors and an industrial award came to be passed. The petitioner contended before the High Court that the workmen were not his and that they were the contractors' workmen. This contention was negatived by the High Court. Special leave was granted to come before the Supreme Court of India. The Court referred to its earlier decision in the case of Ganesh Bidi and held that,

"the presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contractu is of no consequence when, on lifting the veil or looking at the conspectus of factors governing employment, to discover the naked truth, though draped in different paper arrangement, that the real employer is the management, not the immediate contractor."

M. 1974 I LLJ 367
The case of *Standard-Vacuum Refining Co. of India Ltd. v Their Workmen And Another*\textsuperscript{35} is a landmark decision to determine an "industrial dispute". In this case a dispute was raised by the workmen of a refinery company with respect to contract labour employed by the company for cleaning maintenance of the plant and premises of the company's refinery. The work was given to contractors for a period of one year and the result of the system was that there was no security if service to the workers who were in effect doing the work of the company. Besides, the contractor was paying much less than the amount paid by company and they enjoyed no other benefits and amenities given to the regular workers, though their work was also of a permanent nature. The workmen wanted that the contract system should be abolished and the workers under the contractors should be treated as workers as the workers of the company. It was contended by the company that there was no industrial dispute and that it was not open to the workmen to raise a dispute with respect the workers of contractor. It was also urged that the tribunal was not justified in directing that contract

\textsuperscript{35}AIR 1960 SC 948
The court had to decide on the following questions namely:-

1. Whether there was an industrial dispute?

2. Whether the ingredients of Section 2(k) are satisfied?

3. Whether the tribunal was justified in abolishing the contract system in the company?

Reliance in this connection was placed on the definition of industrial dispute in sec 2(k) of the Act and the judgment of the Supreme Court in Workmen of Dimakuchi Tea Estate v. Management if Dimakuchi Tea estate\(^{36}\).

The first question was answered in the affirmative by the Court on the ground that "how the work should be carried on was certainly a matter of some interest to the workman". Hence, there is a dispute. Moreover, the fact that the contractor employed the workmen does not make the espousal unjustified. The court also relied on the arguments made by the counsel for the workmen that "if the company were to carry on this part of the work under the contract system, they may introduce the same system in other branches of the work too" hence was

\(^{36}\textit{Supra} n 31\)
prejudicial to the interest of the workman. Therefore, there is real and substantial dispute between the workman and the company.

The second question was also answered in the affirmative by the court on the grounds that, there is community of interest between the respondents and the workmen whose cause has been espoused. The fact that both of them belong to the same class i.e. workmen and they are doing work for the same employer, more so the manner in which the work should be carried on is also matter of interest to the workman hence the conditions of section 2(k) i.e. (1) and (2) are satisfied.

The Court in the following manner answered the third question-

"We agree that whenever a dispute is raised by workman with regard to employment of contract labour by any employer it would be necessary for the tribunal to examine the merits of the dispute apart from the general consideration that contract labour should not be encouraged, and that in a given case the decision should rest not merely on theoretical or abstract objections
to contract labour but also on the terms and conditions on which contract labour is employed and the grievance made by the employers in respect thereof".

It was further held that,

"Where contract system was carried on in order to camouflage the work as if it was done through contractors in order to pay less to the workmen there the system should be abolished".

In the present case even though this being not true the order of the tribunal was upheld on the ground that the work done by the contract workers was perennial, incidental and necessary for the company in its day-to-day work.

However stringent the Industrial law in India, the employer somehow finds a way out to discharge the workman from employment. The poor workman cannot find reason for his termination. The Supreme Court in the case of *L.Michael and another v. M/s. Johnson Pumps India Ltd.*[^37^] laid down the guideline for the employer to adhere to in case of termination of the services of the

[^37^]: LLJ 262 SC (1975)
workman for loss of confidence. The facts of the case relate to one Mr. Michael, a permanent employee of proved efficiency and six years standing. He was given two increments on merit. However, a letter dated September 2, 1970 terminated his service, giving him one month’s "notice-pay." No reason was given for his sudden termination.

The workman through the union protested this and the matter was referred to the Labour court for adjudication. The union claimed that the act of the employer was in flagrant violation of elementary principles of natural justice. The management submitted in the court the workman misused his position as receipt and dispatch clerk and passed on office correspondence and secret information about the affairs to certain outsiders. As a result of these activities the management lost confidence in the employee, which resulted in his termination of service. Therefore, it contended that the action was legal and immune to judicial interference.

In the words of Justice Krishna Iyer who, delivered the judgment, the only legal issue was
"Whether the act of the employer that he has lost confidence in the employee is sufficient justification to jettison the latter without levelling and proving to the court the objectionable conduct which has undermined his confidence so that the Tribunal may be satisfied about the bonafides of the "firing" as concoted with the colourable exercise of power hiding a not so innocuous purpose."

The Court observed,

"To hit below the belt is not industrial law." An employer, who believes or suspects that his employee, particularly one holding a position of confidence, has betrayed that confidence can, if the conditions and terms of the employment permit, terminate his employment and discharge him without any stigma attaching to the discharge. But such belief or suspicion should not be a mere whim or fancy. It must rest on some tangible basis and the power has to be exercised by the employer objectively, in good
faith, which means honestly, with due care and prudence. If the exercise of such power is challenged on the ground of being colourable or mala fide or an act of victimization or unfair labour practice, the employer must disclose to the court the grounds of his impugned action so that the same may be tested judicially."

The Court ordered that the employee should be reinstated with back wages. However, the management will be free to proceed against the workman for misconduct, if it has sufficient material. This case is another example as to how the Supreme Court has reposed the confidence in the Industrial law of the country.

The definition of workman as defined under section 2(s) of the Industrial Disputes Act, 1947, has been a subject matter of debate by the Supreme Court. In Burmah Shell Oil Storage And Distribution Co. of India v. Burmah Shells Management Staff Association38 case an attempt was made on behalf of workers to side the scope of the definition of workman so as to include all categories of employees other than those specifically excluded in the

38 1970 2 LLJ 590 (S,C)
restrictive part of the definition. But the court took the other view and held that,

"if every employee of an industry was to be a workman except those mentioned in the four exceptions these four classification need not have been mentioned in the definition and a workman could have been defined as a person employed in an industry except in cases where he was covered by one of the four exceptions. The specification of the four types of work obviously is intended to lay down that an employee is to become only if he is employed to do work of one those types, where there may be employees who not doing any such work could be out of the scope of the word workman without resort to the exceptions."

Thus it could said by virtue of the above decision that the definition of workman is not at all comprehensive but is limited to categories of work mentioned in the definition. In another case decided by the Supreme Court the definition of workman has been enlarged. Thus in S.K. Verma v Mahesh Chander the court enlarged the scope.

39 1983 I LLJ 429 (S.C.)
and coverage of the definition of workman. The Court made the following observation,

"The words any skilled or unskilled manual, supervisory, technical or clerical work are not intended to limit or narrow down the amplitude of the definition of workman, on the other hand they indicate and emphasize the broad sweep of the definition which is designed to cover all manner of persons employed in an industry, irrespective of whether they are engaged in skilled work or unskilled manual work, supervisory work, technical work or clerical work. Obviously the broad intention is to take in the entire labour force and exclude managerial force"

This decision of the Supreme Court is exactly contradictory to the decision in the Burmah Shell case.⁴⁰ Again, in another decision, however the Supreme Court has shown that it has not departed from what was laid down in Burmah Shell Case. Thus in A.Sundarambal v Government of Goa, Daman and Diu⁴¹ it was held that,

⁴⁰ Supra n 38
⁴¹ A.I.R. 1988 S.C. 1700
"We are concerned in this case primarily the meaning of the words skilled or unskilled manual, supervisory, technical or clerical work. If an employee of an industry is not a person engaged in doing work falling in any of these categories he should not be workman even though he is employed in an industry".

In *May and Baker (India) Ltd.*, v Their workman 42 the question that came up before the Supreme Court was whether sales representative is a workman or not? In this case the management terminated the services of Mr. Mukherjee. The tribunal held that he was workman within the meaning of section 2(s) of the Act. On appeal the Supreme Court came to the conclusion that

"He was not workman as he was not employed to do the categories of work mentioned in the definition of workman as he was not covered by the term any person employed in industry to do any skilled or unskilled manual or clerical or technical work for hire or reward".

42 1961 LLJ 94 S.C
Shivananda Sharma v. Punjab National Bank can be considered as the first case where the test for determining the employer and employee relationship was taken up. The Supreme Court in this case held that "supervision or control" test was a crucial one. In another case that is Dharangdara Chemicals Works v. State of Sourastra the Supreme Court has held that "the test of supervision and control may be taken as the prima facie test for determining the relationship of employment but control and direction are decisive for proving the relationship.

In Silver Jubilee Tailoring House v Chief Inspector of Shops and Establishments, the Supreme Court held that "control" is obviously an important factor and in many cases, it may still be the decisive factor, but it is wrong to say that in every case it is decisive. It is now no more than a factor, although an important one. The matter was again considered by the Supreme Court in All India R B I Employees Association v. R.B.I, in this case the court elaborated the matter by saying that

1955 2 LLJ 688 S.C
A.I.R. 1957 S.C. 264
1973 2 LLJ 495 S.C.
1965 2 LLJ. 175 S.C.
"In order to fall within the scope of expression any person a person need not be a workman strictly under the act. But he must be a person in whose condition of employment etc., workers must be having direct and substantial interest or with whom they have community of interest".

In *Newspapers Ltd v. State Industrial Tribunal U.P*\(^7\), The Newspapers dismissed an employee; the U.P Working Journalists Union with which the employee had no connection took up his cause. The U.P government referred the dispute to a tribunal. The tribunal ordered reinstatement. The appellate tribunal and the Allahabad High Court successively affirmed. In an appeal to the Supreme Court the Newspapers contended that the reference was bad because the subject matter of the dispute referred by the U.P government was an individual dispute and not an industrial dispute. The Supreme Court held that,

"The act is based on the necessity of achieving collective amity between labour and capital by means of conciliation, mediation and adjudication. The objectives of the act is the prevention of industrial 

\(^7\)A.I.R. 1960 S.C. 1328
strife, strikes and lock outs and the promotion of industrial peace and not to take the place of the ordinary tribunals of the land for the workman. Thus viewed the provisions of the Act lead to the conclusion that its applicability to an individual dispute as opposed to dispute involving a group of workmen is excluded unless it acquires the general characteristic of an industrial dispute viz, the workmen as a body or a considerable section of them make common cause with the individual workman. Thus, the Uttar Pradesh Working Journalists Union cannot be called "workman" nor is there any indication that the individual dispute had been transformed into an industrial dispute."

In Workman of Dimakuchi Tea Estate v Dimakuchi Tea Estate, the Supreme Court has laid down two tests in determining whether an individual dispute can be treated as an industrial dispute. To hold that the two tests of an industrial dispute as defined by section 2(k) of the industrial disputes act must therefore be one.) The dispute must be a real dispute capable of being settled

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4 Supra n 31
by relief given by one party to the other and two.) The person in respect of whom the dispute raised must be one in whose employment, non employment, terms of employment or conditions of labour the parties to the dispute have a direct or substantial interest and this must depend on the facts and circumstances of each particular case.

Later in *Western India Match Co v. Western India Match Co Workers Union*, "the Supreme Court held that, "After the Dimakuchi case there is no doubt that a dispute relating to any person becomes a dispute where the person in respect of whom it is raised is one in whose employment, non employment, terms of employment or conditions of employment or conditions of labour the parties to the dispute have a direct or substantial interest".

In *Central Provinces Transport Services Ltd., v. Raghunath Gopal Patwardhan* there was a considerable conflict of judicial dicta both in the High Courts and in Industrial tribunals and three different views had been expressed thereon.

\(^{25}\) A.I.R. 1970 S.C. 1205
\(^{30}\) A.I.R. 1957 S.C. 104
1. A dispute between an employer and a single workman cannot be an industrial dispute.

2. It can be an industrial dispute.

3. It cannot be per se an industrial dispute but may become one if it is taken up by a trade union or a number of workmen.

On consideration of these judicial opinions the Supreme Court preferred the last one.

In Bombay Union of Journalists v the Hindu 51 the question that came up before the Supreme Court was whether it is necessary for concerned workman to be a member of the union, which has espoused his cause at the time when that cause arose? The Court held that,

"The test whether an individual dispute got converted into an industrial dispute depended on whether on the date of the reference the dispute was taken up and supported by the union of workmen or the employer against whom the dispute was raised by an individual workman or by an appreciable number of such workmen".

51 A.I.R. 1963 S.C. 318
Before the amendment of the section 10 of the Industrial Disputes Act in the year 1952 the Supreme Court in United Commercial Bank Ltd., v U.P. Bank Employees Union case had held that "the decision of the appropriate government referring an industrial dispute is amenable to judicial review.

Later in the case of *State of Madras v. C.P. Sarathy* the Supreme Court laid down certain propositions based on the unamended act, they are as follows:

1. The government should satisfy itself on the facts and circumstances placed before it as to whether an industrial dispute exists or apprehended
2. It is entirely for the government to decide whether dispute should be referred or not
3. The order making a reference is an administrative act and is not judicial or quasi judicial.
4. The order passed by the government cannot be challenged in the High Court under article 226 of the constitution to see if the government had material before it to support the conclusion that the dispute existed or was apprehended.

51 A.I.R. 1953 S.C. 437
52 A.I.R. 1953 S.C. 53
Strike as we know is a weapon available to the workmen in the industrial warfare. A weapon if used properly brings the erring employer to the negotiating table. The threat of strike sometimes prevents the management from taking decision determinate to the workers. An example of this is provided by the decision of the House of Lords in *Rookes v. Barnard*.55

One Douglas Edwin Rookes was employed for many years in BOAC as a skilled draughtsman at London Airport. He was a member of a trade union, viz. the Association of Engineering and ship-building Draughtsman to which all who were employed in the drawing office of BOAC belonged. He and another man become dissatisfied with the conduct of the union and resigned from it. The union was very anxious to preserve the position that no non-member should be employed in that office and they took energetic steps to get Rookes rejoin. On the refusal of Rookes, the union threatened. Under this threat, the BOAC was induced first to suspend and then to terminate the employment of Rookes.

Under the Industrial Disputes Act, 1947, certain prohibitions have been laid down for the workmen to

54 The term 'weapon' was used by Lord Loreburn L.C in *Conway v. Wade* (1909) A.C. 506 (515) H.L. as quoted by O.P. Malhotra
55 [1964] I All. E.R. 367 (H.L.)
declare strike. Sections 22 to 25 contain these prohibitions. Even though there is no fundamental right to strike, in a democratic state like India the workers have the right to resort to strike in order to express their grievances or to make certain demands. The problem in this area is with regard to wages for the strike period. Can the workmen be entitled for wages when the strike is unjustified or illegal? In India, it is not objects, which make the strikes illegal, but it is the breach of the statutory provisions which renders the industrial strikes illegal. The Supreme Court of India was called upon to answer the question of wages for the strike period in the case of *Crompton Greaves Limited v. Workmen*. In this case the workmen of the appellant had gone on strike protesting against retrenchment resorted to by the appellant. Later, the question of wages for the strike period came before the tribunal for adjudication and the tribunal upheld the claim of workmen for wages for a portion of the strike period. It is to quash this award; the appellant came before the Supreme Court. It was held by the Supreme Court that in order to entitle the workmen to wages for the period of strike, the strike should be legal as well as violate

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*1978 II LL.I. S.C. 80*
any provision of the statute. Use of force and acts of violence or acts of sabotage resorted to by the workmen during a strike disentitled them to wages for the strike period. In the instant case however the court held that the strike was neither unjustified nor illegal.

The decision of the tribunal and its confirmation by the Supreme Court can be seen as a check on the misuse of the weapon of strike. The judgment is a welcome relief to the employers. In a country, which is striving for attaining the status of a developed nation, such judgments by the Supreme Court can be seen as encouraging industrial progress.

The Supreme Court of India has been sympathetic towards the cause of the workmen. In a country where employment opportunities are limited, the Court realized the need for mitigating the hardship arising out of sudden and involuntary unemployment of the workmen. In the case of *Punjab National Bank v. Ghulam Dastagir*, Justice Krishna Iyer has very beautifully summed up the purpose of our Constitution in the following words,

"Social justice is the signature tune of the Constitution of India"

*ILLJ (1978) SC 312*
The facts of this case related to one Ghulam Dastagir, a driver employed by the Area Manager of the appellant Bank in Calcutta. The driver was paid out of the personal allowance given to the Area Manager by the Bank. The termination of the service of the respondent was a hotly contested matter before the Industrial tribunal. The reference to the tribunal was on the question whether Ghulam Dastagir was the driver of the said Bank? The Industrial tribunal examined the matter and came to the conclusion that the driver was employed by the Bank. Consequently, a direction for reinstatement together with backwages was made.

The Bank preferred an appeal to the Supreme Court and the court held that there in nothing on record to indicate that the control and direction of the driver vested in the Bank. There is no nexus between the driver and the Bank. Hence the tribunal award was set aside.

However, the court was sympathetic towards the cause of the individual workman and therefore observed,
"That the system of allowance in a country where unemployment is rampant may lead to individual injustice and exploitative edge. This is not desirable tendency for a public sector undertaking like a nationalized Bank which has an obligation to be an model employer."

Further the court ordered that the Bank pay an ex gratia payment of Rs.7, 500/- to the driver as also costs of Rs.2000/- The Bank was also asked to offer employment to the driver.

This decision of the Court is a teller on the point as to how the employer class could exploit our labour laws and how the courts could implement real meaningful social justice enshrined in our constitution.

In Chemicals and Fibres of India Ltd. v. D.G.Bhoir and others an important question that arose before the Supreme Court was whether, when a reference is pending before a labour court in respect of a matter under section 2A, any strike by the other workers would be illegal.

1975 II LL. J S.C. 168
Facts of the case: - The appellant company dismissed one of its employees, M.S. Bobhate, which led to the government of Maharashtra making a reference to the Labour Court under section 10(1) (C) of Industrial Disputes Act, 1947. A little later the appellant company dismissed three other workers, Dastoor, Shome and Soman, after an enquiry and this led to a strike in the appellant's factory. Towards the end of October, 1972 the company discharged about 312 of its employees, and filed 12 applications before the Industrial tribunal for approval of such discharge on the ground that a reference was pending before it. The appellant pleaded before the tribunal that the strike was illegal as a reference was pending in respect of Bobhate and, therefore the discharge of its workers by the appellant was in order and approval should be granted. On August 30, 1973, the tribunal rejected all the applications for approval. Therefore, the appellant came before the Supreme Court on special leave granted by the court.

The only point for determination before the court was whether when a reference is pending before the labour court in respect of a matter falling under section 2 A any strike by the other workers would be illegal. The court observed that the introduction of section 2 A was
with the objective to give relief to the individual workman who was discharged or retrenched or whose services were otherwise terminated without it being it necessary for the relationship between the employer and the whole body of employees being attracted to that dispute and the dispute becoming a generalized one between labour on the one hand and the employer on the other. Commenting on section 23 the court observed that in the case of an industrial dispute between an individual workman and the employer the whole elaborate machinery set forth in the Act may not be necessary lest it would be like using a sledge-hammer to kill a flea. While there is justification for preventing a strike when dispute between the employer and general body of workmen is pending adjudication or resolution, it would be too much to expect that the legislature intended that a lid should be put on all strikes just because the case of a single workman was pending. In the result the court held that the pendency of a dispute between an individual workman as such and the employer does not attract the provisions of section 23. During the course of the judgment the court submitted that if strikes are to be prohibited merely because the case of an individual workmen was pending whose case had not been
espoused by the general body of workmen, there can never by any strike even for justifiable reasons. A strike is a necessary safety valve in industrial relations when properly resorted to.

Justice Krishna Iyer answered a very important question relating to compensation for an illegal strike by the workmen. Whether the Rohtas Industries limited can claim the loss suffered by it because of the illegal strike by its workmen was the question to be answered by the Supreme Court in the case of Rohtas Industries Limited and another v. Rohtas Industries Staff Union and others. There was a strike in the Rohtas industries which came to an end by virtue of memorandum of agreement and as per the agreement the employees claim for wages and salaries for the period of strike and the company's claim for compensation for losses due to strike was referred to arbitration. The award of the arbitrator inter alia submitted that the workmen jointly and severally were liable to pay to the management a sum of Rs.80,000/- for the loss caused due to the illegal strike. This award came to be challenged in the Supreme Court. Justice Krishna Iyer during the course of the judgment observed,
"Industrial law in India has not fully lived up to the current challenge of industrial life, both in the substantive norms or regulations binding the three parties—the State, Management and Labour—and in the processual system which has baulked, by dawdling disfunctions, early finality and prompt remedy in a sensitive area where quick solution is of the very essence of real justice."

The Court held that the employer's claim for a compensation for an illegal strike is to be found in the statute only in the form of prosecution for starting and continuing an illegal strike, no other relief outside the Act can be claimed on general principles of jurisprudence. The court further observed,

"Our Constitution guarantees the right to form associations, not for gregarious pleasure, but to fight effectively for the redressal of grievance... English history, political theory and life-style being different from Indian conditions, replete with organized boycotts and mass sathyagraha we cannot incorporate English tort
The judgement in the above case illustrates the Supreme Court's concern for the cause of the workers. One could very well imagine the plight of the workers had the court upheld the award of the arbitrator.

In *Punjab National Bank v Their Employees* the question that came up before the Supreme Court was whether stay-in or sit-down strike would be a strike? The Supreme Court held that,

"On a plain and grammatical construction of the definition of section 2(q) it would be difficult to exclude a strike where workmen enter the premises of their employment and refuse to take their tools in hand and start their usual work. Refusal under common understanding to continue to work is a strike and if in pursuance of such common understanding the employees entered the premises of the bank and refused to take their pens in their hands that would be a strike under section 2(q)".

60 AIR 1960 S.C. 160
On the question whether an illegal strike be justified the Supreme Court in *Indian General Navigation of Railway Company Ltd., v. their Workman*, has held that,

"A strike which is illegal can not be characterized as "perfectly justified" and these two conclusion cannot in law co-exist. The law has made a distinction between a strike which is illegal and one which is not, but it has not made any distinction between an illegal strike which may be said to be justifiable and one which is not justifiable".

Later in *Model Mills v Dharan Das* the Supreme Court has held that even though the reasons for going on strike may be completely justified yet the illegal strike would be totally unjustified.

In *Statesmen Ltd v Their Workman*, certain workman went on an illegal strike and the management declared a lock out. The question arose whether the workmen are entitled to wages for the period of illegal strike or legal lock out? The Supreme Court observed that irrespective of the legality of strike the tribunal has discretion to pass

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61 A.I.R. 1960 S.C. 219
62 A.I.R. 1958 S.C. 311
63 1976 I L.L.J 484
such order regarding wages during the strike period as justice, fair play and pragmatic wisdom dictate. In *Kairbetta Estate v. Rajamanickam* "the manager of the estate was assaulted by some of the workmen as a result of which he suffered fractures and was hospitalised for a month. Other members of the staff were also threatened and they wrote to the management stating that they were afraid to go to the affected division of the estate as their lives were in danger. On receiving this communication, the management notified that the affected division would be closed until such time as workmen gave an assurance that there would not be any further trouble and that the members of the staff world not be assaulted. In due course of time the work resumed. The affected workers claimed lay off compensation for the period they had been locked out. The Supreme Court held that,

"Stated broadly lay off generally occur in a continuing business where as a lock out is the closure of the business. In the case of lay off owing to the reason specified in section 2(kkk) the employer is unable to give employment to the workmen. In the case of lock out,
the employer close the place of the business and lock out the whole body of workmen for reason which have no relevance to causes specified in section 2(kk)".

In *Express Newspapers Ltd. v Their workman*, the distinction between lock out and closure has been explained by the Supreme Court. In this case the court held that,

"In the case of closure the employer does not merely close down the place of business but he closes the business itself finally and irrevocable. A lock out on the other hand indicates the closure of the place of business and not closure of the business itself. Lock out is usually used by the employer as weapon of collective bargaining to compel the employees to accept his proposals, just as a strike is a weapon in the armoury of labour in the process of collective bargaining to compel the employer to accept their demands".
In *Hariprasad Shiv Shanker Shukla v. A.D.Divalkar, (Barsi Light Rly Co., v K.N.Joglekar)*, the Government of India decided to take over the undertaking of the Barsi light railway co. The company served a notice on its workmen that due to termination of its contract with the government, their services would also be terminated. When the undertaking was actually taken over about 77% of the staff of the company was re-employed: those who were not, filed application for payment of retrenchment compensation under section 25F of the industrial disputes act. The Bombay high court held that the workmen were entitled to retrenchment compensation.

When the matter came up before the Supreme Court, it reversed the decision of the high court and ordered for no compensation. It held that "retrenchment means the discharge of surplus labour or staff by the employer for any reason whatsoever, otherwise than on a punishment inflicted by way of disciplinary action, and it has no application where the services of all workmen have been terminated by the employer on a real and bona fide closure of business or where the services of all workmen have been terminated by the employer on the business or undertaking being taken over by another employer".

65 AIR 1957 S.C. 121
In *K.T.Rolling Mills's v M.R.Meher*\(^{6}\), the company runs a steel rolling mill. It employed less than 50 workmen on an average per working day. They claimed such compensation because they had suffered involuntary unemployment. However, the Court held that,

"The provisions for payment of compensation for lay off do not mean that the employer can pay lay off compensation and declare lay off. Payment of compensation is not condition precedent to lay off. Compensation cannot be awarded in advance of actual lay off".

In *Workmen of Firestone Tyre and Rubber Company of India Ltd., v The Firestone Tyre and Rubber Company*\(^{67}\) case, the respondent was a manufacturing company at Bombay having its distribution office at Delhi. Thirty workmen were employed in Delhi office. As a result of strike in the company, there was short supply of tyres to the distribution office. Out of 30 workmen, the management laid off 17. There were no certified standing orders, not was there any term of contract of service conferring any right of lay off. It was held that,

\(^{6}\) A.I.R. 1963 (Bom) 146
\(^{67}\) A.I.R. 1976 S.C. 1775
"The workmen were laid off without any authority of law or the power in the management under the contract of service. Chapter V-A of the act does not cover such a case. Therefore the workmen would be entitled to their full wages, but in case of a reference under section 10(1) the tribunal may award a lesser sum depending upon the justifiability of the lay off. Lay off compensation is payable only in those cases to which chapter V-A applies".

In *State Bank v Sunder Money*², the date of termination of services was written in the appointment order itself. The question was whether a stipulation in the appointment order regarding termination of employment amounts to termination of services within the meaning of section 2(oo) of the Industrial Disputes Act, to attract the provisions of section 25F(b) for the purposes of payment of compensation. In this case the respondent Sundermoney was appointed as cashier, off and on, by the State Bank of India between July 4, 1970 and November 18, 1972. In spite of the intermittent breaks the employment had last for 240 days. But the order of appointment stated that the appointment was a purely a

² A.I.R. 1976 S.C. 1111
temporary on e for a period of 9 days but may be terminated earlier, without assigning any reason at the discretion of the bank. Further the appointment stated that, unless termination earlier will automatically cease at the expiry of the period i.e. 18.11.1972.

The Supreme Court observed that 'words of multiple import have to be winnowed judicially to suit the social philosophy of the statute. An employer terminates employment not merely by passing an order as the service runs, he can do so even by writing a composite order, one giving employment and the other rending or limiting it. A separate subsequent determination is not necessary to attract the provisions of section 25F (B) of the Act.

The court held that reinstatement is the necessary relief in this case since the respondents termination of service was considered as retrenchment within the meaning of the Act. It is significant to point out the following the remarks by Justice Krishna Iyer,

"Had the State Bank known the law and acted on it, half months pay would have concluded the story. But that did not happen and now, some years have passed and the Bank has to pay, for no service rendered."
Even so, hard cases cannot make bad law."

The Supreme Court in *Hindustan Steel v Labour Court Orissa* re iterated the above view. In *Surendra Kumar Verma v Central Government Indl. Tribunal*, the Supreme Court in answering the question on the topic of reinstatement of a retrenched workman it held that,

"When the order terminating the services of a workman is invalid reinstatement can be ordered. When the order terminating the services of a workman is struck, it is as if the order has never been made and so it must ordinarily lead to back wages also".

The Supreme Court in *Bombay Union of Journalists v. State of Bombay* has observed that clause (c) of section 25F which requires the employer to serve a notice on the appropriate government regarding retrenchment, cannot be held to a condition precedent like clauses (a) and (b) even though it has been included in section 25F which prescribes condition precedent. It was further held that unlike clauses (a) and (b) clause (c) does not protect

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69 A.I.R. 1968 (Orissa) 169
70 1981 LLJ 386 S.C
71 A.I.R. 1964 S.C. 1617
the interest of the workman but it is intended to keep the government informed about conditions of employment in the industries within its area”.

In Santosh Gupta v State Bank of India "the appellant employee was employed in the State Bank of Patiala, the Mall, Patiala, from July 13, 1973, till August 21, 1974 when her services were terminated on the ground that she failed to pass the prescribed test for confirmation. Despite the break in service workman had admittedly worked for 240 days in the year preceding August 21, 1974. According to the workman the termination of her services was retrenchment within the meaning of that expression in Section 2(oo) of the Industrial Disputes Act, 1947. Since there was retrenchment it was bad for non-compliance with the provisions of section 25F of the Act. It was held that,

"There cannot be any doubt that the expression termination of service for any reason whatsoever covers every termination of service except those not expressly included in section 25F or not expressly provided for by the other provisions"

1980 2 LLJ 72 S.C.
of the act such as sections 25FF and 25-FFF".

Since in the instant case the conditions prescribed for a valid retrenchment was not fulfilled the appellant was directed to be reinstated in service with full backwages.

In Workman of Subong Tea Estate v. Subong Tea Estate⁷, the vendee took possession of the Tea gardens. They also assumed control and management of the Tea gardens before the sale deed was executed. Before execution of the sale deed the vendor company retrenched some of the workmen. The retrenched workmen accepted retrenchment compensation but immediately protested that the retrenchment was illegal. The Supreme Court in special leave held that,

"Retrenchment was not in consequence of transfer but a retrenchment effected after the transfer was made. The transferee who in the mean time became the employer of the retrenched workmen by virtue of his assuming control and management of the tea garden made the retrenchment. Therefore the

⁷ AIR 1964 S.C 420
provisions of section 25FF were not attracted”.

In Excel Wear v Union of India\(^4\), the Supreme Court on considering the validity of section 25-0, has held that,

"section 25-0 as a whole and section 25-R in so far as it relates to the awarding of punishment for infraction of the provisions of section 25-0 are constitutionally bad and invalid for violation of article 19(1) (g) of the constitution. Intrinsically no provision of Chapter V-B suggests that the object of carrying on the production can be achieved by the refusal to grant permission. It is highly unreasonable to achieve the object by compelling the employer not to close down in public interest for maintaining production".

The Constitutional validity of Section 25N came under challenge before the Supreme Court in Workmen v. Meenakshi Mills Ltd\(^5\). A Constitution Bench of the Supreme Court finally settled the question of constitutionality as originally enacted, that is before the same was substituted by the Amendment Act of

\(^4\) 1978 2 LLJ 527 S.C.
\(^5\) 1992 (3) SCC 336
Two main questions that came up for consideration of the court were: (i) Is the right to retrench his workmen an integral part of the right of the employer to carry on his business guaranteed under article 19(1) (g) of the Constitution? (ii) If so, are the restrictions imposed by section 25N on the said right of the employer saved under clause (6) of article 19 as reasonable restrictions in public interest?

The Court opined that validity of section 25N has to be considered in the light of the particular provisions contained therein. The object behind section 25N is to prevent avoidable hardship to the employees by protecting existing employment and to check growth of unemployment. It is also intended to maintain high tempo of production and productivity by preserving industrial peace and harmony besides giving effect to the mandate contained in the directive principles of the Constitution viz. Articles 38, 39, 41 and 43.

*The Buckingham and Carnatic Mills Ltd v. Their Workman*\(^7\), for the first time delineated the perimeter of an industrial adjudicators jurisdiction to interfere with the hitherto exclusive managerial right of taking

\(^7\)AIR 1953 S.C. 47
disciplinary action against an industrial workman. It set out four circumstances, which would render the managerial action vulnerable.

1. Where there is want of bona fides
2. When it is a case of victimization or unfair labour practice or violation of the principles of natural justice
3. When there is a basic error of facts
4. When there has been a perverse finding on materials.

In another pronouncement by the Supreme court in Workman of Firestone Tyre and Rubber co of India Pvt ltd. v. The Management, the Court has held that

"The tribunal is now clothed with the power to reappraise the evidence in the domestic enquiry and satisfy itself whether the said evidence relied on by an employer established the misconduct alleged against a workman. What was originally a plausible conclusion that could be drawn by an employer from the evidence, has now given place to a satisfaction being arrived at by the tribunal that the finding of

1973 I LLJ 278 S.C
misconduct is correct. The tribunal is at liberty to consider not only whether the finding of misconduct recorded by an employer is correct, but also to differ from the said finding if a proper case is made out".

5. The Supreme Court and the Factory Legislation

The modern factories have evolved through gradual progress of industrialization. It was the handicraft system and Cottage System, which have given way to the factory system. Major Moore in 1872-73 for the first time raised the question of the provisions of legislation to regulate working conditions in factories. Since then factories act has gone tremendous change and alteration. This piece of legislation has gone a long way in helping the labourers in providing them with better conditions of work

In *Ardeshir H. Bhiwandiwalla v. State of Bombay*79, the question that came up before the Supreme Court was whether the process of converting seawater into comes within the meaning of manufacturing process as defined under section2 (k). The Supreme Court held that,

79 1961 2 LLJ S.C.
"It is due to human agency aided by natural forces, that salt is extracted from the sea water. The processes carried out in the salt works come within the definition of manufacturing process in as much as salt can be said to have been manufactured from sea water by the process of treatment and adoption of sea water into salt. In the salt works the finished article is salt. It does not enter the salt works as salt. It enters as brine, which under the process carried out, changes its quality and becomes salt. Therefore the process carried out in the salt works comes within the definition of manufacturing process".

Later in *Nagpur Electric Light and Power co Ltd v. The Regional Director, Employees, State Insurance Corporation*, the process of transforming and transmitting electrical energy are held as manufacturing process.

In *State of Kerala v Patel*, the question before the Supreme Court was whether an independent contractor

79 A.I.R. 1967 S.C 1364
80 1961 I L.L.J 549 S.C
could be considered as a workman. The Supreme Court held that,

"No doubt the definition of worker in section 2(1) is very wide, and appears to take in any person employed in any manufacturing process; howsoever there is a distinction between workers employed by an owner and workers employed by an independent contractor. The independent contractor is charged with a work and has to produce a particular result: but the manner in which the result is to be achieved is left to him. Therefore a works supervisor is like an independent contractor; such worker therefore does not come within the definition of worker".

In *Rohtas Industries v Ramlakhan Singh*¹, a person was employed in a paper factory. He was engaged in supervision and checking quality and weighment of waste papers and rags, which are the basic raw materials for the manufacture of paper. It was held that,

"He was working in the factory premises or its precincts in connection with the work of the

¹ A.I.R. 1978 S.C 849
subject of the manufacturing process, namely the raw materials. Thus he was a factory worker”.

In Workman, Delhi Elect. Supply Undertaking v Management\(^2\), the Supreme Court observed on the point whether the sub-stations and zonal-stations could be considered as factory? The court held that,

"It is clear from the definition of factory that it must be premises where a manufacturing process is carried on. The functions of the sub stations and zonal stations appear to be to maintain the existing lines of generation, transmission and transformation of power. Thus it cannot be said that any manufacturing process either takes place in them. Therefore they are not within the meaning of factory".

In Ardeshir v Bombay State\(^3\) it was held that,

"The word premise is generic term meaning open land or land with buildings or buildings alone. The expression premises including precincts does not necessarily mean that the premises must always have

\(^2\) 1972 2 LLJ 130 S.C
\(^3\) 1961 2 LLJ 77 SC
precincts. The word including is not a term restricting the meaning to the work premises but is a term which enlarges the scope. The use of the word including therefore does not indicate that the work premises must be restricted to main building and be not taken to cover open land as well.

In the recent case of Grauer and Weil (India) ltd v. Collector of Central Excise, Baroda, it has been held that,

"Ordinarily the meaning of the word premises is a piece of land including its buildings or a building together with its grounds or appurtenances, and precincts mean the areas surrounding a place".

In John A. Donald Mackenzie and Another v. chief Inspector of Factories, Bihar and Others the Supreme Court in defining an occupier has held that "the expression occupier as defined in section 2(n) of the Factories Act is not to be equated with owner. No doubt, the ultimate control over a factory must necessarily be with an owner unless the owner has completely

\* 1995 2 LLJ 648 S.C.
\* 1962 2 L.L.J 412
transferred that control to another person. Therefore the manager of a factory who claims to be an occupier of the factory must lay before the chief inspector of the factories the necessary material for showing that the company had in some manner transferred the entire control over the factory to him".

However, "If the premises are given over to partnership firm in return for periodic payment and the owner of the premises has not control over them, he cannot be said to be an occupier". This was held in the case of *State of Maharastra v. Jamnabai Purushotam*[^2]. In the recent judgments of the Supreme court in *J.K.Industries Limited and Others v. Chief Inspector of Factories and Boilers and Others*,[^3] it has been held that,

"There is a vast difference between person having the ultimate control of the affairs of a factory and the one who has immediate or day to day control over the affairs of the factory. In the case of the company the ultimate control of the factory, where the company is the owner of the factory always vests in the company, through its board of

[^2]: AIR 1968 S.C. 53
[^3]: 1997 I LLJ 722 S.C.
directors. The manager or any other employee of whatever status can be nominated by the board of directors of the owner company to have immediate or day to day or even supervisory control over the affairs of the factory. Even where the resolution of the board of directors says that an officer or employee, other than one of the directors shall have the ultimate control over the affairs of the factory, it would only be a camouflage or an artful circumvention because the ultimate control cannot be transferred from that of the company, to one of its employees or officers, except where there is a complete transfer of the control of the affairs of the factory."

In *D.G. and G Mills Co v. Chief Commr. Delhi* \(^{34}\) the Supreme Court on the point of duty of the inspecting staff has held that,

"The inspectors appointed under the factory rules do not simply carry out the duties laid on them under the act. In the course of discharge of their duties and obligations the Inspectors are expected to give

\(^{34}\) *AIR 1971 S.C. 344.*
proper advice and guidance so that there may be due compliance with the provisions of the act. It can well be said that on certain occasions factory owners are bound to receive a good deal of benefit by being saved from the consequences of the working of dangerous machines or employment of such processes as involve danger to human life by being warned at the proper time as to the defective nature of the machinery or of the taking of precautions which are enjoined under the act. It involves a good deal of technical advice.

In *State of Gujarat v. Jethalal Ghelabhai*\(^35\), the Supreme Court speaking section 21(1) (IV) (c) suggested that

"The fencing would always be there, the statute has put the matter beyond doubt by expressly saying that the fencing shall be kept in position while the machine is working. When the statute says that it will be the duty of the occupier or the manager to keep the guard in position when the machine is working and when it appears that he has not done so, it will be for him to

\(^35\) AIR 1964 S.C. 779
establish that notwithstanding this he was not liable”.

The Court also said that,

"Where the prosecution establishes the default of not fencing the dangerous part of machine while in motion the occupier or the manager has to show that he has done everything to carry out his duty to see that the guard was in position when the machine was working”.

In Mitchell v. North British Rubber Co Ltd\textsuperscript{36} the Supreme Court has held that,

"a machine was also held to be dangerous if in the ordinary course of human affairs, danger may be reasonably anticipated from its use if unfenced, not only to prudent or alert but also to the careless or inattentive worker whose inadvertent conduct may expose him to risk of injury from the unguarded part”.

In Kanpur Suraksha Karamchari Union v. The Union of India\textsuperscript{37}, the Supreme Court has held that,

\textsuperscript{36} 1954 SCJ 73
\textsuperscript{37} 1989 1 LJ 26 SC
"Under section 2(n) (iii) in case of a factory owned or controlled by the central government, the person or persons appointed to manage the affairs of the factory by the central government shall be deemed to be the occupier. The person so appointed is under an obligation to comply with section 46 of the act by establishing a canteen for the benefit of workers. Even though a managing committee is constituted under section 46 it cannot be the employer of those workmen in the true sense of the term. Therefore there is no difficulty in holding that the employees working in such canteens are employees of the factories in which the canteen has been established".

In *The Sarapur Mills Co ltd. v. Ramanlal Chimantal and Others*[^1] where the canteen for the workers was run by the co-operative society to which the canteen work was entrusted by the mill, it was held that the mill was the occupier and the employees of the canteen could not be treated as being different or separate from the regular employees of the company.

[^1]: 1973 2 LLJ 130 SC
In *Parimal Chandra Raha v L.I.C of India*\(^3^9\), it was held by the Supreme Court that,

"Where as under the provision of the factories act, it is statutorily obligatory on the employer to provide and maintain canteen for the use of the employees or where although it is not statutorily obligatory to provide canteen it is otherwise an obligation on the employer to provide a canteen, the canteen becomes a part of the establishment and therefore the workers employed in such canteen are the employees of the management".

In *A.C.Companies v P.N.Sharma*\(^4^0\), the Supreme Court has held that,

"Section 49(2) which imposes a condition on the management to secure the concurrence of the labour commissioner before inflicting the punishment on him was said to fall within the section 49(2) of the act. It further said that the object of the section is to assure security of tenure to such officers".

\(^3^9\) 1995 2 LLJ 339 SC  
\(^4^0\) A.I.R 1965 SC 1595
In *John Douglas Keith Brown v. State of West Bengal*\(^4\), the Supreme Court has held that,

"Upon the proper construction of the provisions it is clear that whenever workers are required or are permitted to work on a weekly holiday the specific permission of the chief inspector of factories in respect of each and every worker who is required to work on such a day should be obtained. That being the provision of the law the occupier must deemed to have known it. He can be held guilty of the contravention of the provisions of section 52".

In *The Clothing Factory, National Workers Union, Avadi, Madras v. Union of India and Others*\(^4\), the piece rated workers of the factory worked for 8 hours during the week except on Saturday, when they worked for nearly 5 hours. Thus they worked for nearly 45 hours a week. The workers claimed over time wages under section 59 of the act. The court held that section 59 of the factories act comes into play only if the piece rated worker has worked beyond 9 hours in a day or 48 hours in a week and not otherwise.

\(^2\) 5902 LLJ 201 SC
In Union of India v. Suresh C. Baskey and Others\(^3\), the Supreme Court has held that,

"Sub section (2) of section 59 of the act defines ordinary rate of wages to mean the basic wages plus such allowance as the worker if for the time being entitled to. It does not include the bonus and wages for overtime work".

In State of Gujarat v. Kansara Manilal Bhikhalal\(^4\), the Supreme Court has held that,

"Section 63 can come into operation only if there is a change or if any adult worker is asked to work or allowed to work in breach of the notified period and the system of work as contemplated by section 61, sub section (1) or sub section (10). When there was a departure merely on a special occasion and no change in the system of work, the provisions of section 63 cannot apply".

In Alembic Chemical Works Co Ltd v. Its Workman\(^5\), the Supreme Court has made the following observation that,

\(^3\) 1996 I LLJ 1094 SC  
\(^4\) ALR 1964 SC 1893
"The provisions made by section 79 are elaborate, and in that sense may treated as self contained and exhaustive. The provision of the section prima facie sounds like a provision for the minimum rather than the maximum leave, therefore the challenge to the validity of the award based on the assumption that section 79(1) provides for standardized award of annual leave with wages fails".

In Shankar Balaji v. State of Maharastra46, the Supreme Court giving explanation to the expression has held that,

"Total full time earnings can only mean the earnings of worker earns in a day by working full time on that day, the full time to be in accordance with the period of time given in the notice displayed in the factory for a particular day. This is further apparent from the fact that any payment for overtime or bonus is not included in computing the total full time earnings".

In State of Maharastra v. Jamnabhai Purushotam47, the Supreme Court has held that where the premises were

46 AIR 1962 SC 517
given over to partnership firms in return for periodic payment the owner had no control over them. It was held that,

"The owner is not liable. If there is no connection between the owner and the workmen in the sense that they work without the permission and without an agreement with him, there would be no question of the liability of the owner as an occupier".

In *State of Gujarat v. Jeshalal Ghelabhai Patel*\(^4\), the Supreme Court explaining on when an occupier or manager is exempt from liability has held that,

"section 101 stated that where an occupier or manager of a factory is charged with an offence punishable under this act, he shall be entitled to have any other person whom he charges as the actual offender brought before the court and if he proves to the satisfaction of the court the he used due diligence to enforce the execution of the act and that he said other person committed the offence in question without his

\(^4\) AIR 1964 SC 779

\(^4\) AIR 1968 SC 53
knowledge, consent or connivance, then that other person shall be convicted of the offence and the occupier or the manager shall be discharged”.

6. The Supreme Court of India and the Industrial Employment Standing Orders Act

Before the enactment of this legislation the workers were at the mercy of the employer. They could be terminated from work at any time. There was no legislation to provide security for the workman. However, after the enactment of this legislation every employer has to follow the rules specified under the violation of which attracts punishment. This Act has been of great help to the workmen in providing them with security of service.

The Supreme Court in Bagalkot Cement Co Ltd v. R.K. Pathan49 has felt that,

"The object of the Standing Orders Act, 1946, as stated in the preamble is to require employers in industrial establishments to define with sufficient precision the conditions of employment under them.

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49 AIR 1963 SC 439
and to make the said conditions known to the workman employed by them".

It was also said that the certified standing orders constitute the statutory terms of employment between the management and the workman.

This has also been reiterated by the Supreme Court in Sharada Saharanpur Light Railway Co Ltd v S.S.Railway Workers Union\(^{50}\), Glaxo Laboratories Ltd v The Presiding Officer, Labour Court\(^ {51}\) and Agra Electric Supply Co Ltd v Alladin\(^ {57}\).

The Supreme Court on modification of standing orders has held in Associated Cement Co's Ltd v P.D. Vyas\(^ {53}\) that it is open to the certifying officer to modify the draft so as to bring it in conformity with the model standing orders, if he is satisfied that there is not difficulty in doing it. In this case the question that came up before the Court was whether under the provisions of the act it was competent to the certifying officer or the appellate authority to make modifications in the draft

\(^{50}\) AIR 1969 SC 513
\(^{51}\) AIR 1984 SC 505
\(^{52}\) AIR 1970 SC 512
\(^{53}\) AIR 1960 SC 663
standing orders submitted by the employer for certification under the act.

The Supreme Court in *Rajasthan State Road Transport Corporation v. Krishna Kant*\(^5\), on the question of the effect and scope of the standing orders has said that,

"The Act does not say on such certification the standing orders acquire statutory effect or become part of the statute. It can certainly not be suggested that by virtue of certification they get metamorphosed into elevated/subordinate legislation. Though these standing orders are undoubtedly binding upon both the employer and employee and constitute the conditions of service of the employees, it appears difficult to say on principle that they have statutory force".

The Supreme Court in *Chandiprasad Singh v. State of U.P*\(^5\), speaking on the meaning of the term employment has said,

"The term employment broadly speaking is a service rendered by a
person to another under contract and unlike an independent contractor, he forms an integral part of the business of industry. If that person is bound to devote whole time to it that would be very strong evidence of his being under control”.

The decision in the case of *Workman of the Firestone Tyre and Rubber Co Ltd v Its Management* 56 the Supreme Court in this case held that,

"The tribunal is now at liberty to consider not only whether the finding of the misconduct recorded by the employer is correct, but also it can differ from the said finding if a proper case was not made out. What was once largely in the realm of satisfaction the employer has ceased to be so and it is the satisfaction of the tribunal that finally decides the matter."

In *Banaras Electric Light and Power Co Ltd v. Hanuman Singh* 57, the Supreme Court speaking on the binding effect of the standing orders has held that,

"When the standing orders are certified then they bind not only

56 AIR 1973 1227 SC
57 1973 2 LLJ 19 SC
all existing workmen in employment but also all workmen who may be employed in future. Thus the standing orders amount to a statutory contract between the parties as against the contract agreed to by both the parties”.

However the draft standing orders cannot include anything outside the schedule and therefore the standing orders on right to transfer and quarters were invalid. It is immaterial whether the objection was taken before the certifying officer or not because action without jurisdiction would be complete nullity, Workman of Lakheri Cement Works v. Associated Cement Co Ltd58, and Rohtak Hissar District Electric Co Ltd v. State59.

Again in Buckingham and Carnatic Co Ltd v. Shri v Venkataian60, the Supreme Court has held that,

“The certified standing orders represent the relevant terms and conditions of service in a statutory form and they are binding on the parties at least as much if not more as private contracts embodying similar terms and conditions of service”.

58 A.I.R 1966 SC 1471
59 A.I.R 1966 SC 1471
60 A.I.R 1964 SC 1272
It was also held that the Standing Orders of company which have been certified in accordance with the requirements of the Act represent the conditions of service of the employees serving therein and are binding on both the employer as well as the employees. When a standing order covers any condition of service, it is a matter of construing the terms of the standing order itself if any dispute arises regarding such condition of service, and in such case theoretical considerations of equity and fair play have no place.

Similarly in *Rajasthan Road Transport Corporation and Another* 61 the Supreme Court has held that the certified standing orders constitute statutory provision or have statutory force the writ petition would lie for the enforcement of violation of rules made under the proviso to article 309 of the constitution.

In *Workman of Dewan Tea Estate v the Management* 62 it has been held by the full bench of the Supreme Court that,

"The standing orders which have been certified under the standing orders act become part of the statutory terms and conditions of

61 AIR 1995 SC 1715

62 AIR 1964 SC 1458
service between the industrial employer and his employees. Section 10(1) of the standing orders act provides that the standing orders finally certified under this act shall not except on agreement between the employer and the workmen, be liable to modification until the expiry of six months from the date on which the standing orders or the last modification thereof came into operation. If the standing orders thus become part of the statutory terms and conditions of service, they will govern the relations between the parties unless of course, it can be shown that any provision of the act is inconsistent with the said standing orders. In that case it may be permissible to urge that the statutory provision contained in the Act should over ride the standing order which had been certified before the said statutory provision was enacted”.

In *Western India Match Co Ltd v Workman*, a division bench of the Supreme Court has held that,

"Where the standing orders provided for a probationary period of two

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63 AIR 1973 SC 2650
months the employer could not rely on a special agreement by which a workman was placed on probation for a period of six months and terminate the service of such a workman under the terms of agreement as the stipulation of the period of probation of six months would be inconsistent with section 13(2) of the act”.

In *Sukhbans Singh v. State of Punjab* the Supreme Court has held that a probationer does not on the expiry of the period of probation automatically acquire the status of a permanent member of a service unless the rules under which he is appointed expressly provide for such a result.

The Supreme Court in *Express Newspapers Ltd v. Labour Court Madras* has held that, "Without anything more an appointment on probation for a fixed period gives the employer no right to terminate the service of the employee before the expiration of the said period except on the ground of misconduct or other sufficient reason, in which case even the

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64 AIR 1962 SC 1711
65 AIR 1964 SC 806
services of a permanent employee could be terminated".

In *Kedar Nath Bahl v. State of Punjab*\(^{66}\) the Supreme Court has stated that,

"Where the person is appointed as a probationer in any post and a period of probation is specified it does not follow that at the end of the said specified period or there is a specific service rule to that effect, the expiration of the probationary period does not necessarily lead to confirmation. At the end of the period of probation an order confirming the officer is required to be passed and if no such order is passed and he is not reverted to his substantive post the result merely is that he continues in his post as a probationer".

In *Agra Electric Supply Co Ltd v. Alladin*\(^{67}\), one of the main question that came up before the Supreme Court was whether three workmen who had been employed long before the date when the company's standing orders were certified could be retired on attaining the age of 55 years on the strength of the standing orders. It was

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\(^{66}\) AIR 1972 S.C. 873

\(^{67}\) 1969 2 SCC 598
held that "the standing orders when certified would be binding on the employers as well as the workmen who were in employment at the time the standing orders came into force and those employed thereafter as uniform conditions of service".

In *Western India Match Co Ltd v. Their Workman*, it was held that,

"The classification of workman and their conditions of employment as stipulated in the standing orders rules will prevail upon the terms in contract of service. The terms of employment in standing orders would prevail over the corresponding terms of contract".

7. The Supreme Court of India and the Law of Bonus in India

The first glimpse of the history of bonus payment can be seen in the report of the committee published during the mid of 1920's of the 20th century presided over by Sir. Norman Meleod, the then Chief Justice of Bombay High Court. According to that report, the first payment of bonus was in 1921 in the Textile Industry, when certain

68 A.I.R. 1973 S.C. 2650
payments were made towards the high cost of living and increased price of foodstuffs on the basis of a percentage of the wages and termed as 'WAR BONUS'. In 1920 a Committee appointed by the Bombay Mill owners recommended to the member mills payment of bonus equal to one month's pay. Bonus was also declared in 1921 and 1922. It appears that trading conditions in the industry having deteriorated, the mill owners declared in July 1923 that they would be unable to pay bonus for 1923. Thereupon strike began which became general towards the end of January 1924. In February 1924 a bonus dispute committee was appointed by the Government of Bombay to consider the nature of the conditions and the basis of bonus which had been granted to the employees in the textile mills and to declare whether the employees had established any enforceable claim, customary legal or equitable. The committee held that they had not established any enforceable claim, customary, legal or equitable to an annual payment of bonus which could be upheld in a court. This in reality was a payment not in the nature of profit sharing; but was made for neutralising the excess cost of items on expenditure which go into the workers budget.
Even before this payment was made, several instances could be found of payment of lump sums made ex-gratia under different names, but mainly at the time of festivals like Pongal or Divali or a Puja etc. In the course of time this bonus was treated by Tribunals as customary payments as part of workers’ emoluments to which they were entitled as a matter of right and they lost their character of ex-gratia payment.

Another system in vogue was to make such lump sum ex-gratia payments in connection with special occasions like the monsoon and school seasons. All these payments, whether they were connected with a festival or connected with a particular season were not in the nature of profit sharing, but were originally paid as a bounty or as a deferred wage to meet the extra expenditure which a worker is called upon to bear at a particular period in the year and to save him from getting involved in debts. In all these cases the practice was not uniform and the quantum of payment also varied.

The present concept of a profit bonus was evolved in the wartime when the various adjudicators appointed under
the Defence of India Rules, evolved four different theories about bonus, which were:

1. That bonus was a gratuitous payment
2. That bonus was a payment to workers out of wartime surplus profits
3. That bonus was profit-sharing to which the workers were entitled.
4. That bonus partook the nature of extra remuneration from the high profits to which the workers had contributed.

Between the years 1948 and 1949 a dispute for payment of bonus arose in the Bombay Textile Industry. On the said dispute having been referred to the Industrial Court, the Court case of *Rashrtiya Mill Mazdoor Sangh v. Millowner’s Association*⁶⁹, expressed the view that since both labour and capital contributed to the profits of the industry both were entitled to a legitimate return of the profits and evolved a formula for charging certain prior liabilities on the gross profits of the accounting year and awarded a percentage of the balance as bonus. The Court excluded the mills which had suffered loss from the liability to pay the bonus. In

¹950 ICR 1164
appeals against the awards, the Labour Appellate Tribunal s approved broadly the method of computing bonus as a fraction of the surplus profit. The Supreme Court in the cases of *Muir Mills Co. v Suti Mills Mazdoor Union,*70 *Broda Borough Municipality v Its Workmen*71 and *Sree Meenakshi Mills Ltd., v. Their Workmen*72 laid down that bonus was not a gratuitous payment nor a deferred wage and that where wages fall short of the living standard and the industry makes profit part of which is due to the contribution of labour, a claim for bonus may legitimately be made by the workmen. The Court, however did neither examine the propriety nor the order of priorities as between the several charges and their relative importance & nor did it examine the desirability of making any alterations in the said formula. These questions came to be examined for the first time in *Associated Cement Companies Ltd v. It's Workmen*73 where the said formula was generally approved. Since that decision, the Supreme Court has accepted the said formula in several cases. The principal features of the formula are that each year for which bonus is claimed is a self-contained unit, that bonus is to be

70 AIR 1955 SC 170  
71 AIR 1957 SC 110  
72 AIR 1958 SC 153  
73 AIR 1959 SC 967
computed on the profits of the establishment during that year that the gross profits are to be determined after debiting the wages and dearness allowance paid to the employees and other items of expenditure against total receipts as disclosed by the profit and loss account.

However between the years 1946 & 1948 a Committee formed in the erstwhile State of Travancore, recommended payments of a deferred wage-bonus equivalent to a minimum of 4.5 percent and this was extended to the plantation industry specifically in the year 1951. Though the foundations were laid for a profit sharing bonus in war time adjudications as a consequence of the resolutions of the industries conference held on 6 April 1948 to examine the principles to be adopted for the payment of - (1) fair wages to labour, (2) fair return on capital employed in the industry (3) reasonable reserve for maintenance and expansion of the undertaking (4) labour’s share in the surplus profits geared to production, the committee on profit-sharing appointed in May 1948, broadly evolved the principles for distribution of surplus profits after making provisions for a return on capital, with a reserve of 10 percent of the profit to a depreciation fund; and this reserve was made the first charge on the net profits after taxation.
and thereafter upon a capital employed at the rate of 6 percent. The labour's share would be 50 percent of the surplus profit after a deduction of the aforementioned charges. The formula suggested was simple and did not have the complications involved in the full bench formula later evolved by the Labour Appellate Tribunal.

However in the year 1950, itself that the Labour Appellate Tribunal gave its decision laying down the formula for payment of annual bonus which came to be known as the "Full Bench Formula" on bonus which was approved by the Supreme Court in all its material particulars in many cases, and finally in the five judge decision in the case of Associated Cement Companies Ltd., v. Workmen⁴, the Court held that the term 'Bonus' is applied to a cash payment made in addition to wages. It generally represents the cash incentive given conditionally on certain standards of attendance and efficiency being attained. There are two conditions which have to be satisfied before a demand for bonus can be justified and they are:

1. When wages fall short of the living standard.

⁴ AIR 1959 S.C. 925
2. The industry makes huge profits, parts of which are due to the contribution which the workmen make in increasing production.

The demand for bonus becomes an industrial claim when either or both these conditions are satisfied. The Court in this case laid down the formula for the grant of bonus in the following manner:

"As both labour and capital contribute to the earnings of the industrial concern, it is fair that labour should derive some benefit if there is a surplus, after meeting prior on necessary charges. The first charge on gross profits are:

1. provision for depreciation

2. reserves for rehabilitation

3. a return at 6% on the paid up capital

4. a return on the working capital at a lesser rate than the return on paid up capital.

The surplus that remains after meeting the aforesaid deductions would be available for distribution as bonus".

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In the case of *Muir Mills Co. Ltd., v. Suti Mills Mazdoor Union*, the Court held that the claim for bonus can be made by the employees only if as a result of the joint contribution of capital and labour, the industrial concern has earned profits. If in any particular year the working of the industrial concern has resulted in loss, there is neither basis nor justification for a demand for bonus.

In the *Associated Cement Companies Ltd., v. Workmen*, the Supreme Court held that though there may be some force in the plea made for the revision of the full bench formula, the problem raised by the said plea is of such a character that it can be appropriately considered only by a high powered commission and not by this court while hearing the present group of appeals. Besides, the full bench formula had on the whole worked fairly satisfactorily in a large number of industries over the country and the claim for bonus should be decided by tribunals on the basis of this formula without attempting to revise it. The content of each item specified in the formula was determined objectively in the light of all relevant and material facts; the

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75 1955 1 SCR 991
76 Supra n 73
tribunals would generally find it possible to make reasonable adjustments between the rival claims and provide for a fair distribution of the available surplus.

In case of *New Maneckshow Spinning and Weaving Co. Ltd. vs The Textile Labour Association* the Supreme Court rejected the fixation by the Tribunal of minimum bonus for a year beyond the pact period, and held that:

"Although this was done in the interest of industrial peace. This case is of no value because the question is of the power of the Parliament and not of the power of the Tribunal. The powers of Parliament to fix minimum bonus cannot be questioned because it flows from jurisdiction over industrial and labour disputes welfare of labour including conditions of work and wages. The legislation is therefore neither a fraud on the constitution nor a colourable exercise of power. Under any of these powers or all of them viewed together the fixation of minimum bonus is legal and if these topics of legislation were found to

77 AIR 1961 SC 867
be insufficient the residuary power of Parliament must lead validity to the enactment. The validity of arguments about the integration of dearness allowance with wage to determine the quantum of bonus depends on how wages can be viewed today”.

One of the most important question regarding this Act was answered by the Supreme Court in the case of Union of India and others v R.C. Jain and Others. The question whether it is obligatory on the part of the management of local bodies to pay bonus to the employees was answered by observing that the local bodies do not come within the purview of the Payment of Bonus Act. The Supreme Court held in this case that Delhi Development Authority was a local body and therefore did not attract the provisions of Payment of Bonus Act.

In Baidyanath Ayurveda Bhavan Mazdoor Union v. Management following tests have been laid down by the Supreme Court to determine whether a particular payment is customary or festival bonus:

78 AIR 1981 SC 951; 1981 SCC (lab) 323.
1. That the payment has been made over an unbroken series of years;
2. That it has been paid for a sufficiently long period - the period has to be longer in the case of an implied term of employment
3. That it did not depend on the earning of profits and that payment has been made at a uniform rate throughout.

The Court further held that,

"it is also provided that under sec.17 of the Act that where an employer has paid any puja bonus or other customary bonus he will be entitled to deduct the amount of bonus so paid from the amount of bonus payable by him under the Act. However if the customary bonus is thus recognised statutorily and if in any case it happens to be much higher than the bonus payable under the Act, there is no provision totally cutting off the customary bonus. This does not mean that there cannot be contractual bonus or other species of bonus. This provision only emphasises the importance of the obligation of the
employer in every case to the statutory bonus”.

In *Mumbai Kamagar Sabha v. Abdubhai Faizullabhai* the Supreme Court distinguished its earlier decision and traced the history of the concept of bonus. The Supreme Court in this case concluded that the Payment of Bonus Act dealt only with profit bonus and not every kind of bonus. In the words of Krishna Iyer J,

"The end product of our study of the anatomy and other related factors is that the Bonus Act spreads the canvas wide to exhaust profit based bonus but beyond its frontiers is not void but other cousin claims bearing the caste name 'bonus' flourish miniature of other colours. The Act is neither proscriptive nor predicative of other existence."

He also further expressed that,

"Bonus is a word of many generous connotations. There is profit bonus, which is one specific kind of claim and perhaps the most common. There is customary or traditional bonus which has its emergence from

* (1976)2 LLJ 186 (SC)
long, continued usage leading to a promissory and expectancy situation materialising in a right. There is attendance bonus, production bonus and what not. In present case bonus is based on custom and service condition not one based of profit”.

In Jalan Trading Co. Case the full bench judges in this case viewed that,

"Bonus is not a gratuitous payment made by the employer to his workmen, nor a deferred wage and where wages fall short of the living standard and the industry makes profit part of which is due to the contribution of labour a claim for bonus may be legitimately made the workmen."

However the term bonus has acquired a secondary meaning in the sphere of industrial relations. It is classified amongst the methods of wage, payment. It has been used especially in USA to designate an award in addition to the contractual wage. It is usually intended as a stimulus to extra efforts but sometimes represents the desire of the employer to share with his works the

1 (1967) 1 SCR 15, AIR 1967 SC 691
fruits of their common enterprise." Corpus Juris Secundum defines it as:

"The word 'Bonusr is commonly used to denote an increase in salary or wages in contracts of employment. The offer of a bonus is the means frequently adopted to secure continuous service from an employee, to enhance his efficiency and to augment his loyalty to his employer and the employee's acceptance of the offer by performing the things called for by the offer binds the employer to pay the bonus so called."

Thus the concept of bonus as understood in the ordinary parlance is a gratuitous payment made by one to another in the expectation of continued loyalty from the servant. Notionally it has no connection with the legal rights recognised by the common law unless it has the characteristics of being agreed upon between the contractual parties by an express term in the contract of employment.

However the bonus in its generic sense may also have a reference to a particular type of payment continuously

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87 Encyclopaedia Britannica Vol.3.p.856.
89 The pocket part of corpus juris secundum under the heading "A compensation for service"
made for a sufficiently long period so as it might ripen into a customary right. In this sense, the term has been in vogue in India and the payment of festival bonus especially for Durga Pooja in the erstwhile Bengal province of undivided India and Diwali Bonus in other parts was and is still more common. The difference between the puja bonus and profit sharing bonus was laid down in case of The Indian Tea Association v. Workmen as follows:

"The claim for puja bonus proceeds on entirely different considerations. Customary puja bonus undoubtedly prevails in many industries in Bengal but there are certain tests which have to be applied in determining the validity of the claim. The amount by way of puja bonus must be shown has been consistently paid by the employer to his employees from year to year at the same rate, that it has been paid even in years of loss and that it has no relation to the profit made by the employer during the relevant year. The course of conduct spreading over a reasonably long period between the employer and the

84 AIR 1962 S.C. 1340-1343
employee in the matter of payment of puja bonus is of considerable importance in dealing with the claim of customary puja bonus".

8. The Supreme Court of India and the Workmen’s Compensation Act, 1923

At all times and in every society at every stage of development, there have been sick people requiring medical aid and care, handicapped and the old people who are unable to work for living 45. Quite apart from this, there are people who are unemployed and are unable to make both ends meet. In the early days when human needs were limited and livelihood was based primarily on agriculture, joint families, craft guild, churches, charitable and other religious institution provided some securities. Today when the world is passing through an industrial era and life is becoming more and individualistic yet complex and complicated because of industrial and scientific advancement the risks of life have increased manifold.

In the pre-independence era, legislation relating to social security was extremely limited in its scope and provided relief only in case of injuries resulting in death permanent and partial disablement and occupational diseases. Post-independence legislation on the other hand is intended to provide social security in the real sense to safeguard the interests of labour\textsuperscript{86}.

The question of granting compensation to workmen for fatal or serious accidents was first raised in India in 1884 and the need for proper legislation as emphasized by factory and mining inspectors. However, the Government of India took up the question of framing legislation only in the end of 1920 and in 1921, public opinion on the subject was invited. In order to examine the question in some detail it was referred to a small committee composed of Legislative Assembly members, Employer's and worker's representatives and medical and insurance experts, which met in 1922\textsuperscript{97}. The committee's detailed recommendations for framing legislation were accepted and a Workmen's Compensation Act was passed in 1923. The measure followed the British Act in its main principles and in some of its details, but it contained

\textsuperscript{86} Supra n 86 p 122

\textsuperscript{97} G.M.Kothari, \textit{A study of Industrial Law}, pp 499-504

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a large number of provisions designed to meet the special conditions in India. This Act was the first step towards social security in India. This was followed by legislation enacted in several states for the protection of workers. Under these enactments, the responsibility for payment of compensation rested with employer a system, which led to certain hardship. The Royal Commission on Labour reviewed the subject and made a number of recommendations as regard Workmen's Compensation. The Commission's recommendations involved the substantial extension and enlargement of the rights the Act conferred and its revision in a number of matters of detail.

On 26 January 1950, India became a sovereign, democratic, republic and framed a constitution. This has made a specific mention of the duties that the state owes to labour to their economic upliftment and social regeneration\(^8\). Certain directions aimed at physical, social, and moral improvements have been enunciated in the Directive Principles of State Policy\(^9\). One of the significant duties which has a direct bearing on social security legislation is the duty to make effective

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\(^9\) Articles 38, 39, 41, 42 & 43 of the Constitution of India.
provisions for securing public assistance in case of unemployment, old age, sickness, disablement and other cases of undeserved want." Soon after the commencement of the constitution planning was introduced in India and all the five year plans emphasised the need for social security schemes to achieve the desired result. The concept of social security according to Justice P.N. Bhagawati is that,

"It does not emanate from the fanciful notions of any particular adjudication but must be founded on a more fanciful foundation." 

In the opinion of Justice Gajendragadkar,

"The concept of social and economic justice is a living concept of revolutionary import it gives guidance and sustenance to the idea of welfare state."

In order to provide social security to the working people various legislative steps have been taken in our country like other countries of the world. It may not be incorrect to say that the Workmen’s Compensation Act, 1923 has been the first step towards social security in

90 Art.41 of the Constitution of India.
91 Mair Mills Ltd v. Suti Mill Mazdoor Sabha (1955) LL 11 (SC)
our country. The basic principle of this legislation is social justice. Under these circumstances, the Act was passed to provide social justice and social security to the workers who are working under dangerous and risky conditions of work in the factories.

The general principles of workmen's compensation had almost universal acceptance and India was then nearly alone amongst civilized countries without legislative measures embodying those principles. For a number of years the more generous employers had been in the habit of giving compensation voluntarily but this practice was by no means general. The growing complexity of industry in the country with the increasing use of machinery and consequent danger of workmen, along with the comparative poverty of the workmen themselves rendered it advisable that they should be protected as far as possible from hardship arising from accidents.

An additional advantage of legislation of this type was that it increased the importance for the employer of providing adequate safety devices. This reduced the number of accidents to workmen in a manner that could not have been achieved by official inspection.
By virtue of the provisions of Art. 141 of the Constitution of India the law declared by Supreme court shall be final and binding and it is the law of the land. By this provision the judgement of the Supreme Court is supreme and valid and prevails over the provisions of Workmen's Compensation Act, 1923.

The Supreme Court of India in several cases has held that all accidents and dangers happened to an individual or to the entire society due to the fault or negligence of the employer or proprietor. Hence, any person failed to make necessary steps to prevent any injury should be responsible to make good of him and liable to pay compensation.

One of the important questions to be determined for a claim for compensation under the Act is the question of time and place of the accident of the workman. That is whether the accident arose out of and in the course of his employment. The Supreme Court of India in this regard has played dynamic role in interpreting the various terms of the Act in a manner beneficial to the workmen. The Supreme Court evolved the principle of 'notional extension' of the employer's premises so as to include an area which the workman passes and re-passes
ingoing to and in leaving to the actual place of work. The Court has applied this principle in many cases coming before it not only to benefit the workmen but also to limit the liability of the employer. *General Manager, B.E.S.T. Undertaking v. Mrs Agnes*\(^3\) is a very important case on the point. The facts of the case were that the Bombay Municipal Corporation carried on a public utility service in greater Bombay and for the purposes employed certain drivers to drive the buses. One of the drivers finished his work for the day and in order to reach his residence he boarded another bus of the same employer, which collided with a stationery lorry. Consequently the driver was thrown out of the bus and was injured. He ultimately expires in the hospital. The compensation was claimed by his widowed wife pleading that the accident has arisen out of in the course of employment. When the matter came before the Supreme Court it observed and held that,

"A driver when going home from the depot or coming to the depot uses the bus; any accident that happens to him is an accident in the course of his employment".

\(^3\) AIR 1964 SC 193
Thus, the doctrine of notional extension was used for the benefit of the workman.

In *Rajanna v. Union of India*\(^1\), the Court once again explained the principle of notional extension based on its earlier decisions in the case of *Saurashtra Salt Manufacturing Co. v. Bai Velu Raj*\(^2\) and *Mackinon Mackenzie and Co. Pvt. Ltd v. Ibrahim Mahmmed Issak*\(^3\). In this case a security assistant in the Special Protection Group (SPG) attached to the Cabinet Secretariat sustained injuries resulting in permanent partial disablement in a motor accident when he was travelling from staff quarters to South Block for duty in the official SPG vehicle provided for the purpose. He claimed ex-gratia payment in accordance with the circular dated June 13, 1986, of the Cabinet Secretariat of the Central Government providing for grant of ex-gratia payment to the SPG personnel. The Central Administrative Tribunal rejected the claim. In an appeal by special leave the Supreme Court ruled that the principle under the Workmen’s Compensation Act, 1923 for determining whether an accident arose out of and in the

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\(^1\) 1995 II LLJ 824 S.C.  
\(^2\) 1958 II LLJ 249  
\(^3\) 1970 II LLJ 16 S.C.
course of employment of the workman should be equally 
applicable in the instant case. The Court observed,

"In our opinion, the meaning of the 
expression "actual VIP Security 
Duty" in the circular must be the 
same as that of the words "in the 
course of employment" in Women's 
Compensation Act, 1923."

The Supreme Court directed the authorities to adopt a 
humane approach in such problem in order to achieve the 
objectives. Thus, it can be seen that the Supreme Court 
has shown concern to the plight of the injured workmen 
by interpreting the provision of the Act in a manner 
beneficial to the working class. In recent years, the 
Courts have begun a liberal view in applying the 
provisions of the act to meet the day to day problems in 
the industries and in order to provide social justice 
both in relation to imposition of liability on employer 
and in widening the rights of the workman.
9. The Supreme Court of India and the Minimum Wages Act, 1948

The Minimum wages law is a landmark in the history of labour legislation in the country. According to the National Commission on Labour,

"The whole philosophy underlying the enactment of the Minimum Wages Act is to prevent exploitation of labour through the payment of unduly low wages." 97

The Act empowers the Central and State Governments to fix minimum rates of wages for different employments listed in the schedule to the Act. The appropriate government is empowered to add any employment to the schedule after due notification. The Act also provides for review of rates fixed at intervals not exceeding five years.

Thus, the Act recognized that wage cannot be left to be determined entirely by market forces. The employer is obliged to pay the minimum wages fixed under law and that he cannot plead his inability to pay such minimum wages to the employees. The Act has much impact as on

non-schedule establishments as well because, what applies to the establishment included under the schedule of the Act, must, on principle of social justice, apply with equal force to industrial establishments not included in the schedule. Hence, the Act adds something new and revolutionary to the chapter on labour legislations in India. The Supreme Court while interpreting various provisions of the Act has shown tremendous concern to the working class thereby furthering the ideal of the Constitution.

The provisions of this Act were challenged on the ground that they are violative of Article 19(1)(g) of the Constitution of India but the Supreme Court of India in *Bijoy Cotton Mills Ltd., v. State of Ajmer* negated these contentions holding that the Act is designed to effectuate the Directive Principle embodied in Article 43 of the Constitution. In order to protect the labourers against the exploitation it is absolutely necessary to impose restrictions upon the freedom of contract of the employers. Individual employers might find it difficult to carry on business on the basis of minimum waged fixed under the Act, but this must be entirely due to economic condition of those employers.

98 AIR 1955 SC 33
That cannot be the reason for striking out the law as unreasonable and repugnant to Art.19 (1) (g) of the Constitution. The restrictions imposed by the Act are not unreasonable restrictions within the meaning of Art. 19(6) of the Constitution.

The Supreme Court in the case of Hydro Engineers Pvt. Ltd., v. Workmen held that,

"The fact that employer might find it difficult to carry on business of minimum wages is an irrelevant consideration is now a well-settled principle. Therefore, it cannot be a sufficient reason for striking down the law itself as unreasonable. The poverty of labourers is also a factor to be considered while determining the question whether a particular provision is in the interest of the general public."

In Edward Mills Company Ltd., v. State of Ajmer the Supreme Court was invited to invalidate the delegation of power to vary the schedule. The Act authorizes the setting up of minimum wages for certain specified industries by Notification. It was assumed that there

99 AIR 1969 S.C. 182
100 AIR 1955 S.C. 25
was no legislative policy to guide the officials charged with the duty of adding to the list of industries covered. The court held that the legislative policy which was to guide in the selection of industries was clearly indicated in the Act, namely to avoid exploitation of labour by setting minimum wages in industries where due to unequal bargaining power or other reasons wages were inadequate. The Court emphasized the necessity to allow the flexibility for adaptation to local conditions.

The Supreme Court in *Express Newspapers v. Union of India*\textsuperscript{101} classified wages into three categories, namely living wage, fair wage and minimum wage. The court also explained that the living wage is one which as appropriate for the normal needs of the average employee regarded as a human being living in a civilized community. It must provide not merely for absolute essentials such as food, shelter and clothing but for a condition of frugal comfort estimated by current human standard. The fair wage stands in between the minimum wage and living wages. Fair wage is said to be a step towards the progressive realisation of a living wage. A fair wages is settled above the minimum wage and goes

\textsuperscript{101} A.I.R 1958 S.C. 576
through the process of approximating towards a living wage. While the lower limit to fair wage must obviously be the minimum wage, the upper limit is set by capacity of the industry to pay. That it depends, on the present economic position as well as the future prospects of that industry. The minimum wage is one which can only provide for a bare subsistence. It is one which is sufficient to cover the bare physical needs of a worker and his family. Minimum wage is different from statutory minimum wage. The former is one which could be sufficient to cover the bare physical needs of a worker and his family. This is to be paid to the worker irrespective of the capacity of the industry to pay. The statutory minimum wage is one prescribed by statute and it may be higher than the bare subsistence or minimum wages providing for some measure of education, medical requirement and other amenities. In the case of Manganese Ore Ltd., v. Chandi Lal Saha and Others\textsuperscript{102} where the management was paying to the employee attendance bonus and was supplying grain to them at concessional rates the question for consideration was whether these can be included in wages. The Supreme Court ruled that the supply of grain at concessional

\textsuperscript{102} AIR 1991 S.C. 520
rate to the workmen is an amenity and cannot be included in the rates of wages prescribed by a notification fixing the rates of wages for different categories of workmen. There cannot be a wage in kind under the scheme of the Act unless there is a notification by the appropriate government under section 11 (3) of the act. The supply of grain at concessional rate to the workers is in the nature of an amenity or an additional facility / service. The managements especially in the case or Public Undertakings are bound by the Directive Principles of State Policy enshrined under part IV of the constitution of India. The workers must be ensured a living wage, just and humane conditions of work and decent standard of life. The management must endeavour to secure for the workmen apart from wages other amenities like supply of essential commodities at concessional rate, medical aid, housing facility, education for children, old age benefit and opportunities for social, cultural and sports activities. All these amenities may be capable of being expressed in terms of money but it is clear from scheme of the Act that these concessions do not come within the definition of wages as given under section 2(h) of the Act.
In the present case the attendance bonus was payable after regular attendance for a specified period and remaining loyal to the management. The scheme of payment of bonus was thus an incentive to secure regular attendance of the workmen. It was an additional payment to the workmen as a means of increasing production. It was in the nature of extra-remuneration for regular attendance. It was only an incentive and it was not a wage.

In the case of *Workmen v Reptakos Brett and Co. Ltd.*, the Supreme Court remarked that a living wage has been promised to the workers under the Constitution. A socialists frame work to enable working people a decent standard of life, has further been promised by the 42" amendment. The workers are hopefully looking forward to achieve the said ideal. The promises are piling up but the day of fulfilment is nowhere in sight. Industrial wage looked as whole has not yet risen higher than the level of minimum wage. Where a similar question of revision of wage structure to the prejudice of workmen on the ground of financial stringency was involved. The Supreme Court reviewed all the above cases leading to the ratio that the management can

*1992 SCC (L&S) 271*
revise the wage structure to the prejudice of the workmen in a case where due to financial stringency it is unable to bear the burden of the existing wage. However, in an industry or employment where the wage structure is at the level of minimum wage no such revision at all is permissible not even on the ground of financial stringency. It is therefore for the management which is seeking restructuring of D.A. scheme to the disadvantage of the workmen to prove to the satisfaction of the tribunal that the wage structure in the industry concerned is well above minimum level and the management is financially not in a position to bear the burden of the existing wage structure.

10. The Supreme Court of India and the Contract Labour (Regulation & Abolition) Act, 1970

Contract Labour is the most unorganised section of the labour. Not much care has been given to the welfare of the contract labour. The system of employing contract labour for regular work was resorted to by the employers in order to evade the provisions of labour legislations. Now though there is legislation to regulate the working conditions of the contract labour and its abolition wherever possible much remains to be done to ameliorate
the working conditions of this neglected section of the labour.

The judicial awards in India by Industrial Tribunals and the Supreme Court of India have in the absence of any enactment regarding the service conditions of the contract labour, in several cases, discouraged the system of contract labour being an uncivilised practice and directed for its abolition. In several cases the Supreme Court besides directing for the abolition of contract labour has directed the establishments to absorb the contract labour as permanent workmen of the establishment. The Supreme Court had an opportunity for the first time to consider the question of abolition of contract labour in *Standard Vaccum Refining Company's*¹⁰⁴. The facts of this case are already discussed (supra). The Supreme Court observed at page 239 that

"we agree that whenever a dispute is raised by workmen in regard to the employment of contract labour by any employer, it would be necessary for the tribunal to examine the merits of the disputes, apart from the general consideration that the contract labour should not be

¹⁰⁴ Supra n 35
encouraged and that in a given case the decision should rest not merely on theoretical or abstract objection to contract labour but also on the terms and conditions on which contract labour is employed and the grievance made by the employees in respect thereof”

The Supreme Court was of the view that while deciding the question of abolition of contract labour facts of each case should be taken into consideration. The Court while declining to interfere with the award of tribunal held that,

"The contract in this case related to four matters. But the reference is confined to one namely, cleaning maintenance work at the refinery including premises and plant and we shall deal with that only. So far as this work is concerned, it is necessary for it and of a perennial nature which must be done everyday. Such work is generally done by workmen in regular employ of the employer and there should be no difficulty in having regular workmen for this kind of work. The matter
would be different if the work was of intermittent or temporary nature or was so little that it would not be possible to employ full time workmen for the purpose. Under the circumstances, the order of the tribunal appears to be just and there are no good reasons for interfering with it”.

The Court also said that tribunal was right in rejecting the claim of the workmen for taking over the entire body of workmen who where employed through the contractor as the contract in this case was a bona fide one.

The Court held that the system of contract labour should be abolished when the work done by the contract labour is perennial and must go on from day-to-day and which is incidental and necessary for the work of the refinery and which is sufficient to employ a considerable number of whole time workmen and which is being done in most concerns through regular workmen.

In United Salt Works & Industries Ltd., Kandla v. Their Workmen105 the Supreme Court directed for discontinuance of the system of contract labour. Further, the court said that mukaddams should stop deducting the amount

105 (1962) I LL J (SC) 131
from the wages of the labour as their commissions. In this case, the company used to employ labour through the 'Mukaddams' or contractors who used to supervise their work also. The company paid the wages for the labour but the mukaddams used to deduct their commission from the wages of the workmen. The demand for abolition of the Mukaddam system was referred to arbitrators under section 10A of the Industrial Disputes Act, 1947, who directed for the abolition of the contract labour system and gave liberty to the company to appoint the mukaddams as semi-skilled workmen if the company needs their services as supervisors.

On appeal by special leave, the Supreme Court held that in other words all workmen employed by the appellant in its works should be the employees of the appellant for the purpose even though the Mukaddams or contractors may help the appellant in recruiting them and in supervising their work under the appellant's directions. The workers employed by the company were shown in two categories as far as their wages are concerned as departmental workmen and workmen under Mukaddams. The Supreme Court held that the workmen shown under both categories will be treated as workmen employed by the appellant. In this case the employees were paid by the company and for all
practical purposes they were directly employed by the company and held to be the employees of the company. Hence, the system of Mukaddams who used to deduct their commission from the wages of the employees was ordered to be discontinued.

In *Shibu Metal Works Vs Their workmen* the Supreme Court held that where a contract labour was employed for the work of the company which was of a permanent nature it amounts to an unfair labour practice and it should be abolished. The appellant company is a partnership firm carrying on the business of manufacture of circle sheets and brass utensils. The contract labour was employed in the departments viz., Chillai, Lathe, press. The case of the workmen before the Tribunal was that the chillai, lathe and press work is of permanent nature and is part and parcel of manufacturing process of the goods of the industrial concern and therefore, the contract labour system should be abolished. The Tribunal accepted the contention of the labour and directed for the abolition of the system of contract labour after examining the evidence adduced by the parties on this point. On appeal, the Supreme Court held that, "In view of the finding of the industrial tribunal we are of the opinion

*IM (1966) ILL J (SC) 717.*
that there was no justification for the management to employ contract labour for the three sections of chillai, lathe and press."

In this case, the management put forward an argument that the contract labour employed in the company are in a more advantageous position as compared to regular employees of the factory as the contract labour could do various jobs in different factories and at high rates of wages. But this contention of the management was rejected by the Supreme Court as such submission was not warranted.

In National Iron and Steel Co. Ltd., v. State of West Bengal case the Supreme Court reiterated the principle laid down by it in Standard Vaccum Refinery Company's Case and directed the company to abolish the contract labour in the company except regarding the work of loading, unloading and for removing ashes, burats and waste products etc., The court held that abolition of contract system of labour can be ordered by an Industrial Tribunal if the facts justified it. The Tribunal directed the company to abolish the system of contract labour except for the purposes of loading,

107 (1967) II LL J (S.C) 23.
108 (1960) II L.J. 233
unloading and for removing slag, ashes etc. The company before the Supreme Court contended that such direction by the Tribunal would be discriminatory as between the concerns engaged in similar business. The abolition of contract labour in one particular concern while other concerns engaged in similar were free to engage contract labour would mean increase in the expenses of the former and there by ousting that concern from competition. The Court however did not choose to express any opinion on this point, as no material was placed before the Court to arrive at such conclusion. The award of the Tribunal was confirmed. In this case, the appellant company moved the tribunal at the earliest point of time to make all other concerns similarly engaged as parties but the tribunal rejected the contention of the company. The Supreme Court declined to interfere with the award of the tribunal in view of the principle laid down by it, that industrial adjudication should not encourage the system of contract labour.

In *Ghatge and Patil Concerns Employees Union v. Ghatge and Patil (Transport) Pvt Ltd.*, the Supreme Court had an opportunity to compare the principle laid down by it in the earlier cases regarding the abolition of contract labour.

*(1968) I.L.L. J (S.C) 566*
labour with new system of contract entered into between the ex-employees of the company and management of the company.

Brief facts of the case are that the company was employing 70 drivers and equal number of cleaners. Due to practical difficulties met with by the company in implementing the requirements of the motor transport workers act 1961 and to avoid its penal consequences, the company decided to hire its trucks on contract basis to independent drivers. In view of this, 54 drivers of the company applied for obtaining contracts having resigned their jobs as drivers with the company. The company then entered into agreements with the drivers under which the truck drivers became independent contractors and did not fall within the ambit of Motors Transport Workers Act.

Ghatge and Patil concern's employees union raised an industrial dispute contending that the contract system is invented with an intention to deprive the drivers the benefits of the Motor Transport Workers Act 1961 and thereby the drivers lost the benefit of leave of various kinds overtime payment, provident fund, gratuity and insurance. The workmen demanded for the abolition of
the newly introduced contract system and for the reinstatement of the employees of the company.

On reference the Industrial tribunal held that the question of reinstatement of the employees did not arise as they have voluntarily resigned their jobs and hence they cannot be considered as dismissed, discharged or retrenched within the meaning of Industrial Disputes Act. Tribunal also held that the contract entered into between the drivers and the company cannot be said as unfair or anti-labour practice as the company did not compel the drivers to resign and infact, none of the drivers appeared before the tribunal to complain against this system and the claim of the union was rejected.

On appeal by special leave, Supreme Court confirmed the award of the Tribunal. The Court observed that in view of the finding of the Tribunal that the drivers have resigned their jobs voluntarily and entered into agreements considering them to be more favourable than the terms of their former employment, there was no exploitation of drivers. The Court also said that there was no bar in law to the introduction of the system and this case is not analogous to the earlier cases decided by it holding that the employment of contract labour
through a contractor or middlemen was a disadvantage in collective bargaining and thus robbed labour of one of its main weapons in its armoury. The Court said that the drivers have accepted this system because they thought that the new system was more favourable than the terms of their former employment.

In this case, unlike in other cases decided by the Supreme Court on this point there were no middlemen or a contractor between the drivers and the company. Drivers themselves were the independent contractors and there was no relationship of employer and employee. Where as in other cases the contract labour did work of employer and were paid by him through the contractor. The contractor in turn used to deduct the money from the wages for having done nothing to the company there by exploiting the poor and illiterate labour. The contract labourers were not daring enough to raise voice against either the contractor or the principal employers with a fear of loosing their daily bread. This uncivilised treatment of the labour and their exploitation in this way by the contractor was rightly discouraged by the judicial awards and the socially conscious public.
The Supreme Court quoted with approval the observation of the Royal Commission on labour made on the system of contract labour in the cases decided by it on this point. The Royal Commission on labour, while dealing with contract system of labour observed,

"Whatever the merits of the system in primitive times, it is now desirable, if the management is to discharge is to discharge completely the complex responsibility laid upon it by law and by equity that the manager should have full control over the selection, hours of work and payment of worker".

The judicial awards all along have discouraged the system of contract labour. This uncivilised practice cannot be tolerated by any modern country which preaches socialism and must at any cost be put down. Many labour unions and welfare organisation have voiced collectively against this system. Finally, the bill was enacted into an Act in the year 1970 after consideration by the joint committee, as the Contract Labour (Regulation and Abolition) Act 1970.

The Supreme Court and the Industrial Tribunal were dealing with the matters relating to the abolition of
the contract labour in the absence of enactment. After the enactment of the Contract Labour (Regulation and Abolition) Act 1970, many questions were raised before the courts about its interpretations.

Whether the industrial tribunal has jurisdiction to direct for the abolition of contract labour regarding loading and unloading after the commencement of the Act? This question arose for decision before the Supreme Court in *Vegoils Private Ltd v. Their Workmen*. In this case, in its connection with business, the appellant was employing about 700 permanent workmen at its factory in Wadala, Bombay. The appellant had been employing a contractor for more than 30 years for loading, unloading, weighing and stalking materials and bags and feeding the hoppers. The workmen demanded for the abolition of the contract labour in two department of the appellant company Viz., canteen section, in seeds godown and solvent extracting plant section. The dispute was referred to Industrial Tribunal Maharashtra, Bombay. Before the tribunal, the union did not stress for the abolition of contract labour regarding canteen section. Therefore, the tribunal had to consider only

\[\text{Reference: } (1971) II LL J 567 (SC)\]
regarding abolition of contract labour in seeds godown section.

The grounds urged for the abolition of contract labour by the union are as follows. The company had work in this section, which was of a regular and continuous nature. The work in that section was not intermittent or accidental type. The work required to be performed of loading and unloading seed bags and to feed the hoppers for the requirements of solvent extraction plants. The product left after the process of solvent extraction also was to be filled in gunny bags. All these items of work are of permanent nature. This type of work is an essential part of the solvent extraction unit. Therefore, employment of contract labour for these types of works amounts to unfair labour practice. The company resisted the contention raised by the union. After hearing both the parties, the Tribunal held:

1. The system of the contract labour regarding feeding the hoppers should be abolished.
2. The system of contract labour should be abolished regarding loading and unloading of de-oiled cakes because the two enactments central and state support the
view that contract labour should be abolished as far as possible.

On appeal by special leave the Supreme Court confirmed the award of the Tribunal regarding the abolition of contract labour for feeding the hoppers. But set aside the direction of the tribunal regarding the abolition of contract labour for loading and unloading the seed bags and de-oiled cakes.

Three contentions were raised by the appellant before the Supreme Court that the,

1. Tribunal had no jurisdiction to consider the question of abolition of contracts labour in view of the two enactments;
2. Even on the basis of principles laid down by this court the direction to abolition contract labour in respect of loading and unloading is erroneous in law;
3. The finding that contract labour should be abolished in this regard is opposed to the evidence and practice obtaining in the industries in the same area.

The Court held that,

"The provisions of section 10 of the Act, provides that a particular
authority acting in a particular manner had been given power and jurisdiction to decide whether contract labour has to be prohibited in any establishment and before such a decision is taken the representatives of the workmen contractor and industry have to be heard and the decision of the appropriate government is final. The court further held that the jurisdiction to decide about the abolition of contract labour or to put it differently to prohibit the employment of contract labour is now to be done in accordance with section 10. Therefore it is proper that the question whether the contract labour regarding loading and unloading in the industry of the appellant is to be abolished or not is left to be dealt with by the appropriate government under the Act, if it becomes necessary. On this ground we are of the opinion that the direction of the industrial tribunal in this regard will have to be set aside. In our opinion, the most important provision in the Act is made in section 21. That section provides that on the first instance the contractor is liable for payment
of wages to the workers employed by him as a contract labour. The sub section 4 of section 21 makes the principal employer responsible to pay the same to the contract labour”.

The Court further said stressing its findings on the role of the principal employer that “this provision (sec.21 (4)) in our opinion further supports the view that for the effective administration of the Act there can be only one principal employer”.

Under the Contract Labour (Regulation & Abolition) Act 1970, the appropriate government has been vested with power to prohibit employment of contract labour in any process or operation after consulting with Central or State Advisory Board as the case may be. Except section, 10 of the Act all other sections deal with regulation of contract labour rather that its abolition. The Act should have provided for abolition of contract labour altogether at least in public sector and government department to start with.

Though the law was enacted, as long back as in 1970 many states have not framed the rules for implementation of the Act, which are more important. Unless the machinery
is set-up in accordance with the Act by framing rules, the Act will be a dead letter. It is necessary to have the inspecting staff who are dedicated to the cause of labour, for implementing the provisions of the Act.

It is a known fact that the millions of workers are working as casual labourers in Railways, Mines, Sugar factories and many other public sector undertakings though there is sufficient work to engage whole time workmen. This class of labour viz., the casual labourers should be brought within the ambit of this Act. It is better sooner it is done.

The Supreme Court had in several cases even in the absence of an enactment for the abolition of contract labour as a guardian of the peoples rights directed for the abolition of contract labour whenever it was suitable to do so. The Supreme Court was clear in mind and rightly, without any ambiguity held that whenever the work was of a perennial nature the contract labour should be abolished.
On 26 January 1950, the people of India gave unto themselves a sovereign democratic republic. The constitution adopted on the same day promised a new era based on freedom equality, fraternity and justice for all citizens of the country. It recognised that political freedom by itself was not enough and therefore gave primacy to the achievement of social and economic justice. Children were given low priority during the pre-independence period in India and very few statutes relating to children were enacted. It was only after independence that the founding fathers of the nation became aware that employment of children is one of the manifestations of the pervading poverty in the country, and realised the nation’s responsibility towards children their education, protection and development.

Most of the children in the third world countries work where some of this work involves wage employment and the rest may be tasks around the house. Child work does have economic and social significance. Growing children are introduced to economic activity in some societies where a child’s work is considered as part of the
socialisation process in the west. To supplement the family income, child employment involves diverse forms of exploitation in which the beneficiaries are members of either another class or another generation.

The children are delicate and precious flowers of life. It is undisputed that they are the potential embodiment of our ideals, aspirations, ambitions, dreams and hopes. One may sincerely visualise in their innocent personalities the great scientists, philosophers, committed rulers, devoted policy makers, utilitarian legislators, efficient administrators worthy engineers, enlightened industrialists.

In order to safeguard the interest of the children effectively and really the U.N. General Assembly on November 20, 1989 adopted convention on the Rights of the Child. With India's accession to the convention in December 1992 it has now become obligatory for the government of India to undertake measures effectively to eliminate the scourge of child labour which has assumed serious proportions in recent days.

The Supreme Court emphatically stated that the International Labour Organisation has been playing an important role in the process of gradual elimination of
child labour and to protect the child from industrial exploitation. It has focused on five main issues:

1. Prohibition of child labour
2. Protecting child labour at work
3. Attacking the basic causes of child labour.
4. Helping children to adapt to future work.
5. Protecting the children of working parents.

Till now the ILO in the interest of working children all over the world has adopted 18 conventions and 16 recommendations.

In India, Sivakasi has ceased to be the only centre employing child labour. The malady is no longer confined to that place. A write up has described Bhavnagar as another Sivakasi, as the town of about 4 lakh population has at least 13,000 children employed in 300 different industries. The problem of child labour in India has indeed spread its fangs everywhere. The Supreme Court referred to commendable work of U.N. volunteer Neera Burra "Born to work—child labour in India" to highlight the magnitude of the problem. The child labour by now is an all India evil, though its acuteness differs from area to area. Therefore, without a concerted effort, both the Central Government and
various State Governments, this ignominy would not be wiped out. Their Lordships in the case of *M.C. Mehta v. State of Tamil Nadu and Others*\(^{11}\) observed,

"We have therefore thought it fit to travel beyond the confines of Sivakasi. We would address ourselves as to how we can and are required to tackle the problem of child labour, solution of which is necessary to build a better India."

The Supreme Court has systematically narrated background of the Child labour (Prohibition and Regulation) Act 1986 efforts made at national and international levels, indicating contributions of the ILO constitutional mandates and other labour enactments prohibiting child labour in India.

In *M.C. Mehta v. State of Tamil Nadu and others*\(^{112}\) where the Supreme Court observed that despite the constitutional mandates, the stark reality is that in our country like many others, children are an exploited lot. Child labour is a big problem and has remained intractable even after about 50 years of our having become independent, despite various legislative

\(^{11}\) 1997 SCC (L&S) 49.
\(^{112}\) (1993) 1 SCC 645
enactments prohibiting employment of a child in a number of occupations and avocations. In our country, Sivakasi was once taken as the worst offender in the matter of violating prohibition of employing child labour. As the situation there had become intolerable, the public spirited lawyer M.C.Metha thought it necessary to invoke this Court's power under article 32, as after all the fundamental right of the children guaranteed by article 24 was being grossly violated. He therefore filed this petition. It came to be disposed of by an order of 31-10-1990 by noting that in Sivakasi, as on 31-12-1985 there were 221 registered match factories employing 27,338 workmen of whom 2941 were children. The Court then noted that the manufacturing process of matches and fireworks is hazardous, giving rise to accident including fatal cases. So keeping in view the provisions contained in articles 39(f) and 45 of the constitution it gave certain directions as to how the quality of life of children employed in the factories could be improved. The court also felt the need of constituting a committee to oversee the directions given.

Subsequently suo moto cognizance was taken in the present case itself when news about an "unfortunate
accident” in one of the sivakasi cracker factories was published. At the direction of the court Tamil Nadu Government filed a detailed counter stating inter alia, that number of persons who died was of 39 years of age. The Court gave certain direction regarding the payment of compensation and thought that an advocates committee should visit the area and make a comprehensive report relating to the various aspects of the matter as mentioned in the order.

The Supreme Court appreciated the commendable work of the committee. The President of the All India Chamber of Match Industries, Sivakasi and the president of Tamilnadu Fireworks and Amorces Manufacturers’ Association denied what the committee found. The apex court considered various reports relating to working conditions etc., of child labour at Sivakasi. The Supreme Court examined the magnitude of the problem considered constitutional mandates, international commitment, statutory provisions highlighting as to how the problem of child labour has been viewed by our policy makers and what efforts have been made to take care of this evil and held that section 3 of this Act prohibits employment of children in certain occupations and processes. Part A of the schedule to the Act
contains the names of the occupations in which no child can be employed or permitted to work and in Part B names of some processes have been mentioned in which no child can be employed or permitted to work. The Supreme Court quoted the schedule.

Every rule made by a state government under this Act shall be laid as soon as may be after it is made, before the legislature of the State. Where as Supreme Court ruled that failure to lay rules before parliament or state legislature does not affect the validity of the rules.\textsuperscript{113}

In \textit{People's Union for Democratic Rights v. Union of India} \textsuperscript{114} it was contended that the children in the construction work of Asiad Projects in Delhi were not involved in since construction industry was not specified in the schedule to the Children Act. The court rejected this contention and held that the construction work is hazardous employment and therefore under Art. 24 no child below the age of 14 years can be employed in the construction work even if construction industry is not specified in the schedule of the Employment of Children Act.

\textsuperscript{114} A.I.R 1983 S.C. 1473.