CHAPTER – IV

AGRICULTURAL LABOUR AND SOCIAL SECURITY
CHAPTER – IV
AGRICULTURAL LABOUR AND SOCIAL SECURITY

The socio-economic and political status of agricultural labourers in Karnataka are inextricably linked to the rural set up and traditional caste and class structure as a whole and they cannot be viewed in isolation. They represent the weakest among the weak. These agricultural labourers have no alternative source of livelihood other than offering personal labour. They are socially weak as the majority of them belong to Scheduled Castes, Scheduled Tribes and Backward classes, and a substantial number of them are women and children who need special care in order to equalize their position to that of socially forward communities. They are economically weak as they are neither owners of material resources nor having gainful employment. The inherent problem of agricultural occupation exposes them to various kinds of exploitations. They are politically weak as they are not organised and are unable to assert their political rights against the ruling political elite. Their ignorance pushes them in the mire of political exploitation. To ameliorate the misery of the agricultural labourers, it is necessary to extend social security benefits to them so that they may be able to avail the opportunities at par with their counter parts in the industrial sector.

Attempts by the Governments to provide some measure of social security appears to be extending some such measures available to the organized sector to unorganized agricultural sector. How far such measures can be effectively extended to the unorganized sector remains doubtful owing to the amorphous nature of the
unorganised sector. The legislative measures applied to the organized sector appears to be not suitable to the unorganized sector and therefore in the following pages an attempt is made to analyses constitutional and legal basis of social security measures and the most important social security schemes meant to provide social security to the agricultural labourers.

4.1 Social Security for Agricultural Labour under the Constitution of India

The people of India resolved, on November 26, 1949 to constitute their country “into a Sovereign Democratic Republic and to secure to all its citizens:

Justice, social, economic and political;
Liberty of thought, expression, belief, faith and worship;
Equality of status and of opportunity, and to promote among them all,
Fraternity assuring the dignity of the individual and the unity of the Nation”.

And adopted a Constitution which seeks to provide a legal framework for the achievement of these cherished human values.

The Preamble to the Indian Constitution reflects the imagination of the founding fathers. It is a declaration of an egalitarian philosophy, aiming at social reconstruction, Justice – social and economic, equality of status and liberty, dignity of individual and other radical humanist promises are spelt out in the opening words of the supreme ‘lex’, the document on which rests the aspirations of teeming millions of the country. Accordingly, Granville Austin observed.

1 Preamble to the Constitution of India The Constitution (42nd Amendment) Act 1976 changed the Republic to Sovereign, Secular, Democratic and Republic
"The Indian Constitution is first and foremost a social document. The majority of its provisions are either directly aimed at furthering the goals of the social revolution or attempt to foster this revolution by establishing conditions necessary for its achievement. Yet despite the permeation of the entire Constitution by the aim of national renaissance, the core of the commitment to the social revolution lies in Parts III and IV, in the Fundamental Rights and in the Directive principles of State Policy. These are the conscience of the Constitution".3

The constitutional mandate for the achievement of socio-economic Justice, has been further emphasized in Article 38 which states:

"(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political shall inform all the institutions of the national life.

(2) The State shall, in particular, strive to minimize the inequalities in income and endeavor to eliminate inequalities in states, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different vocations".4

Agricultural labourers suffer from the dual curse of social inequality and economic inequality. They constitute a large class of landless labourers who are treated as untouchables by the rest of the community and they have no house to live in, no proper clothes to wear or nutritional food to eat and sometimes even drinking water is beyond their reach. The Preambular egalitarianism in its comprehensive form

---

4 As amended by the Constitution Forty-Four Amendment Act, 1978 which has inserted clause (2) of the Article
regards this as a blot on India’s policy and seeks to remove it by legislative process. When Indian democracy seeks to meet the challenge of socio-economic inequality by its legislative process and with assistance of rule of law, it virtually seeks to achieve economic justice without any violent conflict.\(^5\) Economic justice is one of the important justices to be secured by the Constitution of India. Article 39 the Constitution reaffirms the principles of policy to be followed by the State in securing:

(a) That the citizens, men and women equally, have the right to an adequate means of livelihood.

(b) That the ownership and control of the material resources of the community are so distributed as best to sub serve the common good.

(c) That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.

(d) That there is equal pay for equal work for both men and women, and

(e) The health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter a vocation unsuited to their age or strength”.

The idea of economic justice calls for an improvement in the conditions of agricultural labourers who even today form a considerable part of the population and have weaker position in comparison of others. That is the reason why the Report of Labour Investigation Committee pointed out that, “If maximum good of maximum

---

number is to be achieved, the maximum number in India as anywhere else, consists of the labouring classes and, therefore, if the common man has to get his due, a frontal attack on problem at issue will have to be made with the State in vanguard of a movement".6 The Constitution, therefore, puts the State under obligation to make effective provisions within the limits of its economic capacity, securing the right to work, education and public assistance in cases of unemployment, old-age, sickness and disablement, etc.,7 provision for just and human conditions of work and maternity relief living wages for workers, etc.8

For implementation of any of the governmental policies at the grass root level for agricultural labourers, the role of village Panchayat is very important. Article 40 says that the State shall take steps to organize village Panchayat and endow them to function as units of self-government. In recent years the relevance of Panchayat Raj has been strongly felt, in context with agricultural labourers the provisions of Article 46, 47 and 48 of Chapter IV of the Constitution are relevant. Article 46 provides that the State shall promote with special care the educational and economic interest of weaker sections of the people, and in particular, of the scheduled caste and scheduled tribes, and shall protect them for social injustice and all forms of exploitation. According to Article 47 the State shall regard the raising of the level of nutrition and the standard of living of its people, and the improvement of public health as among its primary duties and, in particular, the State shall endeavor to bring about prohibition of

---

6 Labour Investigation Committee Report p.10.
7 Article 42 and 42 of the Constitution
8 Article 43 of the Constitution.
the consumption, except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health. Under Article 48 the State shall endeavor to organize agricultural and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds and prohibiting the slaughter of cows and calves and other milk and draught cattle.

Besides this the Constitution guarantees some fundamental rights concerning labour irrespective of the fact that they are engaged in organized sector or unorganized sector. Article 19(1) provides that all citizens shall have the right: (i) to freedom of speech and expression; (ii) to assemble peacefully without arms; (iii) to form association and unions; (iv) to practice any profession, or to carry on any occupation, trade or business. Article 23 guarantees the right against exploitation and Article 24 prohibits the employment of children below the age of 14 years.

Thus, the majority of the provisions of the Constitution are either directly purporting to provide social security for the agricultural labourers or attempt to foster this revolution by establishing conditions necessary for its achievement.

4.2 Social Security for Agricultural Labour under Different Labour Legislations

There is no specific social security legislation for agricultural labour. Whatever social security could be made available to the agricultural labourers is merely extension of legislative measures primarily enacted for organized sector.

4.2.1 The Minimum Wages Act, 1948

The most important labour legislation applicable to agricultural labourers is the Minimum Wages Act, 1948. The enactment of this Act was the culmination of the
impact of several factors. Apart from the influence of India’s historical ties with Great Britain which was one of the earliest to accept the principle of minimum wage regulation, a noteworthy influence was the desire of the government to bring about an alignment between the national law and the I.L.O. standards on minimum wages.\(^9\)

Soon after the adoption of the I.L.O. Convention No. 26 in 1928, the practicability of ratifying the Convention was referred to the Royal Commission on Labour for advice. The Commission advised that ‘in order to confirm to the letter and spirit of the Convention, it would first be necessary to create machinery for fixing minimum rates of wages on those trades in which wages are the lowest and where there is no question of collective bargaining’.\(^10\) Since after the First World War the issue was discussed at several sessions of Indian Labour Conference.\(^11\) The Policy Committee on Agricultural (1946) recommended that priority should be given to legislation for fixing minimum wages for agricultural labour. Statutory prescription of minimum wages in sweated industries and occupations in agriculture was one of the main functions of the Governments.\(^12\)

*The Philosophy behind the Minimum Wages Act*

The philosophy underlying this legislation is simple; it is mainly to prevent exploitation of labour through the payment of unduly low wages in those employments where ‘sweated’ conditions exist and where the workers are particularly

---

\(^9\) Labour-Administration of Minimum Wages in Agriculture (A background paper presented at the National Symposium on Administration of Minimum Wages in Agriculture, India) I.L.O. (1965) p. 9


\(^12\) Report of the Policy Committee on Agriculture (1946) p. 48.
vulnerable because of lack of organization. The Supreme Court of India has observed that the object of the Act is directed against exploitation of the ignorant, less organized and less privileged members of the society by the capitalist class. This anxiety of the State for improving the general economic condition of some of its less favored members appears to be in suppression of the old principle of absolute freedom of contract and the doctrine of *laissez faire* and in recognition of new principles of social welfare and common good.\(^{13}\) It also implies the acceptance by the government of the view that in a developing country with severe unemployment and underemployment, wages cannot be left to be determined entirely by market forces, and the government has a positive role to play in ameliorating the conditions of the low paid workers.\(^{14}\)

*The Coverage of the Minimum Wages Act*

The Minimum Wages Act, 1948, came into force with effect from 15\(^{th}\) March 1948. It extends to the whole of India. It covers all persons who are employed “for hire or reward to do any work, skilled or unskilled, manual or clerical, in scheduled employment in respect of which minimum rates of wages have been fixed; and includes outworkers to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of that other person where the process is to be carried out in their home of the outworker or in

\(^{13}\) Y. A. Mamarde *v. Authority under the M. W. Act*. A.I.R 1972 S.C 1721

some other premises not being premises under the control and management of that other person" and also an "employee declared to be an employee by the appropriate Government".\(^{15}\)

Part II of the Schedule to the Act covers employment in Agriculture. The appropriate Government is empowered to add to the Schedule any employment "after issuing a notification in the Official Gazette not less than three month's notice of its intention so to do".\(^{16}\) Under this provision, among other States, the Government of Karnataka has fixed minimum wages for agricultural workers in the year 1959.\(^{17}\)

**Fixation and Revision of Minimum Wages**

Sub-section 3 of Section 3 of the Act empowers the appropriate governments to fix or revise different minimum rates of wages. There could be two main objects of revision of wages: (i) protection against rising cost of living, and (ii) improving equitability and wage differential between different categories of wage earners within and across various employments. The minimum that should be achieved by the revision of wages is to protect erosion of real incomes of wage earners affected by inflation and rising cost of living.\(^{18}\) The practices governing revision of wages vary from State to State. There are thirteen States including Karnataka which have opted

---

\(^{15}\) Section 2(i) of The Minimum Wages Act 1948.

\(^{16}\) Section 27 of the said Act.


for the Variable Dearness Allowance (V.D.A.) systems for compensating for rise in cost of living.\textsuperscript{19}

The appropriate Government may fix minimum rate of wages for time work, piece work, and overtime work and a guaranteed time rate for piece work.\textsuperscript{20} Further, in fixing or revising minimum rates of wages different minimum rates of wages may be fixed for (i) different scheduled employment, (ii) different classes of work in the same scheduled employment (iii) adults, adolescent, children and apprentices; and (iv) different localities.\textsuperscript{21} Similarly, the minimum wages may be fixed by any one or more of the following wage period, namely (i) by the hour (ii) by the day (iii) by the month or (iv) by such other longer period as may be prescribed.\textsuperscript{22}

Section 11(1) of the Act lays down that the minimum wages payable shall be paid in cash, however, it gives due recognition to the force of 'custom' and has left it to the State governments specifically authorize where 'necessary' such payments in kind by notification in the Official Gazette.

Under the Act the appropriate Government is entitled to fix the number of hours of work constituting a normal working day inclusive of one or more rest intervals.\textsuperscript{23} Section 14 of the Act provides for overtime and lays down that where an employee works on any day in excess number of hours constituting a normal working

\textsuperscript{20} Section 3(2) of The Minimum Wages Act 1948
\textsuperscript{21} Section 3(3) (a) of the Act.
\textsuperscript{22} Section 3(3) (b) of the Act.
\textsuperscript{23} Section 13(1) (a) of the Act.
day the employer shall pay him overtime. The overtime shall be payable for every hour or part of hour so worked in excess at the rate fixed under this Act or under any law of appropriate Government for the time being in force whichever is higher.

Time for Revision of Minimum Wages

Wage structures are not static and are liable to be revised with the change of circumstances. The Act, therefore, empowers the appropriate Government to review the minimum rate of wages so fixed and revise the minimum rate at such intervals as it may think fit. The interval as aforesaid shall not exceed five years. But the effect of this is neutralized by the provision where the government, due to any reason, has not reviewed the minimum wages fixed by it within the period of five years it can do so even after the expiry of five years and until the wages are revised, the minimum rate of wages already fixed will continue to be in force.\(^24\)

Choice of Minimum Wage Fixation Process

The Act empowers the appropriate Government not only to fix minimum rate of wages in respect of any scheduled employment for the first time or in revising minimum rate of wages so fixed but also to choose either of the following two process:

(i) appoint as many Committees and sub-Committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision, as the case may be,\(^25\) or

\(^{24}\) Section 3(1) (b) of the Act.
\(^{25}\) Section 5(3) of the Act.
by notification in the Official Gazette, publish the proposals for the
information of persons likely to be affected thereby and specify a date,
not less than two months from the date of the notification, on which the
proposal will be taken into consideration.\textsuperscript{26}

Where the second method is chosen by the Government then it is duty bound to
consult the Advisory Board.\textsuperscript{27} After considering the advice of the Committee or
Committees appointed or representation received by it, the appropriate Government
shall fix or revise minimum rates of wages in respect of each scheduled employment
and unless such notification otherwise provides through notification in official gazette
that it shall come into force on the expiry of three months from the date of issue of the
notification.

\textit{Enforcement}

For the administration of the Act, the State Government has been authorized to
appoint Inspectors. Section 22(b) dealing with cognizance of offences provide that no
court shall take cognizance of offence relating to payment of wages less than notified
rates, unless an application in respect of these matters has been presented under
Section 20. Under Section 20(4) if the claim authority is satisfied that the petition was
either malicious or vexatious, it may direct penalty to be paid to the employer by the
person presenting the application. The burden of proof is on the claimant while it
should be on the employer who is keeping every record in his own hands.

\textsuperscript{26} Section 5(1) (b) of the Act.
\textsuperscript{27} Section 5(1) (b) of the Act.
It is relevant to take note of certain trend-setting judgments delivered by the Supreme Court of India regarding payment of minimum wages to provide a helping hand to the poor labourers. In their judgment in the case of *Peoples' Union for Democratic Rights and others v. Union of India and others*, 28 (Asiad case), the Supreme Court observed as follows:

"Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as 'force' and of labour or service is compelled as a result of such 'force' it would be 'forced labour' where a person is suffering from hunger or starvation, when he has no resources at all to fight disease or to feed his wife and children or even to hide their nakedness, where utter grinding poverty has broken his back and reduced him to a state of helplessness and despair and where no other employment is available to alleviate the rigour of his poverty, he would have no choice but to accept any work that comes his way, even if the remuneration offered to him is less than the minimum wage. He would be in no position to bargain with the employer, he would have to accept what is offered to him. And in doing so he would be acting not as a freed agent with a choice between alternatives but under the compulsion of economic circumstances and the labour or service provided by him would be clearly 'forced labour'.... We are, therefore, of the view that where a person provides labour or service to another for remuneration which is less than the minimum wages, the labour for service provided by him clearly falls within the scope and the ambit of the words 'forced labour' under Article 23."

The expression "minimum wage" is not defined in the Act presumably because it would not be possible to lay down a uniform minimum wages for all industries throughout the country on account of different and varying conditions prevailing from industry to industry and from one part of the country to another. Hence Supreme Court tried to define the term "minimum wages" in *Hydro (Engineers)Ltd. v. The Workmen.*

"The concept of minimum wages takes in the factor of the prevailing cost of essential commodities whenever such minimum wage is to be fixed. The idea of fixing such wages in the light of cost of living at a particular juncture of time and neutralizing the rising prices of essential commodities by linking up scales of minimum wages with the cost of living index cannot, therefore, be said to be alien to the concept of minimum wage. Furthermore in the light of spiraling of prices in recent years, if the wage scales are to be realistic it may become necessary to fix them so as to neutralize at least partly the price raise in essential commodities."

Further the court held, the Act contemplates that minimum wage rates must ensure not only the mere physical need of the worker which would keep him just above starvation but must ensure for him not only his subsistence and that of his family but also preserve his efficiency as a workman. It should, therefore, provide not merely for the bare subsistence of his life but the preservation of the workers and so must provide for some measure of educational, medical requirements and amenities.

---

29 AIR 1969 SC 182.
30 Ibid.
Workmen of Reptakos Brett & Co. Ltd v. Management,\textsuperscript{31} in this case the Supreme Court observed that a worker's wage is no longer a contract between an employer and employee. It has the force of collective bargaining under the labour laws. Each category of the wage structure has to be tested at the anvil of social justice which is the live-fibre of our society today. Keeping in view the socio-economic aspect of the wage structure one more component to minimum wage should be added, namely, children education, medical requirement, minimum recreation including festivals/ceremonies and provision for old age, marriages, etc. should further constitute 25% of the total minimum wage.

It was further held that the wage structure which approximately answers the above six components is nothing more than a minimum wage at subsistence level. The employees are entitled to the minimum wage at all times and under all circumstances. An employer who cannot pay the minimum wage has no right to engage labour and no justification to run the industry.

In Sanjit Roy v. State of Rajasthan,\textsuperscript{32} the Supreme Court has struck down the Rajasthan Famine Relief Works Employees (Exemption from Labour Laws) Act, 1964, on the ground that this Act excludes the applicability of the Minimum Wages Act, 1948 to workmen employed on famine relief works and permits payment of less than the minimum wage to such workmen, it must be held to be invalid as offending

\textsuperscript{31}I.L.J. 1992 SC 340
\textsuperscript{32}AIR 1983 SC 328
the provisions of Article 23. In his concurring judgement Justice Pathak preferred to rest his decision on the ground that there is a breach of Article 14 of the Constitution.

According to B.G.Deshmukh: “The trend set by the Supreme Court is an extremely positive and encouraging one.... This will also help the administration and voluntary agencies to work in close union to achieve the desired objectives of the organization of the rural poor”.33

But, the low paying capacity of the employers in agriculture, the complex relationship between the landowners and agricultural labourers in semi feudal rural set up and lack of organization among agricultural labour, pose hurdles in the implementation of minimum wages.

4.2.2 The Equal Remuneration Act, 1976

The rural agricultural market is known for discrimination against women agricultural labour in terms of wages *vis-à-vis* their male counterpart. The Declaration on the Elimination of Discrimination against women adopted unanimously by the U. N. General Assembly on November 7, 1967 was an important step at the international level. The Convention No. 100 of 1951 of I.L.O. lays down the principle of equal pay for equal work. Indian has ratified it on September 5, 1958. Article 39(d) of the Indian Constitution proclaims equal pay for equal work for both men and women. Pursuant to Article 39(d), the Parliament has enacted the Equal Remuneration Act, 1976. The objective was to provide for payment of equal remuneration to men and women.

---

workers and for prevention of discrimination on the ground of sex against women in matter of employment and for matters connected therewith or incidental thereto.\textsuperscript{34} The Act imposed a duty on the employer to pay equal remuneration to men and women workers for same work or work of a similar nature.\textsuperscript{35} Similarly, no discrimination should be made while recruiting men or women workers.\textsuperscript{36} To provide increasing employment opportunities for women, a provision for setting up of an advisory Committee by the State Government has been made.\textsuperscript{37} The Act also provides penalties for employer for omitting or failing to comply the provisions laid down in the Act.\textsuperscript{38}

For monitoring the administration of the Act, a women’s cell has been set up in the Ministry of Labour. The Central Government and most of the State Governments have also appointed authorities for hearing and deciding complaints and claims of women workers under the Act.\textsuperscript{39} It has been observed by the Supreme Court in \textit{Randhir Singh v. Union of India and others},\textsuperscript{40} that it is true that the principle of equal pay for equal work is not expressly declared by our Constitution to be a fundamental right but it certainly is a constitutional goal.

Nevertheless, women labour forces in agriculture continue to be discriminated. The objective of equality could not be achieved by legislation alone. It needs

\textsuperscript{34} Aims and Objects of the Equal Remuneration Act 1976
\textsuperscript{35} Section 4 of the Act.
\textsuperscript{36} Section 5 of the Act.
\textsuperscript{37} Section 6 of the Act.
\textsuperscript{38} Section 10 of the Act.
\textsuperscript{40} I.L.J. 1982 SC p.344.
awareness amongst the beneficiaries and adequate machinery for implementation of the provisions.

4.2.3 The Bonded Labour System (Abolition) Act, 1976

"Bonded Labour" is a peculiar phenomenon of our agricultural economy. It has been prevalent in various parts of the country since long. The question of its liquidation also has a long history. The British Parliament passed a law in 1833, seeking to abolish slavery throughout the British Empire. It was in 1843 that bonded labour and slave trade was declared illegal in India by the British Government. Several Acts and Regulations were passed since 1843 to the day of independence. With the commencement of the Constitution of India forced labour was prohibited and begar was declared illegal.

The 20-Point Programme declared by Mrs. Gandhi, on 1.7.1975, at item No. 5 incorporated liquidation of bonded labour. She announced: "The practice of bonded labour is barbarous and will be abolished. All contracts or other arrangements under which services of such bonded labour are now secured will be declared illegal". In pursuance of this declaration an Ordinance entitled 'The Bonded Labour System (Abolition) Ordinance' abolishing bonded labour with immediate effect was promulgated on 24th October 1975. Subsequently, the Ordinance was replaced by the

---

44 Supra note 19, at 175
Bonded Labour System (Abolition) Act 1976. The object of the Act is “to provide for the abolition of bonded labour system with a view of preventing the economic and physical exploitation of the weaker section of the people…”

The definition of bonded labour system given in the Act covers a wide and varied number of situations. It includes forced, or partly forced labour under a contract which may be taken by a debtor or his linear ascendants or descendant and in consideration of the interest, if any, due on such advance, the labour would forfeit his right to work elsewhere or to sell at market value, his property or product or his labour or those of any members of his family to another; the bondage may be for a specified period or it may be for unspecified period or hereditary either without wages or for nominal wages; it may arise out of customary or social obligation or by reason of his birth in a particular caste or community. In all these circumstances the labour is termed as ‘bonded labour’.45

The Act abolishes all such bondage and declares that such labourers are to be free and discharged of all obligations to render bonded labour.46 It also provides that after its commencement no person shall make any advance on conditions which amount to bondage and that on person shall compel another to render any bonded labour. All agreements or customs are declared void and inoperative.47 The liability to repay the bonded debt is totally extinguished. Any property belonging to the labourer which has been attached is required to be vacated and restored to the labour. No

45 Section 2 (g) of the Bonded Labour System (Abolition) Act 1976.
46 Section 4 of the Act.
47 Section 5 of the Act.
decrees passed in favor of the creditor are to be executed. The District Magistrate is empowered and obliged to carry out the provisions of the Act. The onus of proof regarding debt is on the creditor. The accused of the system is punishable with fine and imprisonment. Under the Act the State Governments have been armed with administrative and judicial powers relating to cognizance of the offence, prosecution of suspects and their summary trial.

Bonded labour has drawn the attention of the Supreme Court of India through writ petitions in the form of public interest litigation. In People's Union for Democratic Rights v. Union of India popularly known as Asiad Workers case, where non-payment of minimum wages to construction workers was successfully challenged, among others, for the violation of Article 23, the Supreme Court, after an elaborate discussion on the background, philosophy and scope of that article, held that the prohibition against "traffic in human beings and beggar and other similar forms of forced labour" is "a general prohibition, total in its effect and all pervasive in its range". It is a charter of recognition of human dignity, the Court said, against all-State as well as private person. Rejecting the argument of the Union that it prohibit only beggar or other unpaid labour the Court held that all unwilling labour is forced labour whether paid or not and is, therefore, prohibited. On the specific question of minimum wages the Court held that where someone works for less than minimum wages the presumption is that he is working under some compulsion. The compulsion may be

48 Section 6 of the Act.
49 Section 16, 17 and 18 of the Act.
either the result of physical force or of legal provisions or of want, hunger and poverty. Emphasizing on the last factor and declaring the non-payment of wages a forced labour the Court concluded:

"Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as "force" and if labour or service is compelled as a result of such "force", it would be forced labour"

It would be very significant to note that use of bonded labour also contravenes the provisions of Article 21 of the Constitution. In Bandhua Mukti Morcha v. Union of India 51 is an important decision of Supreme Court relating to bonded labour system where question of bondage and rehabilitation of some labourers was involved Justice P.N.Bhagwati observed,

"It is the fundamental right of everyone in this country........ to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses(e) and (f) of Article 39 and Article 41 and 42 and at least, therefore, it must include protection of the health and strength of the workers men and women, of the tender age of children against abuse, opportunities and facilities for children to develop in a healthy manner and in conditions of freedom and dignity, educational facilities, just and humane conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity, and no State ...... has the right to take any action which will deprive a person of the enjoyment of these basic essentials"

---

51 (1984) 3 SCC p 131
Further in *Neerja Chaudhary v. State of Madhya Pradesh*, the Supreme Court has stressed the need of rehabilitation. Neerja Chaudhary invoked the post-Maneka concept of Article 21 to secure effective rehabilitation as their right to live with human dignity.

Justice Bhagwati said that it is the plainest requirement of Articles 21 and 23 of the Constitution that bonded labourers must be identified and on release they must be suitably rehabilitated.

But, the implementation of the Act has faced with the problems, such as identification and rehabilitation of bonded labourers in agricultural sector.

### 4.2.4 The Child Labour (Prohibition and Regulation) Act, 1986

This is an Act to prohibit the engagement of children in certain employment and to regulate the condition of work of children in certain other employments. 'Child' means a person who has not completed his fourteenth year of age. The Act imposes prohibition of employment of children in certain occupations and processes, set forth in Part-A of the Schedule or in any workshop wherein any processes set-forth in Part-B of the Schedule is carried on. A Child Labour Technical Advisory Committee has to be constituted to advise the Central Government for the purpose of addition of occupations and processes in the schedule. In rest of the occupations or

---

53 Section 2(ii) of the Child Labour (Prohibition & Regulation) Act 1986.
54 Section 3 of the Act.
55 Section 5 of the Act.
processes including agriculture,\textsuperscript{56} regulation of conditions of work of children viz. hours and period of work,\textsuperscript{57} weekly holidays,\textsuperscript{58} health and safety,\textsuperscript{59} has been provided. After the commencement of this Act every occupier in relation to and establishment in which a child is/was employed or permitted to work (before or after the commencement) is under liability to inform the inspector under the Act various facts regarding employment of child labour. He has to maintain register regarding occupation and condition of work of child. Strict penalty provisions are made for compliance of various provisions of the Act. Government of India recently on 10-7-2006 issuing a notification announced a ban on the employment of children as domestic servants and workers in dhabas (road-side eateries), restaurants, hotels, motels, tea-shops, resorts, spas or other recreational centres.\textsuperscript{60} It came into effect from 10\textsuperscript{th} October 2006.\textsuperscript{61} Though the range of hazardous occupations has now been expanded under the Child labour Act, most child labourers including those working in agriculture, continue to be 'regulated' to an official maximum of 6 hours a day. Working in agriculture, while not officially recognized as such, is hazardous as well. Working days are normally long and there is frequent exposure to pesticides.

This new legislation has provided a uniform and comprehensive coverage to the problem of child labour. Employment of child labour on large scale is a common

\textsuperscript{56} Section 6 of the Act.
\textsuperscript{57} Section 7 of the Act.
\textsuperscript{58} Section 8 of the Act.
\textsuperscript{59} Section 13 of the Act.
\textsuperscript{60} Notification No. S.O. 1029(F), dated 10-7-2006.
\textsuperscript{61} Available at http://www.indianet.nl/pb060804.html(Visited on 1/2/2008)
phenomenon in agricultural occupation. Hence effective application of this Act may provide remedy up to a certain extent.

4.2.5 The Contract Labour (Regulation and Abolition) Act, 1970

It aims at preventing the exploitation of contract labour by prohibiting its employment in some establishments and regulating its employment and working conditions in other establishments. Under the Act a person is considered to be employed as 'contract labour', in connection with the work of an establishment when he is hired for this work by or through a contractor, with or without the knowledge of principal employer. The Act applies all over India to every establishment and contractor who employs on any day twenty or more persons during the preceding twelve months as contract labour.  

Both the Central and State Government is appropriate Governments for administering and implementing the Act. The extension of and exemption form the Act, appointment of inspectors, registration officers and licensing officers are under the authority of appropriate governments.

The Government may prohibit employment of contract labour in any establishment, any process, or operation or other work after considering the condition of work and benefits provided for the contract labour on consulting their respective advisory boards. Contract labour may not be permitted for any process operation and other work if the same; (i) are incidental to or necessary for industry, trade, business, manufacture or occupation carried on in the establishments, or (ii) are of perennial or

---

62 Section 1(3) of the Contract Labour (Regulation & Abolition) Act, 1970.
perpetual nature or of sufficient duration, or (iii) are executed ordinarily through regular workmen; or (vi) can employ a considerable number of whole time workmen.

The Act has made registration and licensing mandatory and every contractor who undertakes in a work through contract labour has to provide and maintain for his labour drinking water facility, washing facilities, sufficient number of latrines and urinals and other measures for better working conditions similar to the provisions of the Factories Act. Contraventions of the provisions of the Act are punishable with imprisonment of fine or both.

The rural workers seeking employment in various establishments through contractors are being benefited by this Act but those who join agricultural occupations are not. Because Section 1(5) (a) expressly provides that the provisions of the Act shall not apply to establishments in which work only of an intermittent or casual nature is performed. And explanation of the Section says for the purpose of this subsection, work performed in an establishment shall not be deemed to be of an intermittent nature if it was performed for more than one hundred and twenty days in the preceding twelve months, or if it is of seasonal character and is performed for more than sixty days in a year.\textsuperscript{63} Due to lack of adequate irrigational facilities and dependence of cultivation upon uncertainty of monsoon, it is not possible to grow in major part of the land two or more crops in a year. So farmers can have only seasonal agricultural operations. Even though, some time agricultural labourers meet the eligibility criteria generally the contractor called get free from all actions through

\textsuperscript{63} Section 1(5) (b) Explanation: (i) and (ii) of the Act.
corrupt devices. Hence, the Act should be extended to the agricultural sector to protect the majority interest.

4.2.6 The Workmen’s Compensation Act, 1923

It is a Central Act based on British model to provide social assistance in cases of death, disablements and occupational diseases resulting from employment injury. The Act is applicable to the employment given under Schedule II of the Act. It restricts the application of the Act, although under Section 2(3) the State Governments are empowered to add to the Schedule any class of persons employed in any occupation which they are satisfied, is hazardous.

Regarding agricultural occupations, item 29 of the Schedule covers the workers employed in farming by tractors or other contrivances operated by steam or other mechanical power or electricity. The different State Amendments to the Act, however, make the Act applicable to the workmen employed in the cultivation of land or rearing and maintenance of livestock or forest operations or fishing in which on any day of the preceding twelve months more than twenty-five persons have been employed. Therefore, agricultural labourers engaged in a number of farm activities are covered under the Act.

The casual workers, who are engaged otherwise than for the purpose of employers trade of business are excluded from the definition of workman under Section 2(n) of the Act, this clause has now been omitted by Workmen’s Compensation (Amendment) Act, 2000. But reading both the elements conjointly the unanimous judicial opinion follows that if an employer has employed a person for the
purposes of his trade or business then even though the employment is a casual nature, he would still fall within the category of workman. In *Kochu Velu v. Joseph*, 64 the question was whether a coconut climber employed periodically can be said to be a casual employee. In this case the respondent had engaged him to pluck nuts from his trees periodically. While at work, the appellant fell down and became permanently invalid. He claimed compensation but his claim was dismissed by the Commissioner. It was held by the Kerala High Court that when a person is being regularly employed periodically it cannot be said that he is employed casually. The employment here will not be of a casual nature for there is regularity in employment. It was further held that whatever might have been the concept of business at one time, today it has come to be recognized that even carrying on the avocation of agriculture can be said to be carrying on a business of agriculture.

In *T.N.Sitharama Reddiar v. A. Ayyaswami Gounder*, 65 the owner of a land employed a gang of diggers to deepen a well situate over his field. On March 26, 1949 a worker was injured by explosion of the dynamite used for digging operation. He lost his three fingers of left hand and one of his arm was amputated upto his elbow. The injured person was held to be a workman within the meaning of section 2(1)(n) and Scheduler II, clauses (15) and (16) of the Act and entitled to compensation. It was observed that:

"A workman employed in the construction of a well for the purposes of the employer's business of agriculture on daily wages which do not exceed

64 1980 II. L.L.J. 220 (Ker.).
65 A.I.R. 1966 Mad. 212.
Rs. 1,000/- per month is a workman under the Act. It is not necessary in such cases that the digging of well itself should be the trade or business of the employer. Agriculture being the occupation of the employer it cannot be denied that digging of well on the agricultural land was for the cultivation of land and thus for the purpose of employer's business."

Similarly, a farmer, who is engaged in agricultural pursuits and is using tractor or other contrivances which are driven by steam or mechanical power or electricity is covered by the Act. If he engages a workman in these pursuits and accident is caused by such tractors or contrivances, it will fall within clause (29) of Schedule II, of the Act. Thus, a well-digger employed by a farm owner, a mechanic employed on daily wages for installation of machine, a thirteen-year old boy working on sugarcane-crusher, a person employed to repair a compressor, a person working on power - charkhi for crushing cane on farm land have been held to fall within the definition of workman. Similarly, a person engaged by the owner of a coconut garden to pluck nuts once in a period of fifty days or so is a workman.

The Act imposes unilateral liability on the employer, in the form of cash payment to the employment injury victims in cases of: (a) temporary total disablement, (b) permanent total disablement, (c) permanent partial disablement, (d) temporary partial disablement, (e) death, and (f) occupational diseases. Extent of

---

disablement under the Act has to be assessed in terms of loss or reduction in earning capacity and not in terms of physical capacity. In case of death, cash benefit in lump sum is payable to his dependent as per details in Schedule IV.

The administration of the Act is entrusted to the State Governments. Under Section 20 the State Government may appoint any person Workmen’s Compensation Commissioner to administer the Act. The liability to pay the compensation, quantum of compensation and various other issues regarding administration of the Act are the responsibility of the Compensation Commissioner.

However, the inherent difficulties and required technicalities push the agricultural labourers to surrender before the employer on the issue of claim of compensation. The other important factors are their ignorance of law, lack of collective bargaining, dire economic necessity and inability to pursue the claim with the Commissioner.

4.2.7 The Employees State Insurance Act, 1948

The Act is one of the pioneering measures in the area of insurance for workers. It provides for (i) sickness benefit; (ii) maternity benefit; (iii) disablement benefit; (vi) dependents benefit; (v) medical benefit and (vi) funeral benefit,\(^2\) to the employees covered under the Act. With the contributions of employers and employees and sometimes the State, a common fund is created from which insured person get specified benefits as a matter of right without any means test. The scheme is administered by a corporate autonomous body, i.e., Employees’ State Insurance

\(^2\) Section 46 of the Employees’ State Insurance Act 1948.
Corporation representing concerned and interested parties. The Act was applied in the first instance to the perennial factories using power and employing 20 or more persons. Under Section 1(5) of the Act the appropriate Government may in consultation with the Corporation and with the approval of the Central Government, and after giving, by notification in the official gazette, not less than six months' notice of its intention to do so, extend the provisions of the Act to (i) any other establishment, or (ii) class of establishments, industrial, commercial, agricultural or otherwise. As regards the category of employees covered under the scheme, a broader definition of 'employee' is given under Section 2(9) of the Act. Under this Section all categories of workers employed whether casual, temporary or permanent and placed on principal work of the establishment are included. In the cases of employment of casual workers the employers invariably take the stand that such workers are not 'employees' for purposes of availing benefits under the E.S.I. scheme after making necessary contributions. The reasons for this contention are that the casual labour is generally employed for a short period; that their association is only incidental; that they are in no way connected with actual work of the establishment. The Supreme Court in *E.S.I.C. v. South India Flour Mills*,\(^7\) held that casual employees are employees within the meaning of the Act and it is obligatory on the part of the employer to collect contributions and pay their share as well. The inability of the employer to pay the insurance contribution is no ground to avoid payment nor is the liability to pay such contribution made to depend on the benefit to be received by the

\(^7\) (1986) II L.L.J. SC p. 304.
The contribution under E.S.I. Act are *ex-gratia* payments by the employer as an expression of his goodwill or incentive or any other gesture towards his employees pursuant to any settlement or otherwise irrespective of the terms of the employment contract. The judicial interpretation has provided wider coverage of the Act providing wider meaning to the term ‘employees’. The Act could have provided much needed relief to the Indian workers but owing to its extremely limited coverage it has failed to meet the needs of larger number of unorganized labourers. Unfortunately, none of the States have taken steps to cover agricultural labourers within the purview of the Act. Considering the differences in-between the nature and characteristics of seasonal agricultural employment and industrial employment the Committee on Perspective Planning (1972) was not in favor of implementing the existing E.S.I. scheme to agricultural labour class. The High Powered Sub-Committee (1978) on E.S.I. Act has suggested that suitable modifications should be made in the Act before applying it to the agricultural wage earners. The Employees’ State Insurance Review Committee (1982) recommended that the seasonal workers should be eligible to receive sickness benefit at least for sickness occurring during the working season and outdoor medical treatment in the dispensaries established by E.S.I. Corporation. It further recommended that “we have to keep in view the problems relating to infrastructure as

well as the administrative difficulties involved therein\textsuperscript{77} before extending existing E.S.I. scheme to agricultural labourers.

4.2.8 The Maternity Benefit Act, 1961

Maternity is a boon for every woman but it needs social security as it creates a temporary disablement to working women. A number of legislations have been passed in India to provide social security to this cause. In order to reduce disparities amongst various State and Central Legislations\textsuperscript{78} for maternity benefits and provide uniform legislation, the Central Government enacted a new Act called the Maternity Benefit Act, 1961 which has been extended to the whole of India by the end of the year 1972. The objective of the Act was to regulate the employment of women in certain establishment for certain periods before and after the delivery of the child and to provide for maternity benefits and certain other benefits. The Act applies in the first instance to every establishment being a factory, mine or plantation including and such establishment belonging to the Government. The State Government is empowered to extend all or any provisions of the Act, to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise with the approval of


\textsuperscript{78} The Assam Maternity Benefit Act, 1944; the Bihar Maternity Benefit Act 1947; the Bombay Maternity Benefit Act 1929; the Hyderabad Maternity Benefit Act 1942; the Kerala Maternity Benefit Act 1937; the Madhya Pradesh Maternity Benefit Act 1953; the Madras Maternity Benefit Act 1934; the Mysore Maternity Benefit Act 1959; the Orissa Maternity Benefit Act 1953; the Punjab Maternity Benefit Act 1941; the U.P. Maternity Benefit Act 1938; the Bengal Maternity Benefit Act 1959; the Bombay Maternity Benefit Act 1947.
the Central Government by giving not less than two months notice of its intention of so doing.\textsuperscript{79}

The pregnant woman has been given protection in order to protect her health as well as to avoid any interference which may be detrimental to the sound development of the unborn child. The Act prohibits employment or work by women under certain circumstances during prenatal and postnatal periods, each of six weeks.\textsuperscript{80} They are entitled to get payment of maternity benefit at the rate of the average daily wages for the period of her actual absence immediately preceding and including the day of her delivery and for six weeks immediately following the day (upto maximum of 12 weeks).\textsuperscript{81} The other benefits are Medical Bonus,\textsuperscript{82} leave for miscarriage,\textsuperscript{83} leave for illness arising out of pregnancy etc.,\textsuperscript{84} nursing breaks,\textsuperscript{85} prohibition of dismissal during absence of pregnancy,\textsuperscript{86} no deduction of wages etc.\textsuperscript{87} Some of the State Act provide additional benefits such as free medical aid, maternity bonus and provision of crèches etc. The social security provided under the Act may be a boon for women work force. However, the Act has limited application as the State Government is not using their authority to extend the application of the Act to the agricultural sector and even no judicial decision has been found which support this view.

\textsuperscript{79} Section 2 (1) of the M.B. Act.
\textsuperscript{80} Section 4 of the Act.
\textsuperscript{81} Section 5 of the Act.
\textsuperscript{82} Section 8 of the Act.
\textsuperscript{83} Section 9 of the Act.
\textsuperscript{84} Section 10 of the Act.
\textsuperscript{85} Section 11 of the Act.
\textsuperscript{86} Section 12 of the Act.
\textsuperscript{87} Section 13 of the Act.
4.2.9 The Payment of Wages Act, 1936

The object of this Act is to ensure regular and prompt payment of wages\(^{88}\) and to prevent exploitation of wage earner by prohibiting arbitrary fines and deductions from wages.\(^{89}\) In 1931, the Royal Commission on Labour pointed out the wide prevalence of such unfair practices in regard to the payment of wages to workers as non-payment, short-payment, irregular payment, payment in kind rather than in cash, short measurement of work of piece rate workers and excessive fines or deductions. These features are still prevalent, by and large all over the country in agricultural employments. It is remarkable to note that in pursuance of the recommendations of the Royal Commission on Labour, the Government of India enacted the Payment of Wages Act, 1936 to overcome the aforesaid unfair practices. Under Section 22(F) of the Minimum Wages Act, 1948 the Central Government applied the provisions of the Payment of Wages Act, 1936 in respect of employees engaged in agriculture.\(^{90}\) With the application of the Act every employer or the person named or nominated by him as to be responsible for the regular payment of wages without any deduction or fine which are not permissible under the Act. If there are any unauthorized deductions or undue delay in the payment of wages, claim application can be presented to the authority under the Act.\(^{91}\) Penalties have been provided for contravention of various

\(^{88}\) Section 3, 4 and 5 of the Payment of Wages Act, 1936.
\(^{89}\) Section 7 to 13 of the Act.
\(^{90}\) The Government of India Annual Report of Ministry of Labour (1978-80), Appendix IV.
\(^{91}\) Section 15-17 of the Act.
provisions of the Act. But even today the Act is not being properly implemented in agricultural sector where these unfair practices are featured in common.

4.2.10 The Payment of Gratuity Act, 1972

The Gratuity Act is a measure to provide social assistance against the risk of retirement and old-age. Unlike P. F. Act, this Act aims at providing a non-contributory scheme for lump sum payment in cash in cases of loss of income that occurs of old-age, invalidity and death. Under Section 1(3) the Act applies to: (a) every factory, mine,, oilfield, plantation, port and railway company; (b) every shop or establishment within the meaning of any law for the time being in force in relation to shops or establishment in a State, in which ten or more persons are employed or were employed on any day of the preceding twelve months. The Central Government under Section 1(3) (c) is empowered to extend the provision of this Act to any other establishment employing ten or more workers on any day of the preceding twelve months as the Government may specify by notification. By this the Act may apply to agricultural sector.

For every completed year of service or part thereof in excess of six months, the employer is to pay gratuity at the rate of fifteen days wages based on the rate of wages last drawn by the employee concerned. Gratuity is payable to an employee who has rendered continuous service for not less than five years, on the termination of his employment: (a) on his superannuation, or (b) on his retirement, or resignation, or (c)

---

92 Section 20 of the Act.
93 Section 4(2) of the Payment of Gratuity Act.
on his death, or disablement due to accident or disease. The maximum amount of gratuity payable to an employee in not to exceed three lakh and fifteen thousand rupees.

The provisions of the Act may be extended to agricultural sector but effective use can be made only after modification of the Act as per the needs and characteristics of agricultural workers.

4.2.11 The Dangerous Machines (Regulation) Act, 1983

With mechanization of farming the incidences of thresher accidents started registering a steep rise. There was no effective control of the manufacture of unsafe power threshers and a large number of power threshers were made by village blacksmiths without considering the standards of safety. In view of the seriousness of the problem of thresher accidents Government of India has enacted the Dangerous Machines (Regulation) Act, 1983. The objective was "to regulate trade and commerce in the production, supply, distribution and use of power threshers to ensure that they conform to the prescribed standards of safety in the interest of welfare of person operation such threshers." The Act is primarily meant for regulating manufacture etc. of power threshers and other dangerous machines by making it compulsory on the part of the manufacturers to fabricate power threshers and other dangerous machines

94 Section 4(1) of the Act.
95 Section 4(3) of the Act.
96 Statement of Objects and Reasons, Gazette of India Extra – Ordinary, Part – II, Section 2, No, 18 May 1983
conforming to prescribed standards. The term ‘dangerous farm machines’ has been given wider meaning to include all dangerous farm machines like power threshers, chaff-cutters and cane-crushers etc. It also made compulsory for the owners to get existing machines suitably modified within a prescribed time. Now the manufacturer and dealers of dangerous machines are required to obtain license for carrying on their business.

Apart from regulation of manufacture of dangerous machines, the Act under Section 22 makes the employer liable to pay compensation for injuries caused to agricultural labourers while operating dangerous machines, in accordance with the provisions of the Workmen’s Compensation Act, 1923. The issues like liability to pay compensation, the amount compensation and payment of compensation shall be determines in accordance with the provisions of the W. C. Act, 1923. A proposal was made in 1981 and subsequently incorporated in the Dangerous Machine (Regulation) Act, 1983, regarding insurance of farm workers against thresher accidents. Unfortunately, the State Governments were made responsible for enforcement of the Act from such date (as may be specified by notification in the Official Gazette)

---

97 Section 13 to 16 of the Dangerous Machines Regulations Act, 1983
98 Section 3 (c) of the Act states – ‘Dangerous Machine’ means a power thresher and includes any such machine intended to be used in agricultural or rural sector, as the Central Government, being of the opinion that it is of such a nature that any accident in the course of operation thereof is likely to cause to its operator, death, dismemberment of any limb or other bodily injury, may by notification in the Official Gazette, specify as ‘dangerous machine’.
99 Section 21 of the Act.
100 Section 9 of the Act.
101 Section 24 of the Act.
102 Section 1(3) of the Act.
through the appointment of Collector,\textsuperscript{103} Additional, Deputy or Assistant Collectors and Inspectors.\textsuperscript{104} The uncaring attitude and callousness of the State Governments has made the Act a dead letter. In lack of enforcement, it has remained only of decorative value.

4.2.12 The Industrial Disputes Act, 1947

This statute is a paramount labour legislation which provides suitable settlement machinery for the settlement of industrial disputes and maintains peace and harmony of the establishment by regulating the rights of the employer and employees in respect of lock outs and strikes. It also provides social security to the employees in cases of termination of services, lay off, retrenchment, closure and transfer of undertakings.

Multilateral and multidimensional dynamic social laws, like the industrial law can seldom be confined to "\textit{stictum jus}" because it has in the words of Roscoe Pound "dominant political, economic, social and philosophical features".\textsuperscript{105} The judiciary is constantly trying to bridge the gap in between the law and the social change. The definition of "industry" under Section 2(j) of the Industrial Disputes Act is based on the Australian Statute, i.e., Section 4 of the Commonwealth Conciliation and

\textsuperscript{103} Section 5 of the Act.
\textsuperscript{104} Section 7 of the Act.
Arbitration Act, 1904. Hence in constructing the definition and opinion-making the Indian courts have been influenced by the Australian decisions which have been sub-rosa all the time. In the Australian Act “agriculture” has specifically been excluded from the definition of “industry” in Section 4 on which our definition is based. But in the Industrial Disputes Act, 1947 agriculture has neither been included nor excluded.

The judicial interpretation of the definition of “industry” shows a better appreciation of judicial balancing role, from Budge Budge Municipality to Bangalore water supply case. In *D.N. Banerjee v. P. R. Mukherjee*, the Supreme Court observed that non-technical and ordinary meaning of “industry” is “an undertaking where capital and labour cooperates with each other for the purpose of producing wealth in shape of goods, machines, tools etc.”, and from making profits, and “industry” in this sense includes agricultural, horticulture, etc. The court, however, pointed out that this was too wide a view and every aspect of employer and

---

106 The Definition of “Industry” in Section 4 of the Commonwealth Conciliation and Arbitration Act 1903 – 34: (I) any business, trade, manufacture, undertaking or calling of employers of and or water. (ii) any calling service, employment, handicraft or industrial occupation or a vocation of employee on land or water; and (iii) a branch of an industry and a group ok industries.


employees relation does not result in an "industry". Hence, the need for limiting the scope of the term was felt. But later in *Harinagar Cane Farm v. State of Bihar*, Mr. Justice Gajendragadkar, as he then was, held that the two companies engaged in agricultural operations, i.e., in one case the production of sugarcane, wheat, paddy and other articles for sale in the market and in other case producing sugarcane for the use of sugar factories were "industry" under the Act although the Court had left the larger question; whether all agriculture and operations connected with it are included within the definition of "industry" undecided. However, the Court made it clear that under all circumstances agriculture cannot be called industry. A division bench of the Orissa High Court has held that, "unless agriculture is adopted as a business or calling the operation cannot partake the character of "industry".

Justice V. R. Krishna Iyer in *Bangalore Water Supply and Sewerage Board v. A Rajappa* gave widest possible meaning to the expression "industry" on the principle that, "a worker-oriented statute must receive a construction where conceptually the keynote thought must be the worker and the community, as the Constitution has shown concern for them *inter alia* in Articles 38, 39 and 43". The wide import of industry conceded by Iyer J. makes it possible for every undertaking to fall within the meaning of industry which fulfils the triple test: (i) Where there is a systematic activity; (ii) Such activity is organized by the cooperation between

---

109 (1963) I L.L.J. 692 (S.C)
111 (1978) I Lab. I.C. 467 (S.C)
employer ands employees (the direct and substantial element is chimerical); (iii) For the protection and for the distribution of gods and services calculated to satisfy human wants and wishes (not spiritual or religious but inclusive of material things or services geared to celestial bliss, e.g., making on large-scale Prasad or food).

Now after this decision, any activity connected with “agriculture” or “agricultural operations” affecting “industrial or labour disputes” of “welfare of labour” might fall within the ambit of industry, if it satisfies the triple test laid down therein.

Form the cases brought before the Supreme Court; it is evident that the Supreme Court is inclined to treat organized agricultural operations as “industry”. Although it has limited the application of the I.D.Act, to agricultural laborers, particularly engaged in large agricultural operations. Yet it has drawn the attention of the legislature to make the definition more precise. The parliament has amended the definition by the Industrial Disputes (Amendment) Act, 1982; the Agricultural operations have been specifically excluded form the purview of the definition of “industry” as was excluded in Australian statute.113 But this amendment has not been enforced by the Government. So the position remains the same as was decided in Bangalore Water Supply case. Hence agricultural labourers cane claim compensation from the employer in respect of lay off, retrenchment and termination of services. And also may take the help of settlement machinery’s constituted under this Act for the settlement of disputes arose between them connected to the employment.

113 Section 4 of the Commonwealth Conciliation and Arbitration Act 1904-34.
4.2.13 The Trade Unions Act, 1926

The necessity of this law was felt to provide to the workers freedom of association and the right to voice their grievances and to agitate for their redressal through organized action. The Act aims at legitimizing the trade union movement by providing for the optional registration to trade unions and giving officers and members of unions certain legal protections. But the Act is limited to the workmen employed in industry; trade and profession, hence limited the scope of application.\textsuperscript{114}

It is true that the existing trade union law has failed to look at the interest of workers of unorganized sector. But it encourages unionization among the agricultural labourers. So they may fight collectively against the employers or Government for their social security.

4.2.14 The National Rural Employment Guarantee Act, 2005

Recognizing the urgent need to ensure a certain minimum days of wage employment, the United Progressive Alliance (UPA) Government has declared in its National Common Minimum Programme (NCMP) that it “... will immediately enact a National Rural Employment Guarantee Act. This will provide a legal guarantee for at least 100 days of employment, to begin with on asset creating public works programmes every year at minimum wage for at least one able-bodied person in every rural, urban poor and lower middle class household”\textsuperscript{115} it is also necessary to empower the poor in the rural areas by appropriate enactment so that they can demand

\textsuperscript{114} Section 2(g) and (b) of the Trade Union Act, 1926.
\textsuperscript{115} Central Acts and Ordinance 2005 Part – II p. 27
work on the strength of this legal entitlement. In pursuant to the one of the common minimum programme of the UPA Government the Parliament has enacted the National Rural Employment Guarantee Act, 2005 which received assent of the President on September 5, 2005.

The objective was to enhance the livelihood security of the poor households in rural areas of the country by providing at least one hundred days of guaranteed wage employment to every poor household whose adult members volunteer to do unskilled manual work.116 The Act mandates that the State Government shall in such rural area in the state and for such period as may be notified by the central Government provide to every poor household guaranteed wage employment in unskilled manual work at least for period of one hundred days in a financial year in accordance with the provisions made in the legislation and every state Government shall within six months form the date of commencement of this legislation prepare scheme to give effect to the guarantee proposed under the legislation.117

Similarly, there is a provision for wage fixation, the one hundred days of employment under the legislation will be provided at the wage rate to be specified by the Central Government for the purpose of this legislation until such time a wage rate is specified by the Central Government for an area, the minimum wage rate fixed by the State Government under the minimum wage Act, 1948 for agricultural labour

---

116 Section 3 of the National Rural Employment Guarantee Act, 2005.
117 Section 4 of the Act.
shall be considered as the wage rate applicable to that area.\textsuperscript{118} If an eligible applicant is not provided work as per the provisions of this legislation within the prescribed time limit, it will be obligatory on the part of the State Government to pay unemployment allowance at the prescribed rate.\textsuperscript{119} The Act also made provisions for constituting implementing and monitoring authority a Central Employment Guarantee Council\textsuperscript{120} at the Central level and State Employment Guarantee Council\textsuperscript{121} at the state level. In all states where the legislation is made applicable there will be constituted for review, monitoring and effective implementation of the legislation in their respective areas, the standing Committees of the District Panchayat, District Programme Co-coordinator,\textsuperscript{122} programme officers\textsuperscript{123} and Gram Panchayats have been assigned specific responsibilities in implementation of various provisions of the legislation at the Gram Panchayat, Block and District level.

So, in exercise of the powers conferred under sub-Section 2(c) of Section 32 and read with Section 12 of the National Rural Employment Guarantee Act, 2005. The Karnataka Government has framed the rules; it is called as the Karnataka State Employment Guarantee Council Rules, 2006.\textsuperscript{124} Under this Act agricultural labourers may get minimum hundred days of guaranteed employment in every year with prescribed minimum wages during slack season of agricultural activities. So it helps

\textsuperscript{118} Section 6(2) of the Act.
\textsuperscript{119} Section 7 of the Act.
\textsuperscript{120} Section 10 of the Act.
\textsuperscript{121} Section 12 of the Act.
\textsuperscript{122} Section 14 of the Act.
\textsuperscript{123} Section 15 of the Act.
them to get enhance their livelihood security. Hence, the instant Act can provide remedy to the agricultural labour up to a certain extent if it properly implemented.

4.2.15 The Agricultural Workers Bill, 1987

The Central Government has drafted the Agricultural Workers Bill, 1980, broadly based on Kerala Agricultural Workers Act, 1947. It was not be introduced into the Parliament. Further the Government has redrafted the same Bill in 1987. However, certain provisions of K.A.W. Act, 1974 have been modified to facilitate their adoption at all India level. Setting up of an Employment Guarantee Board in each State, creation of an Agricultural Workers Welfare Fund and a big role for trade unions in organizing agricultural workers are some of the new features of the proposed Central legislation for agricultural labourers drafted by the Standing Committee on rural unorganized labourers set up by the Labour Ministry. The Employment Guarantee Board proposed, would be tripartite in character, having representatives of the State Government, employers and agricultural workers to supervise employment guarantee and social security schemes. The Agricultural Workers Welfare Fund is to be created by the contribution of employer, employees and the State Governments.

The definition of “agricultural dispute”¹²⁵ is taken form the Industrial Disputes Act, 1947. The definitions of “adolescent”, “adult” and “child”¹²⁶ are taken form similar definitions of the Plantation Labour Act, 1951. The definition of “agricultural

¹²⁵ Clause 2(d) of the Agricultural Workers Bill, 1987.
¹²⁶ Clause 2(a) (d) and (c) of the Bill.
worker"127 is abridged one and follows the definition of Kerala Act. "Wages"128 will have the same meaning as in the Minimum Wages Act, 1948. Chapter II of the Bill provides Constitution of Agricultural Tribunal,129 appointments of Registration Officers,130 Conciliation Officers,131 Inspectors,132 and facilities to be afforded to the Inspectors for implementation of the Act.133

There is some departure form the Keral Act, in Chapter III dealing with "Security of Employment and Welfare". Preference would be given to "permanent Workers" for employment.134 In this Bill the term "Agricultural Workers Welfare Fund" is used while in the K.A.W. Act, it is "Agricultural Workers Provident Fund". The term used in the Bill is more appropriate and flexible. The hours of work of agricultural workers, adult, adolescent and child have been fixed by the Bill. There is specific provision for extra wages for overtime at the rate of double of the ordinary rate.135

The wages are to be fixed by the Government. The worker can get higher wages in favorable conditions of employment.136 Chapter V deals with "Settlement of Disputes", reference of disputes for adjudication to various authorities and to the

127 Clause 2(g) of the Bill.
128 Clause 2(n) of the Bill.
129 Clause 3 of the Bill.
130 Clause 4 of the Bill.
131 Clause 5 of the Bill.
132 Clause 5 of the Bill.
133 Clause 7 of the Bill.
134 Clause 8 of the Bill.
135 Clause 19 of the Bill.
136 Clause 21 of the Bill
National Commission for Agriculturists. For strict implementation of the provisions, there is provision for "Penalties and Procedure" under Chapter VI. Since the Bill is proposed welfare legislation, it has been felt that no impression should be created in the minds of the agriculturists that the penalties are severe. For these provisions of the Payment of Bonus Act, 1965 have been relied upon. Chapter VII entitled "Miscellaneous" consists of important provisions like maintenance of registers and records, bar of jurisdiction of Civil Courts, recovery of money due from employer, prohibition of unfair labour practice and power to make rules.

Thus the proposed Bill will certainly be a suitable uniform and comprehensive Central legislation for agricultural labourers if passed by the Parliament. Because the Bill consists many provisions which deals with the social security for agricultural labourers that is in order to provides security of employment the Bill prohibits the employer not to employ a new agricultural worker unless he has employed all the agricultural workers who had worked at any time during the previous agricultural season and in case of permanent employees preference shall be given to those who have worked earlier.\textsuperscript{137} Clause 10 of the Bill provides for the establishment of Agricultural Workers' Welfare Fund, the State Government, employer and each agricultural workers shall pay contribution to the fund in such manner and at such rate as may be prescribed by the Government. The other benefits are hours of work.\textsuperscript{138}

\textsuperscript{137} Clause 8 of the Bill.

\textsuperscript{138} Clause 18 of the Bill.
extra wages for overtime work,\textsuperscript{139} daily intervals for rest,\textsuperscript{140} harvesting wage\textsuperscript{141} and registration of trade unions of agricultural workers.\textsuperscript{142}

\textbf{4.2.16 The Unorganised Workers Social Security Bill, 2007}

The Bill is intended to provide a measure of social security to the workers in the unorganized sector it mandates the Central and State Government to implement a National Social Security Scheme.

Chapter II of the Bill dealing with "Social Security Benefits" it mandates the Central Government to formulate a scheme to be called 'National Social Security Scheme'\textsuperscript{143} for the unorganized workers consisting of the following National Minimum Social Security benefits: (i) Health benefits in the form of health insurance for self, spouse and children below the age of 18 year, sickness allowance and maternity benefits for women workers or spouse of men workers. (ii) Life Insurance to cover natural and accidental death (iii) Old age security in form of old age pension for BPL (Below Poverty Level) workers above the age of 60 years and provident fund-cum-unemployment relief for all other workers.

Further, it includes the schemes such as National Old Age Pension Scheme, National Family Benefit Scheme, National Maternity Benefit Scheme, Mahatma Gandhi Bunkar Bima Yojana, Health Insurance Scheme for Handloom Weaver Scheme for pension to Master Craft's persons, Group Accident Insurance Scheme for

\textsuperscript{139} Clause 19 of the Bill.
\textsuperscript{140} Clause 20 of the Bill.
\textsuperscript{141} Clause 21 of the Bill.
\textsuperscript{142} Clause 9 of the Bill.
\textsuperscript{143} Clause 3 of the Unorganised Workers Social Security Bill, 2007.
Active Fishermen, Saving-cum-Relief for the Fishermen, Janashree Bima Yojana, Aam Admi Bima Yojana and Swasthy Bima Yojana.\textsuperscript{144}

It also made provisions, under which the State Government may formulate such unorganized worker based schemes as it may find appropriate to (a) strengthen the National Minimum social security by way of its own contribution, and/or (b) design and implement additional social security benefits through its own schemes. These may include: (a) provident fund schemes (b) employment injury benefit schemes (c) housing schemes (d) educational schemes for children of workers (e) skill up gradation of workers (f) funeral assistance (g) marriage of daughters and (h) any other schemes to enhance to socio-economic security of the unorganized worker.\textsuperscript{145}

Clause 4(1) of the Bill provides for the constitution of National Social Security Fund for contribution to the social security schemes framed under this Bill. Chapter III and IV of the Bill provides for the constitution of National Social Security Board and State National Social Security Board for unorganized worker respectively. Chapter V deals on the provisions relating to Registration of unorganized workers to enjoy the benefits under this Bill. Eligibility for registration are \textsuperscript{146} (a) he/she should have completed 18 years of age, and (b) a self-declaration confirming that he/she is an unorganized worker. Every registered worker shall be eligible for National

\textsuperscript{144} Schedule of the Bill.
\textsuperscript{145} Clause 3 (4) of the Bill.
\textsuperscript{146} Clause 9 (1) of the Bill.
Minimum Social Security benefits only if payments of regular contributions have been made.\textsuperscript{147}

The Union Cabinet by making necessary official amendments in the Bill renamed as the Unorganised Sector Workers Social Security Bill 2008 and on 21 August 2008 gave it clearance for the implementation.\textsuperscript{148}

Since, the agricultural labourers fall within the purview of unorganised workers. The Bill will certainly be a suitable legislation for the agricultural labourers, if passed by the parliament.

The aforesaid estimation of various legislation and proposed Bills evidently proves the lack of comprehensive social security and social welfare legislation to deal with the problems of agricultural labourers in India as well as Karnataka.

4.3 Social Security for Agricultural Labour through Developmental Programmes

The social security system is not specifically evolved for agricultural labourers as it is available to the organized sector. The extension and application of the existing labour legislations needs legislative and executive activism. The Central as well as the majority of State Government including Karnataka have not enacted suitable legislations but in the name of rural development and alleviation of rural poverty they have launched a number of developmental programmes which are providing social security to the agricultural labourers incidentally and indirectly.

\textsuperscript{147} Clause 9 (4) of the Bill.
4.3.1 Rural Landless Employment Guarantee Programme (RLEGDP)

Rural Landless Employment Guarantee Programme (RLEGDP) was launched on 15 August 1983 to generate additional employment in rural areas particularly for the rural landless workers. The programme has three basic objectives, (i) to improve and expand employment opportunities particularly for the rural landless, (ii) to create productive and durable assets for strengthening infrastructure which will lead to rapid growth of rural economy and steady rise in the employment opportunities for the rural poor, and (iii) to improve the overall quality of life in rural areas.\(^{149}\)

The programme is fully controlled by the Central Government. The state governments are required to prepare specific work projects and get them implemented through various agencies under them. The wage component in the project undertaken is required to be minimum 50 per cent of the cost of the project. Since the objectives of the programme is to provide wage employment opportunities during lean agricultural seasons, in times of floods, droughts and other natural calamities and also put an upward pressure on market wage rates by attracting people to public works programmes, thereby reducing labour supply and pushing up demand for labour. Hence, it certainly helps the agricultural labourers in some extent to overcome from unemployment and low wages problem.

4.3.2 The Swarnajayanti Gram Swarozgar Yojana (SGSY)

SGSY was launched in April, 1999 and is the only self-employment programme currently being implemented. It aims at promoting micro-enterprises and

to bring the assisted poor families (Swarozgaris) above the poverty line by organizing them into Self Help Group (SHGs) through social mobilization, training and capacity building and provision of income generating assets through a mix of bank credit and Government subsidy. The scheme is being implemented on a cost-sharing ratio of 75:25 between the Centre and the States. Through this scheme the idea of union will create among the agricultural labourers and improve the collective bargaining position. By involvement in micro enterprise there is a chance to decrees the dependence on agriculture and it also improve the economic condition of agricultural labour. In the year 2005-06 totally 4571 persons were benefited under this scheme in Karnataka. Thus the programme has in-built safeguards for the agricultural labour.

4.3.3 Sampoorna Grameen Rozgar Yojana (SGRY)

The Sampoorna Grameen Rozgar Yojana (SGRY) was launched in September 2001. The schemes of Jawahar Gram Samridhi Yojana (JGSY) and Employment Assurance Scheme (EAS) have been fully integrated with SGRY. The objective of the scheme is to provide additional wage employment along with food security, creation of durable community, social and economic assets and infrastructure development in the rural area. The scheme envisages generation of 100 crore man days of employment in a year. The works taken up under the programme are labour-intensive and the workers are paid the minimum wages notified by the states. Payment

---

of wages is done partly in cash and partly in kind =5 kg of food grains and the balance in cash. The Centre and the states share the cost of the cash component of the scheme in the ratio of 75:25. An allocation of Rs. 3,780 crore was made for the programme in 2001-02. The scheme in some extent simultaneously tries to solve the problem of employment and food security of the agricultural labourers.

4.3.4 Pradhan Mantri Gramodaya Yojana (PMGY)

PMGY was launched in 2000-01 in all the States and the Union Territories in order to achieve the objective of sustainable human development at the village level. The PMGY envisages allocation of Additional Central Assistance to the States and Union Territories for selected basic minimum services in order to focus on certain priority areas of the Government. PMGY initially had five components viz., Primary Health, Primary Education, Rural Shelter, Rural Drinking Water and Nutrition, Rural Electrification has been added as an additional component from 2001-02. The allocation for PMGY in 2000-01 was Rs. 2500 crore. This has been enhanced to Rs. 2800 crore for 2001-02. For the year 2002-03 Rs. 2800 crore have been provided. Under this scheme by establishing the basic minimum services such as Health, Education, Shelter, Drinking Water and Electrification in rural area attempt being made to improve the social conditions of agricultural labour.

154 Ibid p., 239
4.3.5 Antyodaya Anna Yojana (AAY)

The scheme was launched by the Prime Minister on 25th December 2001. Under the scheme 1 crore poorest families out of the BPL families covered under the Targeted Public Distribution System are identified. 25 kgs of food grains were made available to each eligible family at a highly subsidized rate of Rs. 2 per kg for wheat and Rs. 3 per kg for rice. This quantity has been enhanced from 25 to 35 kgs with effect from April, 2002 for a period of 1 year, i.e., up to March 31, 2003. Against an allocation of 19,060 lakh tones of food grains from the Central Pool, up to December 2002 were 24.08 lakh tones. It is notified that more than 60% of the annual income of agricultural labour required for food-grains. So by proper implementation of the scheme would lessen the burden of expenditure of agricultural labour on food-grains.

4.3.6 Indira Awas Yojan (IAY)

The Indira Awas Yojana (IAY) aims at providing dwelling units, free of cost, to the poor families of the Scheduled Caste, Scheduled Tribes, freed bonded labourers and also the non-SC/ST persons below the poverty lines in rural areas. The scheme is funded on a cost-sharing basis of 75:25 between the Center and States, The ceiling on construction assistance under the IAY is Rs. 20,000 per unit for the plain areas and Rs. 22,000 for the hilly/difficult areas. Since inception, upto February 2003 about 94-lakh houses have been constructed by incurring an expenditure of Rs. 16,202.25 crore.

A major scheme for construction of houses to be given to the poor, free of cost, it has an additional component, namely, conversion of unserviceable Kutcha houses to

---

155 Supra note 149, at 30
semi-pucca houses. Further, a Credit-cum-Subsidy Scheme for rural housing was launched from 1.4.1999 targeting rural families having annual income up to Rs. 32,000 from the year 2002-03, this scheme has been merged with IAY.\textsuperscript{156} Study report indicates that majority of agricultural labour do not have even their own houses and those who had their own houses that too not in a proper condition. Thus instant programme in some extent will fulfill housing requirement of agricultural labourers. It is notified that in the year 2005-06 totally 48601 houses were constructed in Karnataka under this scheme.\textsuperscript{157}

4.3.7 The National Social Assistance Programme (NSAP)

NSAP was launched in August 1995 marks a significant step towards fulfillment of the Directive Principles of State Policy. The NSAP has three components. National Old Age Pension Scheme (NOAPS), National Family Benefit Scheme (NFBS), and National Maternity Benefit Scheme (NMBS). The NOAPS provides a monthly pension of Rs. 75 to destitute/BPL persons above the age of 65. The NFBE Scheme provides Rs. 10,000 to the BPL families in the event of death of the bread-winner. The NMBS Scheme gives assistance of Rs. 500 to support nutritional intake for pregnant women.\textsuperscript{158} Though the Central and State Government have not enacted suitable social security legislation for the agricultural labour so far, all three component of this programme such as old age pension, family benefit and

\textsuperscript{157} Supra note 150, at 124.
maternity benefit are certainly assist them if it properly implemented. As per the report 495952 were getting old age pension in Karnataka.  

4.4 Welfare Schemes launched by the Karnataka State

4.4.1 “Namma Bhumi – Namma Thota” Yojana

Namma Bhumi – Namma Thota Yojana was launched in October 2005-06. The scheme seeks to improve the economic and social conditions of landless agricultural labourers through grant of agricultural land. A person will be eligible for the scheme if be fulfils following conditions i) families of the labour should not own any agricultural land since at least two generations, ii) he should depend on agricultural works for his livelihood. The extent of land will be granted is 5 ghunta in case of dry land and 2.5 ghunta in case of wet land. For the year 2005-06 Rs. 20 core have been provided for this scheme. Duration of the scheme is five years and planed to bring all land less agricultural labourers under this scheme with in scheduled time limit. If the programme properly implemented it certainly helps to improve the social and economic security of the agricultural laboure and it prevent the migration of labour from one place to other for the surch of employment. And it may compel the agricultural labourers to move towards independence from dependence.

4.4.2 ‘Bhagya laxmi’ Yojana

‘Bhagya laxmi’Yojana, which was launched on 1st April 2006. Under this scheme Government will deposit Rs. 10,000 in the name of female child whose birth

159 *Supra* note 156, at 127.

160 *Karnataka State Gazet* 6 October 2005 No. 1840 Bangalore, pp. 1-15
took place in BPL families. Beneficiaries of these schemes will get back approximate amount of Rs. 45,000 when the child attains the age of majority.

Now the deposit amount has been enhanced to Rs.20,000/- instead of Rs.10,000/-. So the beneficiary will get back approximate Rs.1,00,000/-.  

Primary aim of these schemes is to eliminate the fear in the family on the birth of female child and for the future benefit of such female child. So far 55 thousand female child were identified for the benefit under this scheme and necessary grant of Rs. 234 crore has been released for the implementation of this scheme. Since majority of the agricultural labourers are living in below poverty line, female child of that house hold are entitled to get benefit under this scheme. Accrued amount of the deposit may be utilized for the higher education or marriage of such beneficiaries. Hence the programme somewhat protect agricultural labourers from mounting burden of debt.

4.4.3 Sandhya Suraksha Yojana (SSY)

Sandhya Suraksha Yojana scheme was launched in 2nd July 2007. Purpose of the scheme is to provide some relief to the aged by providing financial assistance in the form of social security pension. A person will be eligible for pension of Rs 400/- per month under this scheme if she/he satisfies the following conditions. (i) He/She should be 65 years or more in age. (ii) The combined annual income of the proposed pensioners and his or her spouse shall not exceed Rs. 20,000/- as certified by the local

162 'Janapada' Bangalore: Published by Dept of Publication Govt. of Karnataka, February 2007, p.39.
revenue authority. (iii) If the income declared by beneficiary himself/herself, the income of Adult Children will not be counted for calculation of the income of the proposed social security pensioner. (iv) The total value of combined deposits held by the pensioner and his spouse shall not exceeding Rs. 10,000/-. (v) Such of the persons availing of Old Age Pension, Destitute Widow Pension or Physically Handicapped pension or any other form of pension from public or private sources are not eligible for this scheme. (vi) The beneficiaries under this scheme will be chosen from the following categories:— (a) Small farmers, (b) marginal farmers, (c) agricultural labourers, (d) weavers, (e) fishermen, (f) labourers form unorganized sector but it shall not applicable to person covered under the “Building and other construction workers” (Regulation of Employment and conditions of services) Act. 1996.163

4.5 Towards Comprehensive Protective Legislation and Action Plan for Agricultural Workers

It has been felt that the continued misery of agricultural labour is primarily due to the fact that there is no comprehensive legislation at the national level to deal with the problems relating to condition of work, social security and livelihood promotion. Accordingly in 2002 Second National Commission on Labour (SNCL) recommended for “the comprehensive legislation to cover social security and welfare, regulation of employment and conditions of work, as well as promotion of livelihoods.”164

163 Karnataka State Gazet 4 July 2007 Bangalore, pp. 1-10.
The essence of the proposed Umbrella legislation was the removal of poverty of the working population of India through improving their productivity, quality of work, enhancing income earning abilities and increasing their bargaining power. Its aim was to improve the quality of employment to provide a decent life to the workers and to integrate them with the growing opportunities in the country. The basic approach of the legislation is recognition and protection of all types of unorganised sector workers regardless of industry, occupation, work status, and personal characteristics. The provisions covered by the umbrella legislation included social security, health and safety, working hours, holidays, prohibition of child labour, workers right to access the common natural resources to develop and increase his productivity through work, traditional right related to work and space, protection from unfair labour practices, retrenchment without a reasonable cause, education, training and skill development. The proposed legislation also recommended record maintenance such as a register of workers employed, muster roll cum wage payment register and wage slips to be issued to the workers with the seal of the employer. The SNCL recommended that the Umbrella legislation should be integrated into other existing laws, policies and schemes that basically control the economies of these sectors to be more effective.¹⁶⁵

For this purpose of the Government of India, constituted the National Commission for Enterprises in the Unorganised Sector (NCEUS) vide Ministry of Small Scale industries Resolution No. 5(2)2004-ICC dated 20th September, 2004,

¹⁶⁵ Ibid.
under the Chairmanship of Professor Arjun Sengupta. The terms of Reference of the Commission are as follows: Review the status of unorganized/informal sector in India including the nature of enterprises, their size, spread and scope, and magnitude of employment; Identify constraints faced by small enterprises with regard to freedom of carrying out the enterprise, access to raw materials, finance, skills, entrepreneurship development, infrastructure, technology and markets, and suggest measures to provide institutional support and linkages to facilitate easy access to them; Suggest the legal and policy environment that should govern the informal/unorganized sector for growth, employment, exports and promotion; Examine the range of existing programmes that relate to employment generation in the informal/unorganized sector and suggest improvement for their redesign; Identify innovative legal and financing instruments to promote the growth of the informal sector; Review the existing arrangements for estimating employment and unemployment in the informal sector, and examine why the rate of growth in employment has stagnated in the 1990s; Suggest elements of and employment strategy focusing on the informal sector; Review Indian labour laws, consistent with labour rights, and with the requirements of expanding growth of industry and services, particularly in the informal sector, and improving productivity and competitiveness; and Review the social security system available for labour in informal sector, and make recommendations for expanding their coverage.

---

166 Ibid.
167 Ibid.
4.5.1 Recommendations of the National Commission for Enterprises in the Unorganised Sector (NCEUS)

As part of its mandate, the NCEUS is required to review labour laws in the informal sector, consistent with labour rights, and with requirements of expanding growth of industry and services, and improving productivity and competitiveness. Further, the Commission is required to review the social security system available for labour in the informal sector, and to make recommendations for expanding its coverage. Moreover, the Commission has been asked to recommend measures necessary for bringing about improvement in the productivity of enterprises and generation of large scale employment opportunities. In doing this, the Commission has proposed draft Bills regarding the conditions of work and social security for agricultural labour, which is the Agricultural Workers Conditions of Work and Social Security Bill, 2007. The Draft Bill comprises of nine chapters. Apart from the preliminary matter, these chapters deal with: (1) Regulation of Conditions of Work: (2) Social Security Benefits: (3) the National Social Security Fund: (4) the National Social Security and Welfare Board: (5) the State Social Security and Welfare Boards: (6) Registration of Workers: (7) Delivery of Benefits: and (8) Enforcement and Dispute Resolution. The Bill is applicable to the unorganized agricultural workers (all agricultural wage workers excluding those eligible for protection under the Plantation Workers Act, and all marginal and small farmers).
4.5.2 Conditions of Work

The Commission is aware that there are number of laws which are partly applicable to the unorganized workers. However their domain is restricted either in terms of coverage of the unorganized workers or in terms of benefits provided by those laws. Hence, the Commission has provided a framework providing for minimum conditions of work to agricultural labour.

Physical Conditions of Work

The physical conditions of work prescribed for agricultural labourers are, it mandate the every employer to provide in all the lands where agricultural work is carried on such basic amenities and first-aid facilities, and reasonable housing and provision of basic amenities for seasonal workers, personal protective safety equipments are provide to such agricultural workers as are required to handle machinery and agro-chemicals as are hazardous to the life and limb of such workers, compensate a wage worker for any accident or occupational hazard arising out o or in the course of employment that results in any temporary, permanent, partial or total disablement of the wage worker, at rates to be specified in this behalf, and shall ensure that there is no sexual harassment of the agricultural wage worker at the place of work. Further, no employer shall discriminate against any agricultural wage workers on the grounds of sex, caste, religion, incidence of HIV-AIDS,

---

169 Clause 4 (2) of the Bill.
170 Clause 4 (3) of the Bill.
171 Clause 4 (4) of the Bill.
migration status, place of origin, in employment, wage rates and conditions of work.\textsuperscript{172}

\textit{Duration of Work}

The normal hours of work of a agricultural worker is being restricted to eight hours a day beyond which a worker shall be paid overtime at one and a half the normal rate of wages per hour,\textsuperscript{173} every eight hour working day shall have at least an half hour break, s however that the spread over of work shall not exceed ten hours,\textsuperscript{174} and shall be entitled to one paid day of rest after completing six continuous days of employment.\textsuperscript{175} In addition to this the employer shall not be employed women and adolescents' agricultural labourers between the hours of 9 p.m. and 5 a.m., except where permitted under rules made in this behalf.\textsuperscript{176}

\textit{Payment of wages (National Minimum Wage)}

The Commission has taken the view there should be a statutory National Minimum Wage which shall represent the lowest level of wage for any employment in the country. According Clause 6 (2) (a) & (b) of the Bill deals that the Central government shall notify a National Minimum Wage. This wage shall be applicable to all agricultural workers presently not covered under the Minimum Wages Act of the State concerned, and would be applicable to both wage workers and home workers. Even with respect to the employments covered under the Minimum Wages Act, the

\textsuperscript{172} Clause 6 (9) of the Bill.
\textsuperscript{173} Clause 5 (1) of the Bill.
\textsuperscript{174} Clause 5 (2) of the Bill.
\textsuperscript{175} Clause 5 (4) of the Bill.
\textsuperscript{176} Clause 5 (3) of the Bill.
State Government has to ensure that the Minimum Wages fixed under the Minimum Wages Act, in not lower than the National Minimum Wage. In case, the prescribed minimum wage under the Minimum Wages Act is lower than the National Minimum Wage, the State Government shall immediately amend the prescribed minimum wage, to bring it in conformity with the National Minimum Wage. Even during the intervening period, till the time the State Government has not amended the prescribed wage under the minimum wages Act, the worker shall not suffer and shall be eligible to receive the higher National Minimum Wage. The Central government while fixing the National Minimum Wage shall follow a tri-partite consultative process, and will be announced within one year. The general principles in the fixation of the National Minimum Wage will be the minimum basic needs of the wage and home workers and his/her family. It is seen that the cost of living among different states, districts or even between the rural areas and urban areas within one district vary considerably. The government shall consider all such factors or any other relevant parameters for fixation of National Minimum Wage. Thereafter, the National Minimum Wage shall be periodically reviewed by the Central Government through a modality prescribed by the National Board for Social Security and Welfare for Unorganized Workers. Till such time as the government fixes and announces the new National Minimum Wage, the National Minimum Wage fixed by the Labour

---

177 Clause 6 of the Bill.
178 Clause 6 (2) of the Bill.
179 Clause 13 (m) of the Bill.
Ministry shall, after adjustment for cost of living changes, be deemed to be the National Minimum Wage under this Act.\textsuperscript{180}

\textit{Other Aspect Relating to Wages}

The Bill also consist other aspects relating to payment of wages to agricultural workers. There are cases of delayed payments both for wage workers and home workers. Hence, provide that the wages of workers shall be paid for the periods agreed upon by the employer and the worker which can in no case exceed one month. It there is any delay in payment of wages beyond one month, then the employer shall be liable to pay penal interest to the worker.\textsuperscript{181} Every employer shall provide an agricultural wage worker the details of remuneration received by him/her in such form as may be prescribed by the State Government and maintain such registers and records as may be necessary to verify the employer’s claim regarding the employment status of agricultural wage workers and details of payments made to them.\textsuperscript{182}

\textbf{4.5.3 Social Security}

The Commission’s approach has been to ensure that a minimum level of social protection is seen by the workers as a statutory right and an entitlement and not simply as an ad hoc largesse bestowed by government. Therefore, the statutory

\textsuperscript{180} Clause 6 (2)(d) of the Bill.
\textsuperscript{181} Clause 6 (5) of the Bill.
\textsuperscript{182} Clause 6 (7) (c) of the Bill.
National Social Security Scheme which the Commission has proposed consists of a package of the following minimum benefits.\footnote{Clause 7 (2) of the Bill.}

**Health Insurance:**- (i) Each worker will be entitled to hospitalization for himself and his family member, costing Rs. 15000 a year in total with Rs. 10000 maximum per ailment in designated, hospitals or clinics, public or private, recognized by the State Board, with at least 15 beds. If there is no such clinic available within 10 kilometers from the worker’s residence, he would be entitled to a transport cost to the nearest hospital on actuals upto a maximum of 5% of hospital cost. All payments will be made by the insurance company to the clinics/hospitals directly and except for the transportation cost, no cash payment will be made to the workers; (ii) Maternity Benefits of Rs. 1000 maximum or actual for the member or the spouse, per year; (iii) Sickness cover of Rs 750/- for earning head of family (during hospitalization) for 15 days (only in excess of 3days) during the policy period @ Rs 50/- per day.

**Life and Disability Cover:**- (i) In case of Natural Death, Rs. 30,000/- (ii) In case of Death or total disability due to accident, Rs. 75,000/- and (iii) In case of Partial Permanent Disability due to accident, Rs. 37,500/-

**Old Age Security:**- (i) All BPL agricultural workers will get a monthly pension of Rs. 200 at 60 plus. This would be irrespective of the year of his/her registration with the scheme. 9ii) All agricultural workers other than BPL and registered in the scheme will be entitled to a Provident Fund which will accumulate to his account from the year of
his/her registration. (iii) At the end of 60th year the BPL age workers will have 3 options. He can continue with the provident fund scheme by contributing the full premium i.e. both the governments and his contribution, or, withdraw the whole amount of the Provident Fund accumulated to that date, or alternatively, he could buy an Annuity with the accumulated amount and the returns would be like his pension. (iii) The Provident Fund Scheme can also be used as unemployment insurance. After 10 years' contribution, the worker, if he becomes unemployed and is verified to be so by the Workers Facilitation Center (WFC), he would be entitled to draw up to 50% of the accumulated sum as unemployment benefits for a period of 6 months. After six months or before that if he becomes employed again, the worker will be able to continue with the scheme by renewing his contribution.

Coverage and eligibility:- This social security schemes applies to all agricultural workers who a) has completed 18 years of age; b) whose monthly income does not exceed Rs. 7000/- in 2007 (roughly equivalent to Rs. 6500/- per month recommended by the Indian Labour Conference held in December 2005); c) has submitted a prescribed self-declaration form confirming that he/she is an agricultural workers not owning or operating a holding of more than two hectares or such limits as may be notified from time to time by the State government; and d) has paid the contribution/fee as prescribed.

4.5.4 Action Plans for Livelihood Promotion

The agricultural workers in the Unorganized Sector face problems that arise out of deficiency or capability deprivation in terms of inadequate employment, low
earnings, low health, etc., as well as of adversity in the absence of fall back mechanisms (safety net). These workers have limited or informal social security cover which increases their vulnerability during times of illness, old age, unemployment and untimely death. The absence of social security mechanisms is a critical factor in downturns in the conditions of these households, many of whom are already very poor. It destroys the workers' ability to contribute meaningfully, and to increasing production and productivity. It leads to disaffection increasing social costs, widespread crimes, and persistent ill health. So for the promotion of livelihood of the agricultural workers Commission has recommended the State Government may on the recommendations of the State Board formulate schemes for them, to strengthen the national minimum social security by way of its own contribution and/or design and implement additional social security benefits through its own schemes. These may include a) Provident Fund schemes; b) Employment injury benefit scheme; c) Housing schemes; d) Education schemes for children of workers; e) Skill upgradation; f) Funeral assistance; g) Marriage of daughters; and h) Any other schemes to enhance socio-economic security.\(^{184}\)

Thus the proposed Agricultural Workers' Conditions of Work and Social Security Bill, 2007 be a comprehensive Central legislation to cover social security and welfare, regulation of employment and condition of work, as well as promotion of livelihoods of agricultural labourers if passed by the Parliament

\(^{184}\) Clause 7 (5) of the Bill.
An evaluation of social security and social welfare systems available to agricultural workers in different countries of the world makes it clear that comprehensive social insurance system is available form “cradle to grave” only in those countries where majority of workforce has shifted to organized sector and remaining little population depends on most modernized agricultural sector.\textsuperscript{185} The majority population in India depends on traditional agricultural sector and lesser population could be adjusted in organized sector. They are still passing through semi-feudal exploitations exposing the poor masses to several occupational and non-occupational risks due to non-availability of efficient social security measures.\textsuperscript{186}

The dawn of Indian independence was the beginning of a new era based on the principles of social, economic and political justice. The founding fathers of the Constitution with the clear vision and firm determination introduced provisions like protective discrimination to shelter the down-trodden masses. A number of provisions have been introduced in the Constitution to protect the interest of labourers so that they should not be exploited and social justice should be ensured. Although the welfare government has enacted several labour legislations in consonance with the ideals of the I.L.O. and the Indian Constitution yet very little legislation are available for agricultural labour. The Minimum Wages Act, Workmen’s Compensation Act, Equal Remuneration Act, Bonded Labour Act, Migrant Labour Act and The National Employment Guarantee Act, etc. are the Central legislations which may provide

\textsuperscript{185} Supra note 44, at 212

\textsuperscript{186} Ibid., p. 213.
shelter to the agricultural labourers if amended and implemented properly. Karnataka Government has launched some social security schemes for agricultural labourers. Instead of legislating a uniform and comprehensive Central Government has introduced several developmental programmes, particularly from the Fourth Five Year Plan to eradicate poverty, generate employment and provide better living and working conditions. The trend of judicial activism gives the hope that in cases of non-implementation of the existing socio-legal protection, the Public Interest Litigation may be evoked.