INTRODUCTION

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

The judiciary has played a significant role in the evolution of industrial jurisprudence and made a distinct contribution towards innovative methods and devised strategies to ensure social justice to weaker sections of the society which could be evidenced from a number of decisions. Therefore, Indian judiciary has always been quite proactive in the matter of extending the coverage of social security to eliminate the vulnerability of unorganized workers. Despite various legislations such as Employees’ Compensation Act, Employees’ State Insurance Act, Employees’ Provident Funds and Miscellaneous Provisions Act, etc., it is fact that the unorganized sector workers are remaining outside the purview of social security nets. Owing to the failure of legislations, judiciary has come forward to protect the workers in order to fulfil the gap created by legislative machinery. Through its various pronouncements of judgments Judiciary upholds the spirit of social equity and justice and protects the interests of vulnerable groups like unorganized labour, women and children.

1 Ph.d Scholar  
2 Available at http://shodhganga.inflibnet.ac.in (last accessed on 26/7/2017)  
3 Available at http://shodhganga.inflibnet.ac.in (last accessed on 26/7/2017)
The judicial pronouncements on the right to social security have been very scanty. The court has admitted the fact that it is only in the 20th century the concepts of social justice and social security, as integral parts of the general theory of the Welfare State, were firmly established. The right to social security has been recognized in order to ensure means of livelihood in loss of employment or disablement during employment.\(^4\)

In *Life Insurance Corporation of India v. Consumer Education and Research Centre*\(^5\), The court has observed that social security has been assured under Article 41 and Article 47 and it imposes a positive duty on the State to raise the standard of living and to improve public health. The basic right to enjoy means of livelihood from cradle to crave India.

The activist judiciary needs to revisit its strategy in India. The “activist judiciary” needs to revisit its strategy in the matter of social security. There is no denial of the fact that the right to life impregnates right to social security because standard of living and decent life is unqualified and unconditional right of every individual irrespective of earning capacity of individual\(^6\).

The judiciary has been an arm of social revolution in many societies, particularly, in the democratic ones. It upholds the rule of law and brings about social readjustment necessary to establish coherent socio-economic order. The complexities of growing social order in a developing economy do not keep law at standstill, it moves constantly in consonance with the changing needs of the changing society. In this context, judiciary must continuously seek to mould the law so as to serve the needs of the time. Law confers rights and rights have no life without remedies provided by judicial system. The social security legislation will have a real meaning only when stress is laid on what is described as” remedial jurisprudence” through the judicial power. While interpreting the ‘Social Security Legislations’ Judge must avoid mechanical approach and adopt practical one, being guided by socio-economic values and needs of society.\(^7\)

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\(^4\) Mohapatra. Dipti Rekha.;”ROLE OF JUDIACIARY FOR THE SOCIAL SECURITY AND PROTECTION OF WOMEN LABOUR IN INDIA”; International Journal of Technical Research and Applications; Special Issue 17; 25 (June, 2015).

\(^5\) 1995 AIR 1811, 1995 SCC (5) 482

\(^6\) *Supra* n. 3

\(^7\) *Ibid.*
While interpreting the ‘Social Security Legislations’ the Indian judiciary, considering it a piece of beneficial legislation, has been generous to protect the interest of the down-trodden section of the society and at the same time avoided to become kind oppressor. It always kept in view the broader objectives of the various enactments of social security and to interpret them within the framework of the ideals and principles enshrined in the Supreme Law of the country the Indian Constitution. Further to make the most difficult process of adjustment a reality it attempted to keep itself free from the tyranny of dogmas or subconscious process of preconceived notions and adopted a flexible and pragmatic approach. It also emphasized that socio economic are created by our Constitution are to be translated into practice through the instrumentality of Social Security Legislations. This trend is clearly discernible from Royal talkies, hyderabad v. Employees State Insurance Corporation\(^8\) and Orango Chemical Industries and another vs. Union of India\(^9\), decided in late seventies by the apex court.

Under the Constitution of India, labour is a subject in the Concurrent List\(^10\), where both the Central and State Governments are competent to enact legislation subject to certain matters being reserved for the Centre. In addition to these, our Preamble has secured social, economic, political justice, equality of status and opportunity to all including fraternity to all. Except the preamble, there are so many other provisions in the Constitution which enable India as a “Social Welfare State”. Fundamental Rights are incorporated in the part III of the Constitution of India. These Fundamental Rights can be enforced directly by the Supreme Court by virtue of Article 32 and through High Courts under Article 226. These Fundamental Rights are essential for the better development of mental, character, and human dignity of every individual. These rights cannot be derogated or denied by the state or government\(^11\).

\(^8\) 1978 AIR 1478, 1979 SCR (1) 80  
\(^9\) 1979 AIR 1803, 1980 SCR (1) 61  
\(^10\) Entry No. 22-Trade Unions; industrial and labour disputes, Entry No. 23-Social Security and insurance, employment and unemployment; Entry No. 24- Welfare of Labour including conditions of work, provident funds, employers "invalidity and old age pension and maternity, Entry No. 55- Regulation of labour and safety in mines and oil fields, Entry No. 61- Industrial disputes concerning Union employees Entry No. 65-Union agencies and institutions for "Vocational ...training..."  
\(^11\) Supra n. 1
In *D. S. Nakara v. Union of India*12, the Supreme Court has held that the principal aim of a socialist state is to eliminate inequality in income, status and standards of life. The basic framework of socialism is to provide a proper standard of life to the people, especially, security from cradle to grave. Amongst these, it envisaged economic equality and equitable distribution of income. This is a combination of Marxism and Gandhism, leaning heavily on Gandhian socialism. From a wholly feudal exploited slave society to a vibrant, throbbing socialist welfare society reveals a long march, but, during this journey, every state action, whenever taken, must be so directed and interpreted so as to take the society one step towards the goal.

In *Meneka Gandhi v. Union of India*13, the Supreme Court gave a new dimension to Article 21. It held that the right to “live” is not merely confined to physical existence but it includes within its ambit the right to live with human dignity.

The part IV of the Constitution of India (Article 36 to 51) is concerned with Directive Principles of the State Policy. This part IV is the foundation of social welfare system. However, these principles are neither enforceable nor binding on the state but are simply guidelines for the state, which the state has to consider at the time of policy making. Part IV is just like a light which shows a path to the state. These Directive Principles are supporters for making state a social welfare state. The Directive Principles are the ideals which the Union and state Government must keep in mind while formulating its policies. They lay down certain social, economic and political principles suitable in peculiar conditions prevailing in India. The idea of welfare state envisaged by our Constitution can only be achieved if the State endeavours to implement them with high sense of moral duty14.

The Supreme Court has held some Directive Principles as Fundamental Rights through judicial activism, e.g., In *Randhir Singh v. Union of India*15, the petitioner and other driver constables made a representation to the authorities that their case was omitted to be considered separately by the Third Pay Commission and that their pay scales should be the same as the drivers of

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12 (1983)1 SCC 305  
13 AIR 1978 SC 597  
14 *Supra* n.5  
15 AIR 1982 SC 879
heavy vehicles in other departments. As their claims for better scales of pay did not meet with success, the application has been filed by the petitioner for the issue of a writ under Article 32 of the Constitution. The Supreme Court has held that principle of “equal pay for equal work” though not a fundamental right but it is certainly a constitutional goal, so it can be enforced. It is clear that the Judiciary is playing a pivotal role to promote Indian state as a social welfare state. In addition to these, Public Interest Litigations (PILs) have also played an important role in this field and have maintained social order.

The Supreme Court in number of cases has pointed out that the right to livelihood is inherent in the right to life. Particularly, in the case of Rural Litigation and Entitlement Kendra, Dehradun v. Uttar Pradesh\(^{16}\), the court has held that the right to livelihood is inherent in right to life under Article 21.

Supreme Court’s Emphasis on Right to Health and Medical Care as a Fundamental Right in the landmark case Consumer Education and Research Centre and others v Union of India and others\(^{17}\), the apex court has held that the right to health and medical care to protect one’s health and vitality, while in service or post-retirement, is a fundamental right of a worker under Article 21\(^{18}\) read with Articles 39(e)\(^{19}\), 41\(^{20}\), 43\(^{21}\), 48-A\(^{22}\) and all related Articles and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person.

\(^{16}\) AIR 1985 SC 652
\(^{17}\) (1995) 3 SCC 42
\(^{18}\) Protection of life and personal liberty: No person shall be deprived of his life or personal liberty except according to procedure established by law
\(^{19}\) (e) That 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 avocations unsuited to their age or strength
\(^{20}\) Right to work, to education and to public assistance in certain cases: The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want
\(^{21}\) Living wage, etc., for workers: The State shall endeavour to secure, by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditionsof work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall Endevour to promote cottage industries on an individual or co-operative basis in rural areas
\(^{22}\) Protection and improvement of environment and safeguarding of forests and wild life: The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the Country
The Court held that the compelling necessity to work in an industry exposed to health hazards due to indigence to bread-winning for him and his dependents should not be at the cost of health and vigor of the workman.

Right to life includes protection of a worker's health and strength and is a minimum requirement enabling a person to live with dignity. *The State (central and state) government or an industry, public or private, is enjoined to take all such action which will promote health, strength and vigor of the workman during the period of employment and leisure and health even after retirement as basic essentials to live the life of health and happiness.*

The Supreme Court went on to observe that the right to human dignity, development of responsibility, social protection, right to rest and leisure are a worker's fundamental human rights, as assured by the Charter of Human Rights, in the Preamble and Articles 38 and 39 of the Constitution. Health enables a worker to enjoy the fruits of his labour, keeping him physically fit and mentally alert, and leading a successful life, economically, socially and culturally. *Medical facilities to protect the health of workers are, therefore, the fundamental and human rights of the workman.*

Right to health i.e. right to live in a clean, hygienic and safe environment is a right flowing from Article 21. Clean surroundings lead to healthy body and healthy mind. But, unfortunately, foreaking a livelihood and for national interest, many employees work in dangerous, risky and unhygienic environment. Right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy, particularly clauses (e) and (f) of Article39 and Articles 41 and 42. These Articles include protection of health and strength of workers and just and humane conditions of work. Those are minimum requirements which must exist to

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23 Mihir Desai, “The judicial response to workplace safety”; AGENDA- Occupational safety and health; Issue 15, 2009; P.15
24 Ibid.
25 (f) That children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.
26 Provision for just and humane conditions of work and maternity relief: The State shall make provision for securing just and humane conditions of work and for maternity relief.
enable a person to live with human dignity. Every State has an obligation and duty to provide at least the minimum condition ensuring human dignity.

The fundamental purpose of the National Policy on Safety, Health and Environment at workplace, is not only to eliminate the incidence of work related injuries, diseases, fatalities, disaster and loss of national assets and also ensuring a high level of occupational safety, health and environment performance through proactive approaches along with enhancement of wellbeing of the employee and society, at large.27

In Rajangam, Secretary, Dist. Beedi Worker's Union v State of Tamil Nadu28, the issue concerned the work conditions of employees in beedi manufacturing and allied industries. A large number of children are employed in this occupation. The Supreme Court held that, In view of the health hazard involved in the manufacturing process, every worker including children, if employed, should be insured for a minimum amount of Rs 50,000 and the premium should be paid by the employer and the incidence should not be passed on to the workman.

Judiciary based its decisions on the principles of social justice and attempted to create a value system which takes care of interests and rights of a large number of people who are poor, ignorant or in a socially and economically disadvantageous position. Two decisions of the Supreme Court of India testify this trend. Judgment given in case of People's Union for Democratic Rights and Others vs. Union of India29, which is also known as Ashiad Case, is an important and landmark judgment of the Supreme Court that has not only made a distinct contribution to labour law but also showed the positive and creative attitude of judges to give protection to the interests of the weaker section of the society. It stated that time has come when the courts must become the courts for poor and struggling masses of the country. They must shed their character as upholders of the established order and status quo. The rule of law does not mean that protection of law must be available to the fortunate few or that the law should be allowed to be prostituted by the vested interests for protecting and upholding the status quo under the guise of enforcement of their civil and political rights. The poor too have civil and

29 1982 AIR 1473, 1983 SCR (1) 456
political rights and the rule of law is meant for them also. The court enlarged contours of the fundamental right to equality, life and liberty, prohibition of traffic in human being and forced labour and prohibition of employment of child labour provided in the Constitution.

The case arose out of the denial of the minimum wages to workers engaged in the various Ashiad Projects and non-enforcement of The Minimum Wages Act, 1948, Equal Remuneration Act, 1976, Article 24 of the Constitution, Employment of the Children Act, 1938, Contract Labour (Regulation of the Employment and Conditions of service) Act, 1979. The Court’s attention was drawn by a public spirited organization by means of a letter addressed to Bhagwati, J. of the Supreme Court.30 The Supreme Court has accepted the Locus Standi of the Organisation to file the writ petition and converted the letter into a petition and observed that when legal wrong or legal injury is caused to a person or determinate class of a person and such person or persons are unable to reach the court for relief due to the poverty, helplessness of the disability or social and economic backwardness, they may be represented by any other person or organization.

The Court has further held that employment of children below 14 years in the construction work of the Ashiad Project is a violation of the fundamental right and non-observance of the Equal Remuneration Act, 1976 would amount to breach of Article 14. Further, the violation of the Contract Labour (Regulation and Abolition) Act, 1970 and Inter State Migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979 intended to ensure basic human dignity to workman is clearly in violation of Article 21. It was also held that non-payment of minimum wages to the workers engaged in construction work would amount to not only violation of Minimum Wages Act, but also Article 23 of the Constitution, which intends to prevent forced labour and beggar. Thus, the Supreme Court has protected the interest and dignity of the workers engaged in the construction work of Ashiad Projects and rendered justice.

The spirit was maintained by Supreme Court in its subsequent case of Sanjit Roy vs. State of Rajasthan31. Again it was stressed that State cannot be permitted to take advantage of the helpless condition of the affected persons and deny the advantages of labour legislation to

31AIR 1983 SC 329
helpless labour. No work of utility and value can be allowed to be constructed on the blood and sweat of persons who is reduced to a state of helplessness on account of drought and scarcity conditions. Thus the trend of judiciary has been to make sincere efforts for achieving a coherent socio-economic order based on social justice and basic human values.\textsuperscript{32}

In \textit{Deena V. Union of India}\textsuperscript{33}, the Supreme Court held that labour taken from prisoners without paying proper remuneration was forced labour and violation of Article 23 of the Constitution. The prisoners are entitled to payment of reasonable wages for the work taken from them. And the court is under duty to enforce their claim.

**BONDED LABOUR**

The bonded labour system is the relic of feudal exploitative system resulting in domination of a few socially and economically powerful persons over the large number of illiterate, socially and economically weak people.\textsuperscript{34}

Till recently, there existed in India a system of ‘usury’ under which the debtor or his descendants or dependents has to work for the creditor without reasonable wages or with no wages in order to extinguish the debt. At times, several generations worked under bondage for the repayment of a paltry (miserable) sum, which had been taken by some remote ancestor. This system implied infringement of basic human rights and destruction of the dignity of human labour.\textsuperscript{35}

In order to prevent exploitation of bonded labour the Constitution contains several provisions. Thus clause (1) of article 23 prohibits traffic in human beings and other similar forms of forced labour. Further article 21 guarantees that no person shall be deprived of his life or personal liberty except according to procedure established by law.\textsuperscript{36}

\begin{flushright}
\textsuperscript{32} \textit{Supra} n. 5 \\
\textsuperscript{33} AIR 1983 SC 1155 \\
\textsuperscript{34} C. Srivastava Suresh;"\textit{Constitutional Protection to Weaker and Disadvantaged Section of Labour}"; Indian Law Institute; Vol. 42 2000:p.234-235 \\
\textsuperscript{35} \textit{Ibid.} \\
\textsuperscript{36} \textit{Ibid.}
\end{flushright}
Quite apart from the aforesaid prohibitions the state has been directed to strive to secure, *inter alia* (a) just and humane conditions of work (b) educational and economic interests of scheduled castes, scheduled tribes and other weaker sections. These are directives to the legislative, judicial and executive organs of the state, which are committed to make, interpret and enforce law.37

**Bandhua Mukti Morcha v Union of India**38 case is a landmark decision in the area of bonded labour. It is concerned with the issue of release of bonded labourers especially from stone quarries in Haryana. The Supreme Court appointed a committee to look into work conditions in stone quarries. The committee's report stated that due to a large number of stone-crushing machines operating at the site, the air was laden with dust making it difficult to breathe. Workers were forced to work and were not allowed to leave the quarries. They did not even have clean water to drink and were living in *jhuggies* with stones piled on top of the other as walls, and straw covering the top, which did not afford them any protection against the sun and the rain and which were so low that a person could hardly stand inside them. A few workers were suffering from tuberculosis. Workers were not paid compensation for injuries caused in accidents arising in the course of employment. There were no facilities for medical treatment or schooling for children.

The court held “It is the fundamental right of everyone under Article 21 to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life and breath from the Directive Principles of State Policy and particularly Clauses (e) and (f) of Article 39 and Articles 41 and 42 and at least, therefore, it must include protection of the health and strength of workers, men and women, and children of tender age, 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 neither the central nor the state government has the right to take any action which will deprive a person of the enjoyment of these basic essentials. Since the Directive Principles of State Policy contained in Clause (e) and (f) of Articles 39, 41 and 42 are not

37 *Ibid*.
38 AIR 1984 SC 802: (1984) 3 SCC 161
enforceable in a court of law, it may not be possible to compel the State through the judicial process to make provisions by statutory enactment or executive fiat for ensuring these basic essentials which go to make up a life of human dignity but where legislation is already enacted by the State providing these basic requirements to the persons, particularly belonging to weaker sections of the community and thus investing their right to live with basic human dignity, the State can certainly be obligated to ensure observance of such legislation, for inaction on the part of the State in securing implementation of such legislation would amount to denial of protection under Article 21, more so in the context of Article 256 which provides that the executive power of every state shall be so exercised as to ensure compliance with laws made by Parliament and any existing laws which apply in that state.”

Further, Justice P.N. Bhagwati observed the conditions of bonded labourers as follows:

“Bonded labourers as the “non-beings” are living a life worse than that of animals who are at least free from to roam about as they want and they can plunder or grab food whenever they are hungry. The freedom of bonded labourers are snatched by their employers and they are consigned to an existence where they have to live in hovels or under the open sky and be satisfied with whatever little unwholesome food they can manage to get, inadequate to fill their hungry stomachs. Not having any choice, they are driven by poverty and hunger into a state of bondage, a dark bottomless pit from which in a cruel exploitative society, they cannot hope to be rescued.”

In Neerja Chaudhary v. State of Madhya Pradesh39 this case was on behalf of a group of bonded quarry workers in the early 1980s. A letter was sent to the Supreme Court referring to an article written by the petitioner. The reporter had visited three of the villages in Madhya Pradesh, after the court had released bonded labourers on the petition filed under Bandhua Mukti Morcha. She found that the released bonded labourers were not rehabilitated, they had neither land nor work and they were facing immense hardship at the verge of starvation, and they express their desire to return to their place of work as bonded labourer. All the seventy-five released bonded labourers from these villages were from tribal communities and they had not been rehabilitated six months after their release. The Supreme Court stated that it was imperative that the freed bonded labourers are properly rehabilitated after their identification and release. The Supreme

39 AIR 1984 SC1099
Court also ruled that ‘it is the plainest requirements of Articles 21 and 23 of the Constitution that bonded labourers must be identified and released and on release they must be suitably rehabilitated. Any failure of action on the part of the State Governments in implementing the provisions of the Bonded labour System (Abolition) Act was the clearest violation of Article 21 and Article 23 of the Constitution.’

Supreme Court in *P.Sivaswamy v. State of Andhra Pradesh*⁴⁰ again deprecated the attitude of the state government as it failed to implement the provisions of the Bonded Labour System (Abolition) Act, 1976 and failed to provide effective rehabilitation of identified labour. Such state of affairs in the Court’s view would not lead to frustration among identified bonded laborer, but further worsen their position. Indeed the court feared that uprooted bonded laborer from one place are likely be subjected to the same mischief at another place. The net result would be that the steps taken by the court would be rendered ineffective and there would be mounting frustration among the identified bonded labour.

In *Balram v. State of M.P*⁴¹ several bonded labourers who were released as per the order of the court were not appropriately rehabilitated and were not in a position to sustain them. On these facts the Supreme Court directed the Union of India to release adequate funds under the scheme framed under the Bonded Labour System (Abolition) Act, 1976 within four weeks. The court further directed the Additional Collector and such other officers who are assigned the responsibility of supervising rehabilitation to ensure that the full amount intended for the freed labour reaches them.

**CONTRACT LABOUR**

Contract labour is one of the most exploited sections of human labour. For several years they have been paid low wages, employed for longer hours of work, placed in insanitary working conditions and denied benefits and facilities equal to their counterparts who are employed under regular contract of service. Further, there is no security of tenure. Instances are not lacking where they have been victimised. Moreover, they are not entitled to other benefits and amenities to

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⁴⁰ [1988] Lab IC 1680 SC
⁴¹ 1989] supp (2) SCC 195
which the regular workmen of the company are entitled. Thus, there is wide disparity in emoluments and working conditions between contract labour and direct labour and they are not treated at par with direct labour.\textsuperscript{42}

The Contract Labour (Regulation and Abolition) Act, 1970 was passed to prevent the exploitation of contract labour and also to introduce better conditions of work. The Act provides for abolition of contract labour wherever possible and practicable and regulation of their employment where it cannot be abolished altogether.\textsuperscript{3} It is, thus, clear that the Act does not contemplate the total abolition of the contract labour system.\textsuperscript{43}

In India, probably, for the first time the term "contract labour" has been defined as follows: Contract labour means any person engaged or employed in any premises by or through a contractor with or without the knowledge of the employer in any manufacturing process.

The Contract Labour (Regulation and Abolition) Act 1970 which was enacted to regulate the employment of all forms of contract labour in certain establishments and to provide for its abolition in certain circumstances, defines "contract labour" as follows:

A workman shall be deemed to be employed as contract labour in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor with or without the knowledge of the principal employer.

Both these definitions make it clear that a contract labourer is a workman who is employed by or through a contractor in or in connection with the work of an establishment. The knowledge of this employment to the principal employer is not material.

Sometimes, contract labour is recruited by or through a contractor in one state to work in an establishment situated in another state. Such type of contract labour is known as inter-state migrant workman.\textsuperscript{44} To regulate the working and living conditions of such contract labour, the Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979

\textsuperscript{42} \textit{Supra} n. 33 at 243
\textsuperscript{44} Inter-state Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979, s.2 (l) (e).
was enacted because the Contract Labour (Regulation and Abolition) Act 1970 was found inadequate as inter-state migrant workmen have certain special features in regard to human aspects and administrative problems. Suffice it to write that inter-state migrant workman is contract labour because he is recruited to work in or in connection with the work of an establishment by or through a contractor. Here also, the knowledge of the principal employer as regards this employment is not material. These definitions of "contract labour" cover both labour contract and job contract. Labour contract refers to a situation where a person or agency undertakes to supply labour to an establishment for its work as and when demanded against a stipulated rate of payment, remuneration or commission. The term "job contract" connotes an arrangement wherein a person or agency is formed out to work, service or process by an establishment involving hiring of labour.45

CONSTITUTIONAL PROHIBITION

Article 21 of the Constitution, as observed earlier, lays down that no person shall be deprived of his life and personal liberty except according to the procedure established by law.

In People's Union for Democratic Rights v. Union of India46 the Supreme Court had decided, inter alia, whether the violation of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 are also violative of article 21 of the Constitution. The Supreme Court answered the question in the affirmative and observed:

Now the rights and benefits conferred on the workmen employed by a contractor under the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 are clearly intended to ensure basic human dignity to the workmen and if the workmen are deprived of any of these rights and benefits to which they are entitled under the provisions of these two pieces of social welfare legislation, that would clearly be a violation of Article 21 (of the Constitution) by the Union of India.

45 Pandey.H.S; "CONTRACT LABOUR AND SOCIAL SECURITY LEGISLATION IN INDIA"; Notes and Comments; Journal of the Labour Institute of India; vol.36(1994); p. 194-195
46 (1982) 2 LLJ 454
In *Steel Authority of India ltd. v. National Union Water Front Workers and Others*, a Constitution bench of the Supreme Court delivered a landmark judgment on contract labour as:

“Neither Section 10 of the Contract Labour (Regulation and Abolition) Act nor any other provision in the Act, whether expressly or by necessary implications, provides for automatic absorption of contract labour on issuing a notification by appropriate Government under subsection 1 of Section 10, prohibiting employment of contract labour in any process, operation or other work in any establishment, consequently the principle employer cannot be required to order absorption of contract labour working in the concerned establishment.”

*Air India Statutory Corporation v. United Labour Union* is an epoch-making judgment on contract labour. Here the Supreme Court ruled that after abolition of the contract labour system, if the principal employer fails to absorb the labour working in the establishments of the employer on regular basis, the workmen could seek judicial redress under article 226 of the Constitution. This is so because "judicial review being the basic feature of the Constitution, the High Court has to see that the notification is enforced. The citizen has fundamental right to seek redress of their legal injury by judicial process to enforce his rights in the proceedings under Article 226. The court added: "the workmen have a fundamental right to life. Meaningful right to life springs from the continued work to earn their livelihood. The right to employment, therefore, is an integral facet of right to life". The court accordingly held that when the workmen are engaged as contract labour continuously in establishment of the employer where work is of perennial nature, then on the abolition of contract labour system, the contract labour are entitled per force to be absorbed on regular basis transposing their erstwhile contractual status into that of employer employee relationship under the principal employer.

In *Secretary, Haryana State Electricity Board v. Suresh* the state electricity board employed workers through a contractor to maintain cleanliness in the plant. The contract itself specified

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47 2001, 111 LLR 349
48 Section 10 Prohibition of employment of contract labour -
   (1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.
49 (1997) LLR 288
50 *ibid*
51 *ibid*
52 (1999) 3 SCC 601
the number of *karamcharis* to be employed. They having put in 240 days of continuous service claimed regularisation by the board. The labour court ordered reinstatement with continuity of service along with 10 per cent back wages. The High Court in appeal affirmed the holding of the labour court but without back wages on the ground that there existed relationship of employer and workmen between the electricity board and the *karamcharis*.

The Supreme Court, agreeing with the decision of the high court observed that the work was of a permanent nature and the overall control of the contract labour including administrative rested with the board. Further, neither the board was registered as a principal employer nor the contractor was a licensed contractor. Therefore, the so called contract system was a mere camouflage or a smoke screen. The real contractual relationship was "between the board and the *karamcharis*. As such they were entitled to be regularised in the service of the board. The doctrine of 'lifting of veil' enunciated in *Salomon v Salomon* was applied in this case to decide the actual relationship of employer employee.

The judgment given the SAIL case was followed in *Promod Kumar and Others vs. National Aluminium Company Ltd. and Others* , in which the High Court dismissed the petition seeking a declaration of petitioners to be regular workman as security guards, sergeants and cooks, and give direction to opposite parties to pay them remuneration equal to that paid to regular employees. The high Court observed that the Contract Labour was continuing in the establishment with due permission of the competent authority.

Further by virtue of a notification under section 10 of The Contract Labour Act, 1970, employment of contract labour in the establishment had not been prohibited.

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

The principle laid down in SAIL was followed in many cases, also in *Cipla Ltd. vs. Maharashtra General Kamgar Union* and *Food Corporation of India vs. The Union of* 

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53 *Air India Statutory Corpn v United Labour Union*, (1997) 9 SCC 377 was relied upon
54 1896 AC 22
55 (2002) IIIILLJ 657 Ori
56 2001 LLR 305
India and Others\textsuperscript{57}, while supporting the judgment of SAIL case held that the workers has no right of automatic absorption on abolition of contract labour system.

Judiciary maintained its trend of protecting the interest of unorganised labour. In National Iron and Steel Company \textit{v.} State of West Bengal\textsuperscript{58}, maintained the protection of contract labour interest and the court discouraged the system of contract labour and even directed its abolition in certain circumstances to prevent exploitation. At the same time, in Standard Vaccum Refining Company Ltd. \textit{v.} Their Workmen\textsuperscript{59} court held that if it cannot be possible to abolish contract labour system, according to the objectives of the Act, fair conditions of service and security of tenure should be ensured to them. The Court also emphasized the need of workmen and interest of industry by extending the coverage of the employees by widely interpreting the definition of employee. For instance, In Royal Talkies, Hyderabad \textit{v.} Employees State Insurance Corporation\textsuperscript{60}, the Supreme Court has held that the employees of cycle stand and canteen run in a cinema theatre by contractors were to be covered by the definition of employee under the Employees State Insurance Act and also in Siddheswar, Hubli \textit{v.} Employees State Insurance Corporation\textsuperscript{61}, the Court, while interpreting the term ‘employee’ under the Employees State Insurance Act held that the definition appears to be of wider implication and applies to those persons even whose services are lent to the principle employer.

In the case of Mangesh Salodkarvs Monsanto Chemicals of India Ltd\textsuperscript{62} the issue concerned conditions of work at plants run by Monsanto Ltd. The company manufactures pesticides and it was alleged that a particular worker had suffered a brain hemorrhage because of the work environment. He survived but suffered major after-effects. He was paid Rs 3 lakh by the company towards medical expenses, but he filed a petition in the high court. The court initially appointed a commission headed by a retired judge of the high court. The commission, in turn, summoned documents from the factory inspectorate and asked certain experts to go into the conditions of work at the factory. A medical examination was also carried out on some of the other workers. During the pendency of the matter, the dispute between the workers and the

\textsuperscript{57} 2003 Lab. IC 166
\textsuperscript{58} (1967) 2 LLJ 23 (SC)
\textsuperscript{59} (1960) 2 LLJ 233 (SC)
\textsuperscript{60} (1978) 4 SCC 204
\textsuperscript{61} (1998) Lab I C 214 (Orissa)
\textsuperscript{62} Writ Petition No. 2820 of 2003, decided by the Bombay High Court on July 13, 2006
employer was resolved as the employer agreed to pay an additional Rs 17.80 lakh to the concerned employee and Rs 7.40 lakh to other employees who had been affected. The commission accordingly filed a report with the high court. Since the dispute between employer and employees had been resolved, the court was not called upon to determine that aspect. However, it did go into other aspects concerning the right of employees to a safe workplace, etc. The court held that the workers had a fundamental right to health in the workplace. In addition, it observed:

As this case demonstrate the absence of updated medical records results in a virtual denial of access to justice. In the absence of information, factory workers and all those who promote the cause of workers cannot realistically attempt to redress the systemic failure on the part of the regulated industry to maintain regulatory standards. The court issued various directions, including the following:

I. The medical examination of workers which is to be conducted under Section 41 E of the Factories Act, 1948 should be such as would enable an identification of diseases and illnesses which are a likely outcome of the process and material used in the factory;

II. Copies of medical records of workmen must be handed over to them as and when medical examinations are conducted and the appropriate government will consider the issuance of suitable directions mandating the permanent preservation of medical records in electronic form by factories engaged in hazardous processes;

III. In respect of factories involved in hazardous processes, safety and occupational health surveys as required by Section 91 A should invariably be carried out at the time of renewal of licenses, apart from other times.

In Consumer Education and Research Centre vs. Union of India63, The Apex Court called upon to hear a writ petition by way of Public Interest Litigation praying for maintenance of compulsory health record, adoption of membrane filter as one of the measures environment health protection and compulsory monetary compensation to the workmen of asbestos industry, in order to relieve the poor from handicaps, penury and distress, and to make their life livable for betterment of society. The social justice is to be attained with substantial degree of social,

63 AIR (1995) SC 922
economic and political equality. The Court went to the extent of declaring right to health as a part of right to livelihood and life under Article 21 read with Article 39(e), 41, 43, 48-A of the Constitution. Thus the court observes:

The jurisprudence of personhood or philosophy of the right to life enlarges its sweep to encompass human personality in its full blossom with invigorate health which is a wealth to the workman to earn his livelihood to sustain dignity and to live a life with dignity and equality…. The expression ‘life’ assured in Article 21 of the Constitution does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard to life, by hygienic conditions in work place and leisure.64

The court held that the State, be it Union or State Government or and industry, public or private is enjoined to take all action which will promote health, strength and vigour of the workmen during period of employment and leisure and health even after retirement as basic essentials to life with health and happiness. Health of the workers enables him to enjoy the fruit of his labour. Medical facilities to protect the health of the workers are, therefore, the fundamental human rights to make the life of workman meaningful and purposeful with dignity.65

In *Muir Mills Co. Ltd. v. Suti Mazdoor Union*66, Justice Bhagwati explained Social Justice. According to him social justice is a very unclear and undefined expression, and added that whatever it meant, the concept of social justice does not derive from the imaginary ideas of any adjudicator but must have a more solid foundation. On the other hand, In *Parkash Cotton Mills v. Bombay*67, Mr. Chagla C.J. rejected the submission that the Court should not impose its own ideas of social justice in interpreting statutory provisions by saying that social justice was an object of the Constitution.

The labour welfare is one which lends itself to various interpretations and it has not always the same significance in different countries. State is an important legal institution as it is a source of

64 *Id.* at 839
66 (1955) I SCR 991
67 59 Bom. L.R. 836
all the powers and rights. According to Bosanque, “the ‘state’ is a working conception of life as a whole.” In *Chisholm v Georgia* 68, The Supreme Court of America held, “A state is a body, united together for the common benefit, to enjoy peacefully what is their own, and to do justice to other,” According to Salmond, “A state is an association of human beings established for the attainment of certain ends by certain means.” The relationship between state and law is inherent. A state maintains peace and administration in a society through law. By the time the role of the state has been changed. Now the state is a social welfare state. A social welfare state means such a social system whereby the state assumes primary responsibility for the welfare of its citizens, as in matters of health care, education, employment, and social security. 69

Concept of government in which the state plays a key role in protecting and promoting the economic and social well-being of its citizens, is based on the principles of equality of opportunity, equitable distribution of wealth, and public responsibility for those who lack the minimal provisions for the good life. The term may be applied to a variety of forms of economic and social organization. A basic feature of the welfare state is social insurance, intended to provide benefit during periods of greatest need (e.g. old age, illness, unemployment). The welfare state also usually includes public provision of education, health services, and housing. 70

A welfare state strives to achieve many ideals, some of them are

- Removal of inequalities in distribution of economic resources
- Equality of opportunity for employment, equal pay for equal work.
- Elimination of exploitation of labourers
- Establishment of a welfare state
- Initiation of schemes relating to health, education, social security and other such essential matters.

In *D. S. Nakara v. Union of India* 71, the Supreme Court has held that the principal aim of a socialist state is to eliminate inequality in income, status and standards of life. The basic frame work of socialism is to provide a proper standard of life to the people, especially, security from cradle to grave. Amongst these, it envisaged economic equality and equitable distribution of

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68 2 Dallas 456
69 Supra n. 1
70 Ibid.
71 (1983)1 SCC 305.
income. This is a blend of Marxism and Gandhism, leaning heavily on Gandhian socialism. From a wholly feudal exploited slave society to a vibrant, throbbing socialist welfare society reveals a long march, but, during this journey, every state action, whenever taken, must be so directed and interpreted so as to take the society one step towards the goal.

EMPLOYEES STATE INSURANCE AS A SOCIAL SECURITY

This is another piece of social security legislation. These are consistent with the constitutional guarantee for social, economic justice, to secure freedom from want and security against economic fear. The Scheme under the Employees State Insurance Act and Provident Fund Act were framed by the central government in 1948 and 1952. In 1971, The Act was extended to comprehend family pension and life insurance benefit also. It is designed to provide for some retirement benefit. Karnataka High Court held in *ESI Corp, Bangalore v. Swarva Saw Mills*, even though some of the benefits like sickness benefit and maternity benefits contemplated by section 49 and 50 of Employee’s State Insurance Act,1948 will not be available to casual employees, but other important benefits like disablement, dependant’s and medical benefits are made available even to casual employees. Sec. 38 demands that all employees on wages, whether casual or otherwise, who are employed in factories or establishments coming under the purview of the Act are required to be insured and under section 39, the contribution becomes payable the moment a person is employed even for a day in a week. This means that casual employees are also covered by the Act. Thus, it covers cases of employees who are employed for a part of the week or employed under two or more employers during the same week.

The ESI authorities in *Abu Marble Mining Pvt. Ltd. v. Regional Director, ESI Corp., Mumbai* demanded contribution on the payment made to the contractor for the work of marble fixation done outside the factory premises. The appellant challenged the said demand under section 75 of the Act before the ESI court which held that the job of marble fixing outside the factory of the appellant by the employees engaged by the contractor had no connection with the factory and such employees engaged by the contractor would not fall even within the extended definition of

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72 1979 Lab IC 1335 (Karnataka )
73 Available at <http://shodhganga.inflibnet.ac.in>(last visited at 3:30 pm on 1st January 2017)
74 2005 LLR 184
'employee' under section 2(9) of the Act. This finding of the ESI court was reversed by a single judge of the Bombay High Court. Hence this appeal came to the division bench. Setting aside this order of the single judge and restoring that of the EI court, the division bench observed that merely because the establishment was a 'factory' and covered under the ESI Act, it did not mean that even contractor's employees engaged by an employer would necessarily fall within the definition of 'employee' under the Act. The test for determining if a worker is an employee under the ESI Act is whether the work he was doing was incidental or ancillary to the work of the factory or establishment and the work is being supervised or is done under the control of the principal employer.75 In the instant case the work of the factory was only cutting, polishing and finishing the marble, and the work of laying or fixing it was entirely different. Besides, there was nothing on record which showed that there was supervision or control by the principal employer. It was the person who had given the contract to the appellant who was supervising the work.76 The plea taken by the ESI authorities that the Act is a beneficial legislation with the object of providing medical and other benefits to those who otherwise ordinarily are not in a position to avail of such benefits or to get financial assistance during the time when they are unemployed on account of medical unfitness did not make any impact on the court.

CHILD WORKERS

The Child has been the subject of special laws and legal provisions. Because of its tender years, weak physique, and inadequately developed mind and understanding, every child needs protection against moral and physical harm and exploitation by others. In the formative years of its life, the child needs special care service to realize its full potential for growth and development. There are about 300 Central and State Statutes concerning children.77 These have been enacted with an intention to protect and help children and achieve the goal of child labour welfare enshrined in our National charter. Further these laws are applicable to children in various

75 See, Royal Talkies, Hyderabad vs. ESI Corp., AIR 1978 SC 1478 and CESC Ltd. vs. Subhash Chandra Bose, 1992 LLR 81
76 South India Surgical Company vs. Regional Director, ESIC, Madras, 1997 II LLJ 396; Tata Tea Ltd., Bangalore vs. ESIC, Bangalore, 2000 LLR 1038; CEMENDA Company Ltd. vs. ESIC, 1995 (1) Mh. Lj 243 were referred to. (quoted by Thomas Paul; “Social Security Legislations”; Vol.XLI; Annual Survey of Indian Law [2005]; P.481-482)
spheres of life, which are regulatory, protective and correctional in nature. Laws are sought to protect and promote the rights of child. Under the law, children are entitled to special care, assistance and essential needs and they should be given the highest priority in the allocation of resources.\(^7^8\)

Employment of Children is to be discouraged owing to their weak physical and mental condition and the necessity to channelize their time and energy into education and other activities beneficial in developing their personality and intellectual faculties. Even if child employment is necessary in a country like India for reasons of acute poverty, it is necessary to regulate it to protect the health and physique of children. The Indian statutory provisions are designed to meet these needs. There are a number of statutes, both Central and State, which prohibit employment of children of below a certain age, and permit the employment of children above this limit subject to certain conditions and restrictions. The State statutes generally apply to shops and establishments (like commercial establishments, restaurants and hotels, and places of amusement) in urban areas. The Central statutes apply to sectors like industries, mining and transport.\(^7^9\)

**CONSTITUTIONAL DIMENSIONS OF CHILD LABOUR**

The framers of the Indian Constitution were fully aware of the problem of child labour. They incorporated some specific provisions to prohibit child labour in Part III and IV of the Constitution dealing with the Fundamental Rights and Directive Principles of State Policy. Article 24 of the Constitution prohibits the employment of children below the age of 14 years in any factories or mines or in other hazardous employment. Article 45 states that the State shall endeavor to provide free and compulsory education until they complete the age of 6 years. Not only the Constitutional provision had looked out the problem of child labour, but different Acts had been enacted to minimize the exploitation of child labour these laws have been amended, repealed and revised from time to time. By these amendments many safeguards are provided to protect children, like minimum age, working hours, health and medical examination, wage and

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\(^7^8\) Balasaheb D Pandhare.;"CHILD LABOUR IN INDIA: CONSTITUTIONAL AND JUDICIAL DIMENSIONS"; available at <http://www.researchfront.in>last seen at 12:30 am on 9th January 2017

\(^7^9\) “Encyclopedia of Social Work in India- 1968 & 1978”; Vol. I; P.74
leave, place of environment and physical conditions etc. were prescribed. But it was found that the existing legal framework for the regulation of child labour is dispersed and patchy. Even then it remains anomaly on the said above issues. To meet this gap a significant legislative attempt to prohibit and regulate child labour was made in 1986. The Child Labour (Prohibition and Regulation) Act, 1986 was enacted by the Parliament with an objective to prohibit the engagement of children in certain employment and to regulate the working conditions of work of children in certain other employment. The legislature by enacting the laws to control the problem of child labour had performed its role but the Judiciary had played an important role in this area. In addition to the legislations, the Supreme Court had shown its concern for child labour by bringing occupations or process under the Court’s order by the direct applications of constitutional provisions. Some of the leading cases wherein the Apex court had enlarged the scope of their powers and had taken the issue of child labour and directed the states to implement the guidelines framed by the Apex Court for the welfare of the child labour. 80 The court has shown its wisdom by ensuring the philosophy by public interest litigation and tries to give relief in some of the cases as follows:

PROHIBITION ON EMPLOYMENT OF CHILDREN

In Oriental Insurance Co. Ltd. v. Rathnamma81 It was contended that when a child is prohibited from being employed under the Child Labour (Prohibition and Regulation) Act, 1986, he could not be considered as a workman and hence not entitled to compensation. The court countered this argument by stating that the Act prohibits employment of child labour only in certain hazardous occupations and processes as specified in the schedule and in the rest of the employments they are permitted to be employed. Any employer who violates the provisions of the Act is liable to be punished. The right to compensation is under the Workmen's Compensation Act (now Employee’s Compensation Act) and not under the Child Labour Act and the same is not controlled by it. If despite the prohibition an employer employs child labour he would be liable not merely to pay compensation but would also be subject to penalty under the Act.

80 Sudhakaran; Singh,Chitra.;“Judicial activism for combating the problem of child labour in India: A critical analysis”:International Journal of Law; Volume 2; Issue 3; May 2016; P. 17
81 2000 LLR 854
**People Union for Democratic Right v. Union of India**[^82] is also known as Asiad Case. This case is an epoch-making judgment of the Supreme Court of India, which has not only made significant contribution of labour laws, but also has displayed a creative attitude of judges to protect the interests of the child workers. The court has given a new dimension to several areas, such as *locus standi*, public interest litigation, and enforcement of labour laws, minimum wages and employment of children. The Facts of the case were that the Non-Governmental Organization addressed a letter to the Supreme Court annexing the report of social activists regarding the conditions under which the workmen engaged in various Asiad projects. Pointing reference was made in that report that there was violation of Article 24 of the constitution and of the provisions of the Employments of Children Act, 1938, viz., children below the age of 14 years was employed in construction work of various projects. With regard to allegation of the provisions of Employment of Children Act, 1938, the Delhi Administration and Delhi Development Authority took the stand that no complaint in regard to the violations of the provisions of that Act at any stage received by them. They also took stand that, the Act was not applicable in case of construction work, since construction industry was not covered in the schedule of the Act. The Supreme Court pointed out that this was a sad and deplorable omission which must be immediately set right by every state government by amending the Schedule so as to include construction industry. This could be done in exercise of the powers conferred under section 3A of the Employment of Children Act, 1938. The Supreme Court hopes that every state government will take the necessary step in this behalf without any undue delay, because construction work is clearly a hazardous occupation and it is absolutely essential that the employment under the age of 14 must be prohibited in every type of construction work. That would be in consonance with convention 59 adopted by the International Labour Organization and ratified by India. But apart altogether from the requirement of Convention No, 59 we have Article 24 of the Constitution, which provides that no child below the age of 14 years shall be employed to work in any factory or mine, or engaged in any other hazardous employment. The Supreme Court held that Construction work is clearly a hazardous occupation and it is absolutely essential that the employment of children under the age of 14 years must be prohibited in every type of construction work. This is a constitutional prohibition which, even not followed up by appropriate legislation, must operate proprio vigore.

[^82]: AIR 1982 SC 1473
In *Labourers Working on Salal Hydro Project vs. State of Jammu and Kashmir and others*\(^{83}\) Justice Bhagwati observed that construction work is a hazardous employment and therefore under Article 24 of the Constitution, no child below the age of 14 years can be employed in construction works by reason of the prohibition, enacted in Article 24 and this constitutional prohibition must be enforced by the Central Government. In this case honorable Supreme Court also agreed that child labour is a difficult problem and it is purely on account of economic reasons that parents often want their children to be employed to augment their meager earnings. And child labour is an economic problem, which cannot be solved by mere legislation. Because of poverty and destitution in this country it will be difficult to eradicate child labour, so attempts should be made to reduce if not to eliminate child labour because it is essential that a child should be able to receive proper education with a view to equipping itself to become a useful member of the society and to play a constructive role in the socioeconomic development in the country. They must concede that having regarded to the prevailing socio-economic conditions it is not possible to prohibit the child labour altogether and in fact; any such move may not be socially or economically acceptable to large masses of people. That is why Article 24 limits the prohibition against employment of child labour only to factories, mines or other hazardous employments such as construction work.

The Supreme Court also suggested that whenever the Central Government undertakes a construction project which is likely to last for some time, the Central Government should provide that children of construction, workers which are living it or near the project site should be give facilities for schooling because it is absolutely essential that a child should be able to receive proper education with a view to equipping itself to become a useful member of the society and to play a constructive role in the socio-economic development of the country. We must concede that having regard to the prevailing socio-economic conditions, it is not possible to prohibit child labour altogether and in fact; any such move may not be socially or economically acceptable to large masses of people. So we can say that illiteracy is a main cause of child labour.

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\(^{83}\) AIR 1984 SC 177
In M.C. Mehta v. State of Tamil Nadu and others, Supreme Court allowed children to work in a prohibited occupation like fireworks. Ranganath Mishra and M.H.Kania JJ. opined that “the provisions of Article 45 of Constitution in the Directive Principles of State policy still remained a far cry and through according to this provision”, all children upto the age of fourteen years are supposed to be in the school, but economic necessity forces grown-up children to seek employment. Children can, therefore, be employed in the process of packing of fireworks but packing should be done in an area away from the place of manufacture to avoid exposure to accident. It is a matter of surprise that the Supreme Court in this case allowed the children to be employed in match factories of Sivakashi in Madras and said that, the children must be provided basic diet during working period. This judgment is not in accordance with the constitutional spirit. Further Supreme Court in M.C. Mehta v. State of Tamil Nadu, popularly known as ‘Child Labour Abolition Case’ has held that the children below the age of 14 years cannot be employed in any hazardous industry, mines or other work. It would be appropriate to quote brief facts that, when news about an accident in one of the Shiva Kashi crackers factories was published in the media, wherein several children reported dead, the Supreme Court took “Suo motu” cognizance of it. The Court gave certain directions regarding the payment of compensation. An Advocate’s Committee was also constituted to visit the area and report on the various aspects of the matter.

A three judge bench of the Supreme Court comprising justice Kuldip Singh, Justice B.L. Hansaria and Justice Mujumdar delivered a landmark judgement on 10 December 1996 in writ petition (Civil) No.465/1986. This Judgement is of considerable importance and is a progressive advancement in public interest litigation and child jurisprudence. The decision has attempted to tackle the problem of child labour. M.C. Mehta, an environmentalist, lawyer, filed a writ under Article 32 of the Constitution of India, as the fundamental right of children against exploitation (Article 24) was being grossly violated in the match and fireworks industries in Sivakashi where children were employed. The Court then noted that the manufacturing process of matches and fireworks is hazardous, giving rise to accidents including fatal cases. Therefore, keeping in view

84 AIR 1997, SCC 283
85 Ibid
86 Ibid
the provisions contained in Article 39(f) and 45 of the Constitution, it gave directions as to how the quality of life of children employed in the factories could be improved. The Judges further observed that ‘it is a stark reality that in our country like many others, children are exploited a lot.’ Court had remarked that “child labour is a big problem and has remained intractable even after 50 years of country having become independent, despite various legislative enactments prohibiting employment of a child in a number of occupations and avocations.” The Court said employment of the child below 14 years was unconstitutional in diction and if it had to be seen that all these children had a fundamental right for education, it seemed that the least the Court ought to do was to see the fulfillment of the legislative intent behind the Child Labour (Prohibition and Regulation) Act, 1986. Taking guidance there from, judges are of the view that the offending employer must be asked to pay compensation for every child employed in contravention of the provisions of the Act a sum of Rs.20,000/-; and the Inspectors whose appointment is visualized by section 17 to secure compliance with the provisions of the Act, should do this job.88

The Supreme Court in *Mohini Jain v. State of Karnataka*89 has recognised primary education as an aspect of ‘personal liberty’ under article 21 of the Constitution. The court ruled: “Right to life is the compendious expression for all those rights which the courts must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct which the individual is free to pursue. The right to education flows directly from right to life. The right to life under article 21 and the dignity of an individual cannot be assured unless it is accompanied by the right to education. The state government is under an obligation to makeendeavour to provide education facilities at all levels to its citizens.”

Again in *Unni Krishnan J.P. v. State of A.P*90 the five-judge bench of the Supreme Court held that the free and compulsory education up to the age of 14 years to be a fundamental right of all the citizens. Jeevan Reddy J. observed:

88 Supra n. 92
89 Air 1992 sc 1858
90 Air 1993 sc 2178
The citizens have a fundamental right to education and this right flows from Article 21. This right is however not an absolute right. Its contents and parameters have to be determined in the light of Article 45 and 41. In other words every child/citizen of this country has a right to free education until he completes the age of fourteen years. Thereafter his right to education is subject to the limits of economic capacity and development of the state.

WOMEN WORKERS

The Indian Constitution, *inter alia*, seeks to protect the interest of women through fundamental rights and directive principles of state policy. The founding fathers not only ensure equality before law or equal protection of law within the territory of India under article 14 of the Constitution but have incorporated a specific clause prohibiting the discrimination on the ground *inter alia* of sex under article 15. Thus article 15 (1) of the Constitution provides that the state shall not discriminate against any citizen on ground only of religion, race, caste, sex, place of birth or any of them. Article 15 (3) gives special treatment to women namely "nothing in Article 15 shall prevent the state from making any special provision for women and children", and thereby modifies the requirement laid down in clause (1) of article 15.\(^{91}\)

The Supreme Court in *Government of A.P vs. PB Vijay Kumar*\(^ {92}\) explaining the object for inserting clause 3 to article 15 observed:

The insertion of clause (3) of Article 15 in relation to women is recognition of the fact that for centuries, women of this country have been socially and economically handicapped. As a result, they are unable to participate in the socio-economic activity of the nation on a footing of equality. It is in order to eliminate this socio-economic backwardness of women and to empower them in a manner that would bring about effective equality between men and women that Article 15 (3) is placed in Article 15. Its object is to strengthen and improve the status of women.

\(^{91}\) Supra n. 33 at 244
\(^{92}\) Mat 1651
SEXUAL HARASSMENT AT WORK PLACE

A three judge bench of the Supreme Court in Vishaka v. Union of India\(^93\) made a significant contribution in evolving the code against sexual harassment. While emphasizing the need to have guidelines the Supreme Court observed: “The primary responsibility for ensuring such safety and dignity through suitable legislation, and the creation of a mechanism for its enforcement is of the legislature and the executive. When, however, instances of sexual harassment resulting in violation of fundamental rights of women workers under Articles 14, 19 and 21 are brought before us for redress under Article 32, an effective redressal requires that some guidelines should be laid down for the protection of these rights to fill the legislative vacuum.”

The aforesaid guidelines and norms must be strictly observed at all work places for the preservation and enforcement of the right to gender equality of the working women. These directions according to the court would be binding and enforceable in law until suitable legislation is enacted to occupy the field.

The court added: “The obligation of this Court under Article 32 of the Constitution for the enforcement of these fundamental rights in the absence of legislation must be viewed along with the role of the judiciary envisaged is the Beijing Statement of Principles of the Independence of the Judiciary in the LAW ASIA region.”

In Apparel Export Promotion Council vs. A.K. Chopra\(^94\) the Supreme Court ruled that sexual harassment is a form of sex discrimination. It is an unreasonable interference with her work performance. It has the effect of creating an intimidating or hostile working environment for her. Indeed each incident of sexual harassment of female worker at work place is the violation of the fundamental right of gender equality and right to life and personal liberty.

\(^93\) AIR 1997 SC 3011
\(^94\) AIR 1999 SC 625
The Supreme Court in *Municipal Corporation of Delhi vs. Female Workers’ (Muster Rolls) and others*\(^{95}\) came across question, whether only employees registered on muster roll are entitled to maternity benefit leave. The Delhi Municipal Corporation contended that it granted maternity leave to regular female workers i.e. those on their muster rolls. In response it was contended that the nature of work performed by those women on regular basis was hardly different from that of those working on daily wages. The court observed that the provisions of the Act would indicate that they are wholly in consonance with the Directive Principles of State Policy, as set out in Article 39 and in other Articles, especially Article 42\(^{96}\). Thus the Supreme Court upheld the right of female construction workers to be granted maternity leave by extending the scope of the Maternity Benefits Act, 1961 to daily wage workers.

In *B. Shah v. Labour Court, Coimbatore*\(^{97}\), the question was whether Sunday is to be counted in calculating the amount of maternity benefit. It was held that in the context of sub-sections (1) and (3) of Section 5, the term week has to be taken to signify a cycle of seven days including Sundays. The Legislature intended that computations of maternity benefit are to be made for the entire period of the woman workers’ actual absence i.e. for all the days, including Sundays. Again the word ‘period’ in Section 5(1) seems to emphasize the continuous running of time and reoccurrence of the cycle of seven days. This computation ensures that the woman worker gets for the said period not only the amount equaling 100 per cent of the wages which she was previously earning in terms of section 3(n) of the Act but also the benefit of the wages for all the Sundays falling within the aforesaid periods.

In *Ram Bahadur Thakur (P) Ltd. v. Chief Inspector Plantations*\(^{98}\), the point for determination by the Court was whether in calculating 160 days period which will entitle a woman employee to get maternity benefit, the work on half days can be included or not. It was held that according to Explanation to Section 5(2) of the Maternity Benefit Act, the period during which a woman worker was laid off should also be taken into consideration for ascertaining the eligibility. During the lay-off period a woman worker cannot be expected to have actually worked in the

\(^{95}\) (2000) 1 LLJ 846 SC

\(^{96}\) Article 42: provision for just and humane conditions of work and maternity relief —The State shall make provision for securing just and humane conditions of work and for maternity relief.

\(^{97}\) AIR 1978 SC 12

\(^{98}\) (1989) 2 LLJ 20
establishment. So, actual work for 160 days cannot be insisted as a condition precedent for claiming the maternity benefit.

BUILDING AND OTHER CONSTRUCTION WORKERS

The Supreme Court took serious note of social security of the unorganized sector workers in National Campaign Committee for Central Legislation on Construction Labour vs. Union Of India and Others\(^9\), the court held that object of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 is to confer various benefits to the construction workers, like fixing hours for normal working days, weekly paid rest day, wages for overtime, basic welfare amenities at site, temporary living accommodation near site, safety and health measures, etc. Every State is required to constitute a State Welfare Board to provide assistance in case of accident, to provide pension, to sanction loans, to provide for group insurance to provide financial assistance for educating children, medical treatment etc. Though the welfare board was to be constituted with adequate full time staff, many states has not constituted the welfare boards. In some states, even though the boards are constituted, they are not provided with necessary staff or facilities. As a result, welfare measures to benefit the workers have not been taken.

The Supreme Court in Dewan Chand Builders & Contractors v. Union of India dealt with the constitutional validity and competence of the Parliament to levy cess under the Building and other Construction Workers Welfare Cess Act, 1996 (Cess Act) and the cess rules framed there under. The main ground for challenge to the validity of the Cess Act was the lack of legislative competence of the Parliament.

On behalf of the appellant it was contended that the impost levied by the Cess Act is a compulsory and involuntary ex-action, made for a public purpose without reference to any special benefit for the payer of the cess. It was argued that there exists no co-relationship between the payee of the cess and the services rendered and therefore, the levy is, in effect a tax.

\(^9\) (2011)2 SCC (L&S) 110
It was further submitted that the maintenance of a separate corpus namely building and other construction workers welfare fund, which also vests in the state, is a cloak to cover the true character of the levy, which is to be utilized for the benefit of the building worker, is in fact a ‘tax’. In view of this it was asserted that the Cess Act in fact provides for the levy of tax even though it is termed as cess and that no tax can be levied or collected in terms of article 265 of the Constitution, except by authority of law. In other words, the power to make a legislation imposing a tax has to be traced with reference to a specific entry in the lists in the seventh schedule to the Constitution. Thus, the subject-matter of the Cess Act is fully covered by entry 49 in list II (state List) pertaining to taxes on “lands and buildings”, the power to levy cess would not be available to the Parliament, based on the assumption of residuary power.

On the other hand it was contended on behalf of the respondents that the Cess Act is within the legislative competence of Parliament with reference to entry 97 of List I in the seventh schedule. It was pleaded that the charging section in the Cess Act makes it clear that the levy is attracted when there is an activity of building and construction. The collection of cess on the cost of construction is for enhancing the resources of the building & other construction workers welfare boards constituted under the Building and other Construction Workers Act, 1996 (BOCW Act). The Cess so collected is directed to a specific end spelt out in the BOCW Act itself; it is set apart for the benefit of the building and construction workers; appropriated specifically for the performance of such welfare work and is not merged in the public revenues for the benefit of the general public.

In view of above, the core issue which arose for consideration before the Supreme Court was whether the cess levied under the scheme of the impugned Cess Act is a ‘fee’ or a ‘tax’. In order to deal with this issue, the court examined the concept of ‘tax’ and ‘fee’. The court referred to its earlier decisions wherein it was laid down that the true test to determine the character of a levy, delineating ‘tax’ from ‘fee’ is the primary object of the levy and the essential purpose intended to be achieved. In view of above this court observed:  

There is no doubt in our mind that the Statement of Objects and Reasons of the Cess Act, clearly spells out the essential purpose, the enactment seeks to achieve i.e. to augment the Welfare Fund
under the BOCW Act. The levy of Cess on the cost of construction incurred by the employers on the building and other construction works is for ensuring sufficient funds for the Welfare Boards to undertake social security schemes and welfare measures for building and other construction workers. The fund, so collected, is directed to specific ends spelt out in the BOCW Act. Therefore, applying the principle laid down in the aforesaid decisions of this Court, it is clear that the said levy is a ‘fee’ and not ‘tax’. The said fund is set apart and appropriated specifically for the performance of specified purpose; it is not merged in the public revenues for the benefit of the general public and as such the nexus between the Cess and the purpose for which it is levied gets established, satisfying the element of quid pro quo in the scheme. With these features of the Cess Act in view, the subject levy has to be construed as ‘fee’ and not a ‘tax’. The court accordingly upheld the findings of the high court upholding the validity of the Cess Act.

In the most recent case *Occupational Health and Safety Association v Union of India* 100, the Supreme Court directed the Ministry of Labour to ensure that the suggestions made by the petitioner for the welfare of workers are properly implemented by the Centre and the State governments. The suggestions included—

1. Comprehensive medical checkup of all workers by doctors appointed in consultation with the trade unions. First medical check up to be completed within six months and to be done on yearly basis.
2. Free and comprehensive medical treatment to be provided to all workers found to be suffering from an occupational disease, ailment or accident, until cured or until death.
3. Services of the workmen not to be terminated during illness and to be treated as if on duty.
4. Compensation to be paid to workmen suffering from any occupational disease, ailment or accident in accordance with the provisions of the laws.
5. Modern protective equipment to be provided to workmen as recommended by an expert body in consultation with the trade unions.

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6. Strict control measures to be immediately adopted for the control of dust, heat, noise, vibration and radiation as recommended by the National Institute of Occupational Health (NIOH) Ahmadabad, Gujarat.

7. All employees to abide by the Code of Practice on Occupational Safety and Health Audit as developed by the Bureau of Indian Standards.

8. Safe methods be followed for the handling, collection and disposal of hazardous waste to be recommended by NIOH.

9. Appointment of a Committee of experts by NIOH including therein Trade Union representatives and Health and Safety NGO’s to look into the issue of Health and Safety of Workers and make recommendations.

In *Calcutta Electricity Supply Corporation v Subhas Chandra Bose*\(^{101}\) While describing the scope of constitutional provisions, Justice K. Ramaswamy observed that Health is a Human Right enshrined in the Universal Declaration of Human Rights (Articles 22-28) and International Covenant on Economic Social and Cultural Rights. Further, it is a Fundamental Right of Workmen. The “maintenance of health is a most important constitutional goal”. Health does not mean “absence of disease or infirmity but a state of complete physical, mental and social well-being.”

\(^{101}\) (1992) 1 SCC 441