INTRODUCTION :

The traditional economic theory of transfer of workers from agriculture to non-agricultural sector assumed that the transfer of workers is from low productivity, low wage, low technology based activities to high wage, high productivity, better technology and expanding non-agricultural activities.

The steady transfer of workers was considered to be optimising the resource use for better and more paying jobs as the transfer was in response to the increase in demand for the labour in the non-agricultural activities led by manufacturing. The demand for labour was met by the supply in the form of the reservoir of under-employed and disguised unemployed workers in the rural sector (Lewis).

It was also expected to lead to technological change in agriculture and thereby raise the productivity by removing excess labour from the rural sector.

However, the experience of growth and development in the last fifty or more years indicate that the emerging patterns in the field of labour and employment - the employment generation and the quality of employment are quite different from what was originally conceived in a theoretical framework.

In 1950s (Harth) identified phenomenon of unorganised jobs in the study of Kenya, Africa and called it 'informal sector'. Subsequently several studies have examined the informal sector in various countries. These have one thing in common namely it consisted of vast numbers; have inferior conditions of work and employment; employment status are varied and fluctuate between wage employment or unpaid worker; they earned very low level of income or wages and are predominantly in activities using little of capital.(Breman) emphasises structural problem and criticises the view as either urban phenomenon or segmented view.

In the initial phase of industrial development there were no protective measures for employment, working conditions, or social security for workers. The history of industrialisation in Europe and America indicate that these measures evolved over time through legislative process, socialist political philosophies, struggles by the organisations of workers etc.

CASUAL LABOURERS AS A CLASS:

Within India prior to the middle of Nineteenth Century, a class of general casual labourers as such was almost unknown (Gadgil) in India. Whenever required, either the community collectively contributed labour or forced labour of cultivators was used. the large public works by and large became important from the second half of the 19th century and consisted of railway construction, irrigation works, road construction, construction of military barracks and Government buildings. These works needed large

number of ordinary unskilled labourers and they were employed for considerable length of time.

The main classes from which these labourers were recruited were the agricultural labourers, the poorer among the cultivators and some village artisans affected by the competition from factory made goods.

However, in the second half of the Nineteenth Century, the periodic occurrences of famines led to misrey. The shortage of fodder meant the loss of cattle wealth causing impoverisation of peasantry.

On the other hand, the agrarian structure became exploitative and land was getting concentrated in the hands of money lenders and other parasitic classes.

Debt bondage laws favoured money lenders and it led to transfer of land from agriculturists to money lenders. Around 1830, the slavery was abolished in British Colonies and between 1834-37, 19000 workers migrated to Mauritius and Bourbon as indentured labour.

During the period, out-migration to other regions within India was also considerable. Out migration from UP to Bengal, Assam and Bombay during the decades of 1911-1921 and 1921-1931 was around 5 to 6 lakhs persons in each decade (Mookherjee).

The growing importance of plantations, particularly tea and coffee in North India (Assam,Bengal) and in Madras Presidency had opened up new avenues for employment. However, the peculiar requirement for settled labour on tea gardens coupled with poor transport facilities meant that the migration to tea gardens involved great deal of hardships and surrendering of freedom by workers. The contract system of recruitment and the need to retain labour-force on gardens in those days, as well as the indentured system created almost wholly bonded labour class to serve the needs of capitalist plantation enterprises (Ranjit Dasgupta).

After independence and with initiation of the process of planned economic development in India abolition of the Zamindari system had brought about a major structural change transferring the ownership rights to the peasants on an unprecedented scale in India.

However, the rapid growth of population and relatively limited shift of population from agriculture to non-agriculture sector, led to progressive decline in the size of land holdings and the increase in marginal farm households. It emerged as major feature of Indian agricultural structure. With the passage of time this began to manifest in the growth of casual labour class both in agriculture and in non-agricultural activities in India. The process was particularly marked on account of the slow growth of organised employment in India economy.

WORKERS' PROTECTION ISSUES :

The establishment of the International Labour Organisation in 1917 was a watershed development for protecting the interest of the working class all over the world. The ILO brought new vision and new focus on issues which were affecting employment, working conditions, social security, rights of workers and employers, occupational health and safety. What is important is that ILO provided a tripartite forum for the concerned social partners in industry and through that forum, it encouraged meaningful dialogues which were backed by systematic and scientific studies on various issues affecting the labour.

The standard setting activities of the International Labour Organisation helped in bringing about measures of equity and equality consistent with socio-economic conditions in the countries.

There are several aspects of workers' protection - wages and working conditions, occupational health and safety, right to unionise and collective bargaining and protection against arbitrary dismissal or removal from employment.

The degree and effectiveness of these types of protection depends on the state of socio-economic development, growth of income, demand for labour, and education and skill of workers. It also depends on the level of social enlightenment of the people. However, among these various aspects of workers' protection the critical aspect is the protection of employment or security of job. This is because it is the security of employment that generally confers other benefits and measures of protection such as social securities like Provident Fund, Pension, health-care, paid leave, regulation of conditions of work and so on.

Usually, there are institutional arrangements to regulate and manage these measures.

SIZE AND CHARACTERISTICS OF EMPLOYMENT WITH SECURITY :

In the system of data collection and compilation the employment with security as a rule is referred to as "organised employment". The coverage of such employment in terms of sectors and establishments in on the following lines :

Under the employment market information (EMI) scheme of the Ministry of Labour, Government of India, the information on employment is collected from all public sector establishments irrespective of size of establishment and from non-agricultural establishments in the private sector employing 25 or more persons on compulsory basis and from private establishments employing about 10-25 persons on voluntary basis on annual basis.

These data on employment are collected under the provisions of the employment Exchanges (Compulsory Notification of Vacancies) Act, 1939. However, the

employment market information system does not cover defence establishments, self-employed persons and establishments in the private sector employing less than 10 workers.

SIZE OF ORGANISED EMPLOYMENT :

The organised employment in India was 28.25 million persons within which 4.64 million or 16% was the employment of women in 1997.

Between 1991 and 1997 the total organised employment increased from 26.70 million to 28.25 million or by 5.8% in six years. However, the employment of women during the same period increased from 3.78 million to 4.64 million or by 22.75%. Thus, the employment of women within the organised employment has grown much faster although even in 1997 it accounted only for 16% of the total.

PUBLIC SECTOR AND PRIVATE SECTOR ORGANISED EMPLOYMENT :

Out of the total of 28.25 million organised employment, 19.56 million or 69% was in the public sector.

ORGANISED EMPLOYMENT BY INDUSTRIAL SECTOR ACTIVITIES :

Out of the total of 28.25 million, 11.20 million was in services, 6.9 million was in manufacturing, 5.2 million in transport and communication and about 2.0 million in mining and quarrying and construction.

Agriculture and allied activities accounted for only 1.4 million organised jobs while trade and commerce accounted for only 0.5 million jobs in 1997.

The organised employment is covered by various Acts such as, Factories Act,1948; Shops and Commercial Establishments Act; Plantation Act and so on. The organised employment in these different categories of establishments is shown in Table-I, which includes the employment in insurance companies, banks, factories, plantations, shops and commercial establishments, transport, and so on.

TOTAL WORKFORCE IN INDIAN ECONOMY :

The organised employment or what we have termed as employment with a measure of security, is only a fraction of the total .

According to the Census of India, 1991, the total workforce was as under :

1.	Male	221.66 million
2.	Female	64.27 million

	TOTAL	285.93 million

It will be seen that in the total workforce 22% are women. The distribution of the total workforce across industrial activities by sex is shown in Table-II.

67% of the total workers were engaged in agriculture and allied activities, 10-11% in manufacturing and services each, 7.44% in trade and commerce.

In absolute terms, out of the total of 285.93 million workers 191.3 million were in agriculture and allied activities, 28.3 million in manufacturing and processing, 19.3 million in services, and 21.9 million in trade and commerce.

DEFINITION OF A WORKER IN THE CENSUS :

The definition of worker in the Census is in terms of "time criteria without reference to income". Hence, it defines a worker as the Main Worker (more or less a regular or full time) if he or she had worked for more than 183 days in the reference year. If the worker works for less than 183 days he or she is called "Marginal Worker" or under-employed worker.

The distribution of total workers and organised employment across various industrial activities and its status in 1997 is shown in Table-III.

In 1991 the total organised employment accounted for 9.35 per cent of the total. The highest percentage was in mining and quarrying followed by services. In manufacturing and construction the percentage was about 22%.

Between 1991 and 1997 the organised employment across industrial activities increased at a lower rate than the growth of workers, except in transport and manufacturing. As a result, the overall as well as across several activities the organised employment as percentage to the total decreased from 9.35 per cent in 1991 to 8.44 per cent in 1997.

LEGAL PROVISIONS ON EMPLOYMENT PROTECTION FOR REGULAR WAGE/SALARIED EMPLOYEES :

The legislative and judicial protection of employment for regular salaried employees in the organised sector as discussed above can be studied from the view point of employment in the public sector and employment in the private sector.

The public sector here means employment in Government Debarments, various instrumentalities of the Government, Government Corporations, and other statutorily formed autonomous bodies.

A) Direct Government Servants

Security of employment of this class of employees is guaranteed by the constitution of India vide Article 309 & 311. These articles provide that no govt.servant can be dismissed by authority subordinate to that by which he was appointed and before

dismissal, removal or reduction in rank, an inquiry in which the concerned employee has been informed of the charges against him and given a reasonable opportunity of representation in respect of the charges is given to him.

In cases of disputes pertaining to employment of these class of employees they can approach the High Court or the Supreme Court under their writ jurisdiction for violation of the guarantee under articles 309 & 311 or for violation of fundamental rights as described under chapter III of the Constitution of India. Article 14 of the Constitution protects the citizens of India against arbitrary treatment by the State.

B) Employees of Government Corporation and other statutorily formed autonomous bodies

Employees who are not direct govt. servants but are in the employment of Corporations and other autonomous bodies the management and administration of which are controlled largely by the Government belong to this category.

These employees generally are protected by independent service rules which have statutory force. These statutory rules are enforceable against their employer i.e. Government. Therefore though they do not have direct protection of the constitution itself, since they are employed by the "State", they are permitted to take recourse to the constitutional remedy of article 32 or 226 of direct approach to the High Court or the Supreme Court in cases of violation of their fundamental rights or under writ jurisdiction.

C) Private Sector employees

Within this sector employees who are covered by the definition of workman under Industrial Disputes Act, 1947 get a measure of employment security against retrenchment, dismissal, discharge, closure or transfer of ownership of the Industrial Establishments etc. To understand the nature of protection available to them it is necessary to understand the coverage of the terms "industry " and "workman".

INDUSTRY

Section 2(j) of Industrial Disputes Act, 1947 defines industry to mean any business, trade, undertaking, manufacture, or calling of employers and includes any calling service employment, handicraft or industrial allocation or occupation of workman.

The judicial interpretation of this term has crystalized in the judgement of Bangalore Water Supply & Sewerage Board v/s A.Rajappa (AIR 1978 SC 548)*. The liberal interpretation of the term industry according to this judgement includes any systematic activity carried on by direct and substantial co-operation between employer and his workman for the protection, supply or distribution of goods or services, with a view to satisfy human wants or wishes not being purely spiritual or religious in nature. Whether any capital is invested or not or whether there is any motive of profit behind such activities is irrelevant. This term includes all types of economic activity except

very few small scale professional and domestic services. The nature of ownership, whether public or private sector is not relevant in construction of the term industry. However, the sovereign functions of the state are exempt from coverage under industry.

Whenever an activity is covered in the meaning of the term "industry" as discussed above the relationship of employment depends upon the scope of the term "employer" and "workman". It is only the employees covered by the term workman who get the benefits and protection of employment under this legislation.

WORKMAN

Under section 2(s) of I.D. Act,1947 the term workman means any person, including an apprentice, employed in any industry, to do any skilled, un-skilled, manual, technical, operational, clerical, or supervisory work for hire or reward whether the terms of employment be express or implied. Those employees who have been dismissed,
discharged or retrenched in connection with industrial dispute are included in this definition. However, the employees covered by the Air Force Act, the Army Act, the

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* This judgement has been referred for reconsideration of the larger bench h of the Supreme Court.

Navy Act or employees in the police service or prison services are excluded from this definition. Persons working in managerial or administrative capacity or supervisors drawing wages above Rs.1600/- p.m. exercising function mainly of managerial nature are outside the purview of the definition. The approach is functional and the designation of the employee is not important. When one person performs multiple function some of which are covered by the definition and some are not, then the main work of the employee will be considered for his inclusion within the meaning of the term and subsidiary duties
will be ignored.

These categories of workers get a measure of protection ,if the activity in which they are engaged fall within the definition of "industry " under the Industrial Disputes Act 1947 and they are covered by the term "workman".

EMPLOYER

This term is defined under the act not in an exhaustive way but in an illustrative way. Section 2 (g) defines an employer in cases of Government Department or industry carried on by or under the authority of the government as head of the department or other authority prescribed by the concerned government. For local authority the Chief

Executive Officer shall be treated as the employer. For the rest of the private sector industry employer has to be understood as the ordinary meaning of the term.

The private or public sector employees covered by the definition of workman are granted security of employment under Industrial Dispute Act in cases of retrenchment, dismissal, discharge, lay off, closure or transfer of ownership of the industry. The employers have to seek prior permission before closure, transfer of ownership or retrenchment of the employees under the provision of the act. Notice and payment of compensation before retrenchment, closure etc. are condition precedent under this law. In case of lay-off also the employees are entitled to benefit of compensation from the employer. However, this benefit is available to employees who have put in continuous service of minimum one year or have actually worked for more than 240 days in a year. (190 days for employees working in mines)

However, in the private sector regular salaried employees who are outside the definition of workman i.e. supervisory staffs drawing salary exceeding Rs.1600/- p.m. or managerial or administrative staff do not have specific legal protection of employment under any law. The Indian Contract Act regulates the situation of breach of contract of employment in cases of terminations of such employees. Under this law specific performance of the contract of personal service is not permitted and the employees can only ask for compensation or damages for breach of contract. That practically means that though these employees are in the organised employment, they do not get protection of employment as such but only have a right to claim compensation as damages.

SUMMARY OF LEGAL PROTECTION OF EMPLOYMENT SECURITY FOR REGULAR WAGE/SALARY WORKERS IN INDIA

1. The highest level of employment security is available to public sector employees which includes direct Government servants and employees of semi-government corporations or autonomous bodies as comparatively speedy justice dispensation system is accessible to them through writ jurisdiction of the High Court and the Supreme Court of India and also through well defined legislative and constitutional provisions about conditions of employment and security of employment.

2. The non-government sector employees get employment protection through their service rules as per the standing orders and under I.D.Act, 1947, if they fall within the definition of workman and are working within the meaning of activity defined as industry.
This protection is in the nature of

a) Compulsory notice before termination.
b) Compensation on termination except punitive dismissal or discharge or retirement or
   termination on account of expiry of contract, or continued ill health.
c) Fair and reasonable opportunity of hearing before termination before an un-biased authority as per rules of natural justice.

But for employees outside the purview of definition of workman and activity not amounting to industry under the act, the regular wage/salaried employees get a general protection against arbitrary treatment by the employer in termination matter through interpretation of article 14 of the Constitution of India providing for equality of treatment and extended interpretation of the right to life under article 21 to include right to livelihood as part of the fundamental rights of the citizenships of India. Thus the rules like termination of service by simply giving one month notice without affording an opportunity of hearing (Delhi Transport Corporation v/s DC Majdoor Congress - AIR - 1991-SC-101) or automatic termination for absence without leave or beyond period of certain number of days (D.K.Yadav v/s J.M.A.Industries Ltd.-1993-3SCC-259) are held as illegal by the Supreme Court.

Even with the employees covered by the term workman under I.D.Act, 1947, the mere existence of legal remedies does not in practice imply actual access to these remedies. This is due to fact that under I.D.Act, 1947, the adjudicatory machinery can be operationalised only by the appropriate government. The decision of the Government to mobilise or not to mobilise the remedy available under the act for the workman for their grievances is discretionary and cannot be challenged except in some defined cases. Moreover the labour adjudication in India suffers from the problem of delays and non implementation of awards and settlements.

JUDICIAL ARRANGEMENTS FOR RESOLVING EMPLOYMENT DISPUTES FOR REGULAR WAGE/SALARIED WORKMAN

The legal and constitutional security of employment is effectively protected by the judiciary and the judicial machinery. It is necessary to briefly discuss the judicial arrangements for redressal of grievances related to employment of this class of workman.

1. Direct Government Servants

Under article 309 of the Constitution of India appropriate legislature is empowered to frame rules regulating recruitment and conditions of civil servants appointed to public services or posts in connection with the affairs of the union or any state. Under article 311 these class of employees are protected from arbitrary dismissal, removal or reduction in rank.

For redressal of grievances of central government employees under article 323-A of the Constitution, administrative tribunals are set up by the parliament. These tribunals have jurisdiction to conduct disputes about recruitment and condition of service of government employees. The legislature of the state as power to constitute such tribunals for state government employees for disputes concerning their employment. For higher level employees of state government they can directly approached the High

Court or the Supreme Court under their writ jurisdiction. The Central government employees belonging to higher grades can approach the Supreme Court directly. These employees can also approach the Civil Court for their disputes. However, the Civil Court cannot in service matters grant the relief of reinstatement or re-employment but can order only compensation by way of damages in case of loss of employment. The approach to High Court or the Supreme Court is generally permissible in cases of violation of fundamental rights as per article 14 to 30 of the Constitution or, if there is no alternative remedy under any law or statutory remedy like appeal. In case of violation of rules of natural justice or in case of grave urgency, direct approach to the High Court is permissible. The High Courts and the Supreme Court have wide powers under writ jurisdiction to issue different types of writs and stay the execution of orders passed by the subordinate judiciary.

For grievances of employees working in a specific activity in the public sector like educational institution etc., there are separate tribunals under state laws for dealing with their employment related disputes.

The High Courts has supervisory and appellate jurisdiction over the decisions and awards of subordinate courts and tribunals under article 227. The Supreme Court has supervisory /appellate jurisdiction under article 136 of similar nature.

2. Employees of Semi Government Corporations or Autonomous Bodies

These bodies are covered by the term "State" under article 12 of the Constitution. Therefore employees belonging to this category can directly approach the High Court under article 226 or the Supreme Court under article 32 or 136. However, since they are not direct government servants will not get the protection of article 311 for matters relating to dismissal, removal or reduction in rank. Normally the employers in this category form their own service rules which have statutory force.

These employees can also approach the Civil Court but as explained earlier the Civil Courts cannot specifically enforce contract of employment being a personal service contract and therefore cannot grant reinstatement or re-employment in cases of dismissal.

These employees also have access to the statutorily formed tribunals for their service matters.

3. Private Sector Employees

The employees covered by the term workman in this sector can approach the labour court industrial tribunal or national tribunal for their employment disputes. However, approach to these judicial bodies is subject to a reference by the appropriate government. If the government does not make referrence employees individually cannot directly approach these judicial bodies except in cases of dismissal or discharge. The labour court and tribunals have powers to order reinstatement in appropriate cases.

These employees can also approach the Civil Court. However, the power of Civil Courts in employment matters have limitation as discussed in earlier para No.1 & 2.

CONDITIONS OF EMPLOYMENT, HEALTH AND SAFETY - LEGAL PROVISIONS FOR REGULAR WAGE/SALARIED EMPLOYEES

Provisions about health and safety, employment conditions like working hours, leave rules etc. are provided for the following different categories of employees in the organised sector employment.

1. WORKERS EMPLOYED IN THE FACTORIES

The Factories Act,1948 provides for safety, health, welfare, working hours, restrictions on employment of young persons and woman in factories, annual leave with wages etc. for the workers employed in the factories sector.

A factory here means any premises including the precincts thereof wherein 10 or more workers are working or were working on any day of the preceding 12 months in which any manufacturing process is carried on with aid of power or where 20 or more workers are or were so working without aid of power.

The definition of worker in this act includes any person employed directly by a contractor whether for remuneration or not in any manufacturing process or other works incidental to or connected with the manufacturing process.

Manufacturing process includes large number of activities covering such processes as making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal.

This act provides for elaborate provisions related to safety of workers in hazardous process and imposes restriction on the occupier of the factories not to employ woman and young children during night hours and on hazardous processes. It also provides for welfare facilities like washing, sitting, first-aid, rest rooms, creches or and welfare officers for workers. It lays down provisions related to weekly holiday, daily working hour, intervals for rest, over-time wages etc. for workers working in factory. The inspection machinery under this act is required to carry out the proper implementation of this law.

2. WORKERS EMPLOYED IN SHOPS, ESTABLISHMENTS ETC.

Various state legislations are enacted for regulating conditions of employment, safety, health etc. of workers who are employed in shops and commercial establishments and in other economic activities outside the coverage of the Factories Act, 1948. These acts provides for almost similar matter as under the Factories Act,1948.

Establishment under this law means a shop, commercial establishment, residential hotel, restaurants, eating house, theatres or other place of public amusements etc.

Commercial establishments includes establishments carrying on any business, trade or profession and includes a society registered under the Societies Registration Act,1860 and a charitable or other trust carrying on any business trade, or profession.

This act provides elaborately for working hours, intervals for rest, spread over, holidays, prohibition of employment of children, restriction on employment of young persons and women during night hours or in dangerous work, rules for payment of wages, cleanliness, ventilation, lighting, first-aid in the shops and establishments.

The enforcements and inspection of this law is entrusted to local authority and state government.

The term employee under this law means a person wholly or principally employed, whether directly or through any agency and whether for wages or other consideration, in or in connection with any establishments and includes an apprentice but does not include member of the family of the employer.

The definition of the employer under this law means a person owning or having ultimate control over the affairs of the establishments. Where such employer is a firm or other association of individuals, any one of the individual partners or members may be treated as an employer. Where the employer is a company any one of the directors and in case of private company any one of the share holder can be held accountable as employer.

This is a very comprehensive law which regulates wide range of economic activities carried on in various non-factory sector units irrespective of the size of the establishment or the nature of ownership.

3. WORKERS IN MOTOR TRANSPORT UNDERTAKINGS

A special law called Motor Transport Workers Act,1961 is applicable for matters related to the condition of work, health, welfare, limitation of employment of children and adolescents, rules for payment of wages etc.

A Motor Transport Undertaking under this law means an undertaking engaged in carrying passenger or goods or both by road for hire or reward and includes a private carrier.

A motor transport worker means a person employed in such undertaking directly or through an agency, whether for wages or not, to work in a professional capacity on a transport vehicle or to attend to duties in connection with the arrival, departure, loading or unloading of such transportation vehicles and includes driver, conductor, cleaner, station staff, line checking staff, booking clerk, cash clerk, depot.clerk, time-

keeper, watchman or attendant. However, this definition excludes workers employed in factories or in shops and commercial establishments.

Employer in this act means a person who or the authority which has the ultimate control over the affairs of the undertaking. Where the affairs are entrusted to any other person called manager or managing director or managing agent or any other one such other person is treated as employer.

This act provides for welfare facilities like canteens, restaurants, uniforms, medical facilities, first aid facilities, hours of work for adult and adolescents worker, rest interval, spread over, prohibition of employment of children and payment of wages including over time wages and annual leave with wages for the workers in such undertakings.

4. WORKERS IN PLANTATION

The Plantations Labour Act, 1951, provides for conditions of service and health and welfare facility as well as leave with wages for the worker of the plantations in India. It applies to tea, coffee, rubber, cinchona, cardamom plantation admeasuring five hectares or more and in which 15 or more persons are employed or were employed on any day of preceding 12 months.

Employer in this act means the same as under the Motor Transport Workers Act, 1961.

Plantation in this act includes actual plantation and offices, hospitals, dispenseries, schools and any other premises used for the purpose of plantation but does not include any factory under the Factories Act,1948.

Worker here means a person employed for hire or reward, directly or through any agency, to do any work, skilled, un-skilled, manual or clerical but does not include a medical officer, person employed in managerial capacity or person temporarily employed for work relating to construction, development or maintenance of building, roads, bridges, drains or canals or person whose monthly wages exceed Rs.750/-. This act also provides for health and welfare facilities like drinking water, latrine and urinals, medical facilities, canteens, creches, educational and housing facilities, liability for accident resulting from collapse of houses, welfare officers, hours of work and the restriction on employment of women and children, leave with wages, sickness and maternity benefits etc.

5. WORKERS EMPLOYED IN MINES

The Mines Act of 1952 provides for conditions of employment as well as health and safety, hours of work and limitation on employment of young persons and women in mine.

Under this law mine means any excavation where any operation for the purpose of searching for all obtaining minerals has been or is being carried on and includes oil wells, power station, open cast workings, workshops, conveyers or aerial rope-ways, premises used for depositing sand or other materials etc.

An employee under this law means a manager or any person working under the appointment made by the owner, agent or manger of the mine or with the knowledge of the managers, whether for wages or not in any mining operation, in operation relating to the development of mine, in operating, servicing, maintaining or repairing, any part of the machinery used in the mine, loading for despatch of minerals, in the office of mine, in the welfare, health, sanitary or conservancy services to be provided for under this law or any work which is preparatory or incidental to or connected with mining operations.

The various liability under this law with respect to occupational health survey, safety, medical supervision of persons engaged in a mine in dangerous occupation, drinking water, conservancy, medical appliances etc. are to be borne by the owner or manager of the mine.

The owner here means a person who is the immediate proprietor or lessee or occupier of the mine. But it does not include person who merely receives royalties, rent or fine from the mine or who is merely owner of the soil or one who is the proprietor subject to any lease grant or licence of the working of the mine and is not entrusted in the minerals of the mine.

The act provides for hours of work, days of rest, over time wages, limitation on employment of young children and women, leave with wages etc., There are separate provisions in the act for accidents during mining operations and medical facilities to be provided by the owner in case of accidents or occupational dangers.

Similar act also exists for regulation of employment of Dock workers under Dock Workers (Regulation of Employment) Act, 1948.

So far as the safety aspects of workers in industrial sector is concerned, Workmen's Compensation Act, 1923, provides for liability of employers in cases of injuries and accident during the course of employment. This law has preventive effects on accidents occurring in industries as compared to punitive provisions for accidents in hazardous processes. It provides for medical treatment, compensation for injuries caused in the course of employment resulting in death or disablement, occupational diseases etc. This Act entitles even the dependents of the deceased workers to receive compensation in cases of death of the worker. This act is applicable to large section of workers working in activities covered by both the organised as well as unorganised sector.

From the above discussion it is evident that within the organised sector employment all the dominant categories of wage/salaried employees working in factories, shops, commercial establishments, mines, plantations, motor transport undertaking etc. are

from legal point of view are well protected with respect to their conditions of employment, health and safety provisions and welfare facilities. The practical difficulty lies in actual implementation of regulatory provisions through the inspectorate machinery.

EMPLOYMENT STATUS OF WORKERS :

The employment status of the persons in the organised sector is "employees" or salaried/wage paid jobs. However, it is not the case with the rest of the working population which is 91 per cent of the total and which is outside the ambit of the organised nature of employment. In Table-IV we have shown the distribution of workers by categories of employment status.

The striking feature of employment of the working population in India is that self-employment and casual labour are the two main forms of employment or class of workers.

EMPLOYMENT STATUS OF WORKERS BY GENDER AND RURAL - URBAN ORIGIN IN INDIA :

The striking feature of employment status of the working population in India is that self-employment and casual labourers are two main forms or class of workers among males as well as females and in rural and urban areas in India (Table IV).

RURAL MALES :

Out of 1000 usually employed rural males in India, 576 were self-employed, 339 were casual labourers and 85 were regular employees.

While there was some fall in the number of those who were either self-employed or regular employed during the five year period, there was rather significant increase in the number of casual labour force. The growth in the casual labour as a class is observed across rural-urban areas as well as among males and females.

RURAL FEMALES :

Among rural female workers 589 were self-employed, 386 were casual labourers, 25 were regular employed. Also, among the rural women workers, while there was a significant fall in the number of self-employed and regular employed, the number of casual labour has gone up sizably during 1987-88 to 1993-94.

URBAN MALES :

In urban areas the regular employed class, particularly for male workers, is as important as the class of self-employed. Out of 1000 usually employed male workers, 416 were self-employed, 422 were regular employed, while 162 were casual labourers.

What is of concern, however, that while the number of self-employed and regular employed is falling there is a growth of casual labour even among urban male workers.

URBAN FEMALES :

It is only among the urban females that the number of regular employed among urban women workers has gone up from 275 in 1987-88 to 292 in 1993-94. The number of self-employed has fallen while the number of casual labourers has remained steady. As a single class self-employment among urban women workers remains as a predominant category.

In Indian experience of services the visible and meaningful distinction of employment status is made in the above categories of self-employed, regular employed and casual labour. The main characteristics which can distinguish a self-employed is the ownership of means of production and relative autonomy and control towards the work process. The self-employment within the household enterprises or establishments is defined in economic census for the purpose of data collection.

SELF-EMPLOYED IN HOUSEHOLD ENTERPRISES :

Persons who operate their own farm or non-farm enterprises or are engaged independently in a profession or trade on own-account or with one or a few partners are self-employed in household enterprises. The essential feature of self-employment is that the remuneration is determined wholly or mainly by sales or profits of the goods or services which are being produced. The self-employed persons are further categorised into three groups.

OWN-ACCOUNT WORKERS :

They are the self-employed persons who operate their enterprises on their own account or with one or a few partners and who during the reference period by and large, run their enterprise without hiring any labour. They may, however, have unpaid helpers to assist them in the activity of the enterprise.

Legally this class may fall in the self employed entrepreneur (independent contractor) class or home based workers (dependent entrepreneur) .

EMPLOYERS :

The self-employed persons who work on their own account or with one or a few partners and by and large run their enterprise by hiring labour.

Legally this consist of small scale enterprises where the number of workers generally fall below the legislative norm for being covered under various regulatory or protective labour laws.

HELPERS IN HOUSEHOLD ENTERPRISES :

The helpers are mostly family members who keep themselves engaged in their household enterprises, working full or part time and do not receive any regular salary or wages in return for the work. They do not run the enterprise on their own, but assist the related person living in the same household running the enterprise. Here it is to be noted that a departure was made in the case of identifying 'helpers' from the earlier surveys. Persons who worked in the capacity of 'helpers' but had a share in their family earnings were not considered as 'helpers' in the earlier rounds, but are considered so in the present survey.

Legally this class of workers do not fall in the category of either wage paid labour, self-employed independent workers or workers in triangular relationships (contract labour).

REGULAR SALARIED/WAGE EMPLOYEE :

Persons working in other's farm or non-farm enterprises, both household and non-household, and getting in return salary or wages on a regular basis (and not on the basis of daily or periodic renewal of work contract) are the regular salaried/wage employees. This category not only includes persons getting time wage but also persons receiving piece wage or salary and paid apprentices, both full time and part-time.

CASUAL LABOUR :

A person casually engaged in other's farm or non-farm enterprises (both household and non-household) and getting in return wage according to the terms of the daily or periodic work contract is a casual labour. Depending on whether they are so employed in 'Public works' sponsored by Govt. agencies or local bodies or in other types of work, the casual workers are classified into the two groups viz.Casual labour in public works and casual workers in other types of work.

Legally the casual labour as a class form the bulk of informal sector workforce, the employment status of which fluctuates from temporary to badli to work charge and the contract labour who may not have direct employment relationship but are covered by the term "employees in triangular employment relationships". These workers do not have legal protection of employment or access to state supported social security measures.

Certain other terms related to the different types of 'labour are now explained.

MANUAL WORK :

A job essentially involving physical labour is considered as manual work. However, jobs essentially involving physical labour but also requiring a certain level of general, professional, scientific, or technical education are not termed manual work. On the other hand, jobs not involving much of physical labour and at the same time not requiring much educational background as above, are treated as manual work. Thus engineers, doctors etc. are not considered as manual workers even though their jobs involve some amount of physical labour. But persons, chokidars, watchman, etc. are considered as manual workers even though their work involve much less physical labour. In the NSS, the manual work is specifically defined a as work pursued in one or more of the following occupational groups of the National Classification of Occupations. (1968) :

WAGE PAID MANUAL LABOUR :

A person who does manual work in return for wages in cash or kind or partly in cash and partly in kind (excluding exchange labour) is a wage paid manual labour. Persons who are self-employed doing manual work is not treated as a wage paid manual labour.

AGRICULTURAL LABOUR :

A persons is considered engaged in agricultural labour if he/she follows one or more of the following agricultural occupations in the capacity of a wage paid manual labour, whether paid in cash or kind or both :

(i) farming
(ii) dairy farming
(iii) production of any horticultural commodity
(iv) raising of livestock, bees or poultry

(v) any practice performed on a farm as incidental to or in conjunction with farm operations (including forestry and timbering and the operation for market and delivery to storage or to market or to carriage for transportation to market of farm produce. Carriage for transportation refers to the first state of the transport from farm to the first place of disposal. Working in fisheries is excluded from agricultural labour.

RURAL LABOUR :

Manual labour, living in rural areas, working in agricultural and/or non-agricultural occupations in return for wages paid either in cash or in kind (excluding exchange labour) is considered as rural labour. Thus rural labour includes both agricultural labour and other labour.

CULTIVATION :

All activities relating to production of crops and related ancillary activities are considered as cultivation Growing of trees, plants or crops as plantation or orchards

(such as rubber, cashew, coconut, pepper, coffee, tea etc.) are not considered as cultivation activities for the purpose.

SIZE AND CHARACTERISTICS OF SELF-EMPLOYED ENTERPRISES :

OWN ACCOUNT ENTERPRISES :

An enterprise where the entrepreneurial activity is carried on by the members of the household as a rule is considered own account enterprise.

ESTABLISHMENT :

An enterprise employing at least one hired worker on regular basis is known as establishment.

PERSONS WORKING :

Persons working usually daily on a fairly regular basis in an enterprise are known as workers. This would include members of household and other unpaid workers engaged in the activity as well as workers hired from outside for the same activity.

AGRICULTURAL AND NON-AGRICULTURAL ENTERPRISES :

An enterprise engaged in livestock production, agricultural services, hunting, forestry, logging and fishing is called an agricultural enterprise. The enterprises engaged in all other activities have been defined as non-agricultural enterprises.

It may be mentioned that these are the forms in which self-employment activities are carried - tiny enterprises and establishments.

Some of the controversial issues on employer-employee relationship are raised in this type of employment status. Various categories of home based workers (see Annex - I) work for some manufacturers or wholesalers or departmental stores in reality although apparently they may seem to be independent self-employed individuals or enterprises. The micro enterprises such as small diamond cutting and polishing units engaged in job work on behalf of traders or commission agents and they become economically dependent on such agents for the supply of raw material and so on.

Also in activities like rolling of bidi (indigenous cigar) or scented sticks, the home-based workers in fact work for large companies although in between the large company and the worker there are intermediaries and thereby triangular relation takes place.

The seriousness of this type of employment-employee relationship problem can be understood from the fact that both in terms of enterprises and number of persons working, they are the largest (Table-V).

The estimated number of enterprises in India in the year 1998 were 25.6 million and 77.6 million persons were working in which nearly half of them were hired persons.

The legal position in these types of triangular relationship problem has been as under :

EMPLOYMENT SECURITY IN UNORGANISED SECTOR EMPLOYMENT (FOR THE CLASS OF SELF EMPLOYED IN SITUATION OF ECONOMIC DEPENDENCY AND CASUAL WORKERS)

The employees working in the unorganised sector of economy are outside the coverage of labour legislation as discussed above come within this category of employment. A large number of contract labour, temporary workers, work charge employees, casual workers and the home based workers (self-employed in the situation of economic dependency) consist of the unorganised sector employment. All these categories have different legal status and hence different levels of employment security. One common feature shared by all these categories of workers is abscence of permanancy of employment and ill defined or vaguely defined legal protection for conditions of employment as well as remuneration.

However, benefits of permanency of employment are available only to those employees who can establish permanent employment relationships with their employer. Since regular salaried employment in India is on the decline it is important to understand the criteria which are considered essential in establishing employment relation as per law and its interpretation by the judicial pronouncements. Even when there is no ostensible contract of employment between a class of workers and their employer the Courts in India have evolved certain criteria through judicial interpretation of the existence of master and servant relationships. The evolution of the law relating to master and servant in India is described as under.

CRITERIA TO ESTABLISH EMPLOYMENT RELATIONSHIP

Since the definitions of workman and employer under the Industrial Disputes Act,1947 are not comprehensive and clear which can cover employment relationship including disguised employment relationships, the judiciary in India have laid down certain criteria as bench mark for identifying or establishing the employment relationship.

1. Control and Supervision as criteria of employment relationships.

The control and supervision or direction and controls has been accepted as the primary indication of employment relationships. The control and supervision here

implies an employer can direct not only what is to be done but also the manner of performing it. It is the right of the master or employer to direct the method of performing the work assigned to his servant or employee that establishes the relation of master and servant or employer and employee.

However, this criteria has lost its decisive importance due to increasing employment of professionally skilled man-power over whose performance the management cannot exercise direct control and supervision. These employees have to be given wide field of initiative and discretion in the jobs that they perform. In addition the divorce between management and technical function has diluted the authority of the management to control the work of highly technical staff. The Supreme Court in India observed in the case of Dhrangadhra Chemical Works Ltd. v/s State of Saurashtra (1957- (1)- LLJ- 477- SC) that control and supervision as a criteria for determining the relationship of employment should be taken as a prima facie test. In V.B. Gopala Rao v/s Public Prosecutor (1970 (2)- LLJ -59- SC) the Supreme Court held that there is no a priori test of the work control required for establishing the employment relationship and it is a question of fact in each case whether the relationship of employer and employee exist or not. Different factors like freedom of action given, manner of payment, magnitude of contract amount, power of dismissal, power to withhold payment, manner of performing work, time and place of performing the work and the means to be employed in its performance etc. have to be examined in each case and all these factors will not carry the same weight in all cases. The court has to perform a balancing operation between the factors pointing in different directions. (Silver Jubilee Tailoring Workshop v/s Chief Inspector of Shops & Establishments (1973-2-LLJ-495 SC).

2. Integration with organisation

Under the English Law of employment Lord Denning has evolved another criteria of integration with organisation as a test of employment relationships. When a man is employed as a part of business and his work is done as an integrated part of the business, there exists an employment relationship. In case of independent contractor, the work performed is not integral into the business but only accessory to main function of the business. Similar principle may be applied also to cases in India. However, it is not easy to establish the fact whether an employee is or is not part and parcel of the organisation because of increasing specialisation and division of work. As the system of contracting out of even integral functions of the business is becoming more popular in the manufacturing sector, most of the work of the organisation may be performed by outsider who are people with special knowledge or skill.

3. Independent Contractor v/s Dependant Entrepreneur

More common sense approach of looking at the economic reality in each case is now accepted as rational approach in deciding the question of employment relationships as the Supreme Court opined in the case of Hussainbhai v/s Alath Factory (1978-2-LLJ-397 SC). Whenever a worker or group of worker labours to produce goods and services for the business of another then that other is in fact employer because he has economic control over the worker in his subsistence, skill and continued employment. Independent or dependant entrepreneurship may be decided on the basis of investment in capital (tools and equipment) who has a major stake in profit or loss, who undertakes the risk, the power of removal, permanancy of relation and the skill required in the operation. If upon lifting the veil and looking at the true factor governing employment, the dependant entrepreneur, in fact and in economic reality depends upon the person with whom there is an ostensible contract, then the worker of such dependant entrepreneur actually are workers of the principle employer.

This test laid down in Hussainbhai's case covers the situation of so called self employment which in fact amounts to self employment in situation of economic dependancy like the case of Beedi & Cigar workers or incense workers who are provided raw materials by the employer and who are supposed to return the finished goods as per the specification of the employer. The employer here has a right to reject the goods which are not up to certain standards of quality. Such dependent entrepreneurs are in fact workers of the principal employer and hence there exists in law also relationship of employment.

DIRECT TEMPORARY/CASUAL EMPLOYER-EMPLOYEE RELATIONSHIP :

The casual labourer as a class, as we have noted earlier, is nearly as large as self-employed. In the class of casual workers the agricultural labourers is the largest category and is probably worse affected in terms of availability of employment and wages. Many among them may own land. However, due to population pressure and low productivity of land they partly work as self-employed on farms but seasonally they work as wage labourers and even out-migrate for employment. They have no fixed employers. The persons for whom they work sometimes are marginally different from themselves.

Seasonally they work as forest labourers and engage as construction labourers and so on.
Among these class of workers, therefore, there is hardly an issue of job security. However, in some of the activities like withering of forest produce, 'tendu leaf" (for indigenous cigar), the employer seems to be the State or its agency.

Under such circumstances, the tendu leaf collectors claim to be the employees of the Government and even demand retention of wage for seasonal unemployment. They are the tribals in the states of Orissa, Madhya Pradesh and Gujarat. Due to poverty they live the life of economic dependence and particularly when the State happens to be the direct or indirect employer, these types of pressure become very strong.

Sometimes a group of casual workers are attached to a group of employers in a particular activity such as, loading and unloading labour in agricultural produce markets, wholesale grain markets, wholesale timber markets and wholesale cloth markets and so on. In such situations the objective is to protect group interest rather than the relationship with any particular employer. The legal position of such type of employment which is casual and temporary in nature is as under :

LEGAL PROVISIONS WITH RESPECT TO CASUAL/TEMPORARY WORKERS:

The class of casual labour is a fluctuating group which some times act as self employed class in micro units and some times become the agricultural labourers. There is no regular employment relationship and hence there is no question of security of employment for them.

The temporary or the work charge employees basically come from the pool of casual labour class who are in the category of wage employed class as long as the work itself continues. There are many jobs which are seasonal or temporary or intermittent in nature
both in public as well as private sector. For such jobs of short duration workers are employed either as temporary or as work charge.

The temporary, work charge or casual labour do not have, by the very nature of work for which they are employed, any security of employment. However, if they have completed 240 days of work in any year they become entitled to receive compensation on termination of their jobs. (Delhi Development Horticulture Employees' Union v/s Delhi Administration AIR-1992-SC-789).

The constitutional guarantee of article 21 of right to life is extended by the courts to include the right to livelihood. This means that right to life inclusive of livelihood becomes a justiciable right in courts of law. In cases of violation of guarantee for all the classes of workman, they can go to court and ask for relief. Similarly, article 14 of the constitution guarantees equality before law and equal protection of laws to all the citizens as their fundamental rights. This ensures equal pay for equal work, equality in treatment with respect to service condition etc. It also embodies the concept of reasonableness and fairness in all the action of employers vis-a-vis their workman. Necessary corollary of this guarantee is that employers can not act unfairly or unreasonably in matters of termination of employment. A rule which empowers the employer to terminate the services of an employee merely by giving one month's notice has been held to be unfair and invalid in case of Delhi Transport Corporation v/s D.T.C.Majdoor Congress (AIR -1991-SC-101). Similarly in the case of D.K.Yadav v/s. J.M.K.Industries Ltd. (1993-3SCC-259), it was held that termination for absence without leave or beyond the period of more than 8 days automatically is illegal. The Supreme Court observed that termination of an employee must be inconsonance with articles 14 and 21 of the Constitution of India which means that it can be only after just and fair procedure and after observing the principles of natural justice.

CONTRACT LABOUR - (CASE OF DISGUISED EMPLOYMENT RELATIONSHIP)

It is often the inability to find markets and manage other inputs to develop ones enterprise for livelihood. As a result self-employed such as home based workers of tiny enterprises become dependent on larger organisations for supply of orders or enter into putting out arrangement for work or piece rate remuneration. Similarly casual labour finds it difficult to know the daily demand for their services. The labour contractors mobilise such labour supply for work in factories, construction and so.

FACTORS COMPELLING EMPLOYERS TO EMPLOY CONTRACT LABOUR:

The employers decision to employ contract labour is affected by many factors. In a situation of changing technology the profile of the labour in demand also changes. It is not easy to bring adjustments in the face of union attitude and age profile of the existing workers.

The demand by workers for promotion from within the ranks is not consistent with the emerging needs of the enterprises. Also functions like housekeeping, high level of sanitation, pollution control and accountability under various laws compel the employers to make special arrangements to execute the responsibilities efficiently and in time.

It has been also observed that large scale absenteeism or unstructured absenteeism compels the management to go in for contract work.

In some industries, particularly which involve continuous process, once a process is started every one has to adjust to its logical completion. This is particularly relevant for chemical industry. The absenteeism without notice or willful absenteeism by workers in strategic positions becomes a serious problem and therefore managements are compelled to go for ad hoc arrangement.

The unionised workers engaged in single functions resist undertaking other functions. This introduces rigidity. The industrial needs however demand high vocational and locational mobility.

It is also found that sometimes the trade unions are not against the practice of engaging contract labour as the contract labour is doing the work of the permanent workers and they just supervise the contract workers.

The contract workers provide a flexible pool of labour who can be used for jobs such as reinforcement, centering in the construction industry etc. However, it is also a fact that the companies often use contract labours to do hazardous jobs. A majority of these workers are often migrants.

While the need for flexibility by employers is understandable, the tendency to exploit such contract or casual labour by lower wages and disregard for their working conditions is difficult to accept.

The labour contractor has a role to play. He organises necessary labour and supervises their activities for executing a given piece of work on contract. he also ensures that the contract labourers do not have long spells of unemployment as he starts searching alternative work before the first work is over. Thus, the institution of a contractor has utility. the problem is that the principal employer is not enforcing the necessary standards in respect of employment and working conditions of contract labour. The effective enforcement of Contract Labour Act with its provisions of minimum wages and working conditions, registration and licensing systems can go a long way in providing economic and social protection to contract labour. However, the major problem is the use of contract labour in activities and occupations which normally could have been done by regular workers.

INCIDENCE OF CONTRACT LABOUR IN INDUSTRY IN INDIA :

The information on the employment of contract labour in industry obtained under the annual survey of industry NSSO, Govt. of India, is for the reported factories across industries in India.

The data relate to census sector as well as to sample sector in public and private sectors (Table - VI, VII, VIII & IX).

The percentage of workers employed through contractors in the public sector census sector was 4.7% in 1993-94. This was almost half (8%) of that in the sample sector.

However, the extent of contract labour has marginally gone up over time in the public sector.

PRIVATE SECTOR :

The percentage of workers employed through contractors in the private sector was higher than in the public sector (in the range of 16-22%).

The same sector establishments in the private sector had the highest incidence of contract labour, i.e. 22%.

Moreover, over time the percentage of contract labour has gone up rather sizably in the private sector.

There are specific industries having higher incidence of contract labour, such as, leather and fur products, food products, beverages and tobacco, basis metals, non-metallic mineral products, storage and warehousing services, wool, silk and manmade textiles, chemicals and chemical products, metal products, transport equipment etc.

Establishments in both the public sector and private sector employing in addition to regular work force 20 or more contract labour for specific jobs or processes on any day during the preceding 12 months attract the provisions of Contract Labour (Regulations & Abolition) Act, 1970. There is no absolute prohibition of employment of contract labour in India but the Contract Labour (Regulation and Abolition) Act, 1970 governs cases of employment of contract labour. This law provides for abolition of contract labour when certain conditions are fulfilled and where employment of contract labour is necessary it regulates conditions of employment of such labour by the principal employer and the contractor.

Under this law a workman shall be treated as contract labour in or in connection with a work of establishment where he is hired by or through a contractor with or without knowledge of the principal employer.

Workman under this law means any person employed to do any skilled, semi-skilled, or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment or expressed or implied. But it does not include person employed mainly in managerial or administrative capacity or employed in supervisory capacity drawing wages exceeding Rs.500/- p.m. or an out-worker to whom articles or materials are given by the principal employer for further processing and such process is to be carried out outside the premises of the principal employer for the sale in the trade or business of the principal employer.

A contractor means a person who undertakes to produce a given result for the establishments other than a mere supply of goods or articles to such establishments, through contract labour or whose supplies contract labour for any work of the establishments.

A principal employer in this law is defined as person responsible for the supervision and control of the establishment which includes for government controlled industry head of the department, owner or occupier of the factory, owner or agent of the mine.

This act requires the principal employer to obtain registration of his establishment and the contractor to obtain a licence for employing contract labour. If this requirement is not complied with the contract workman are liable to be treated as regular employees of the principal employer.

Moreover when the following four conditions are fulfilled the government has power to abolish or prohibit employment of contract labour in any process, operation, or other work in any establishment.

1. The process operation are other work is incidental to or necessary for the industry, trade, business, manufacture or occupation carried on in the establishment.

2. The process, operation or work is of perennial nature i.e. it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation.

3. It is ordinarily done through regular workman in that establishment or in a similar establishment.

4. It is sufficient to employ considerable number of whole time workman.

The power of the government to prohibit or abolish contract labour on fulfilment of the above four conditions under section 10 of the said act is subject to consultation with a Central Advisory Board or State Advisory Board and by issuing a notification in the official gazette to that effect.

This act also provides for regulation of conditions of service of contract labour where it is not advisable or practicable to abolish contract system.

These regulation includes provision of canteen, rest rooms, drinking water, first-aid, responsibility for payment of wages by the contractor and the principal employer both etc.

Some important judicial pronouncement on the subject by the Supreme Court in India can throw light on the employment security or otherwise for these class of workers.

JUDICIAL PRONOUNCEMENTS ON CONTRACT LABOUR SYSTEM

Case : Air India Statutory Corpn. Vs.United Labour Union & ors AIR 1997 SC 645 *

Facts :
Air India Statutory Corporation was a Statutory Authority under the International Airport Authority of India Act 1971 and on its renaming as Airport Authority of India 1994 was merged with National Airport Authority. The same is now reconstituted as a company under the Indian Companies Act 1956. They engaged contract labour for sweeping, cleaning, dusting, watching etc. of the building owned and occupied by them. They obtained a certificate of registration under the contract Labour (Regulation & Abolition) Act. The Central Government on the basis of the recommendation and in consultation with the Advisory Board issued notification prohibiting employment of contract labour in the aforesaid processes of the corporation. When the company did not abolish the contract labour system, the union filed writ petition to enforce the notification and abolishing the contract labour system and absorb the employees engaged in the aforesaid processes as permanent workers.

Held :
Abolition of contract labour system ensures right to workmen for regularisation as employees in the establishment in which they were hitherto working as contract labour through the contractor. The contract stands removed from the regulation under the Act and direct relationship of "employer-employee" is created between Principal employer and workmen from the date of abolition.

This positive affirmation of employers-employee relationship between erstwhile employer - contract workmen relationship is a firm step by Indian judicial system towards evolving a socially and economically just society. In doing so, the court has marched a very important step ahead in removing difficulties created by earlier judgements, which hesitantly proclaimed that even though contract labour system is abolished, it does not automatically result into creating permanent employment for the contract workmen. This kind of interpretation created more difficulties in abolition of contract labour system even where the work was proved to be of perennial nature. It amounted to, in the works of Justice S.B. Majmudar "throwing the baby out with the bath waters". As preamble to the contract labour Act clearly points out that it is a legislation for

(a) regulating the employment of contract labour in the establishments covered under
the act and

(b) abolishing such contract Labour system in circumstances covered under 10(2) and

(c) matter connected therewith.

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* This case is referred to larger bench for deciding question of automatic absorption of contract labour.

The phrase "matters connected therewith" clearly can bring within its coverage the issue of absorption of contract labour as regular workmen upon abolition of contract labour system under S. 10(2) of the said Act. It was very logically and rationally explained in the present judgement that under regulatory provisions of the Act, the contract workmen are to be paid wages and provided other welfare facilities under the direct supervision of the principal employer. If so, then the framers of the legislation could not have envisaged that the contract labour, when under regulation, should be the responsibility of the principal employer, but as and when, upon recommendation of the advisory committee, contract system is abolished by the appropriate Government, it is to be left in lurch without employment and any source of livelihood. In a socio-economic welfare legislation, it is implied that when two interpretations are permissible and statue is silent, the interpretation beneficial to the weaker section i.e. labour is to be preferred. Morever, right to means of llivelihood and empowerment are considered to be constitutional rights. Taking away the means of livelihood amount to denuding the workers their right to life, which again is a constitutional right.

It is interesting to note the judicial thinking on the matter even before the Apex Court's holding in the Air-India case. In R.K.Panda v/s Steel Authority of India (1994-5-SCC-304) contract workers were working in Rourkela plant of Steel Authority of India for a period of more than 10 years in spite of change of contractors. The court directed them to be absorbed as regular employees even though there is no express statutory prohibition to that effect in Industrial Dispute Act, 1947.

Case : Haryana State Electricity Board Vs. Suresh & Ors.(1999 (3) - SCC-501)
Facts :

The Haryana State Electricity Board is a statutory Board and a licensee within the meaning of Electricity Act, 1910 and Electricity (Supply) Act, 1948. It supplies power through its various plants and stations. It awards contract for cleaning and maintenance of such plants and stations to contractors. One such contract was awarded to Mr.K for cleaning, sweeping and removing garbage from the main plant building at Panipat in consideration for certain sum of money per month with a stipulation to engage a certain minimum number of Safai Karmacharis for a year. The Board exercised supervision directly over the attendance of the Safai Karmacharis and maintained records of their statutory duties and liabilities. When these Safai Karmacharies services were terminated on completion of 240 days, then raised an industrial dispute before labour court for their absorption as permanent workmen in the corporation.
Held :
The Safai Karmacharis employed through contractor should be treated as regular employees of the Board as the contract was in name only and can be treated as bogus contract to avoid benefits of albour laws. Here, the court differentiated between a genuine contract and bogus contract in terms of the legal consequences of both. Whenever there is a bogus contract, the courts have followed the principle of lifting the veil and looking to the economic reality. This was laid down by the Supreme Court in Hussainbhai V. Alath Factory Thozhiali Union (1978)-4-SCC-259) that whenever any person has economic control over the worker's subsistence, skill and continued employment, even if there are intermediate contractors, courts should regard such person as employer and not the contractor. The relationship may have been buried or disguised as something different, but whenever the economic reality points in the direction of existence of employment relationship, no matter how it may appear in its legal form, it should be treated as such and workers should be given benefits which constitutional social justice requires to be conferred upon them.

SUMMARY OF THE LEGAL JUDGMENTS ON DISGUISED EMPLOYMENT RELATIONSHIP

Whenever there are intermediaries, between the employer/management and employee/workmen the question arises as to who is the real employer. As per various judgments of the Supreme Court of India, following summarised propositions may be taken as guidelines to determine the issue.

(A) Whenever any work or job is entrusted to an intermediary the first question to be determined is whether the nature of relationship as suggested by the contract itself and other relevant surrounding circumstances points in the direction of a real bonafide contract or a bogus contract. (This can be inferred on the basis of criteria to establish employment relationships as well as the guidelines provided by the Contract Labour (Regulations & Abolition) Act, 1970.)

(B) If the contract is bogus, it means that it is created to conceal the reality. The court can and should take notice of the real situation which means that between the employer and so called contract labourer, there is direct employment relationship. The contract workers, are in fact, employees of the original employer. The pointers that a

contract is a sham or bogus, includes whether work is done under supervision of the owner/employer, that employer has right to direct the workers with respect to their duties, attendance and disciplinary action are matters within the purview of the employer, the work itself is regular work of the establishment and workers are working for a sufficiently long period of time, (more than 240 days to entitle them to a period of 1 year of continuous service.) The workers, in such case, can raise dispute in the Labour Court under Industrial Disputes Act and seek suitable order. (This is a situation of disguised employment relationships.)

(C) If the contract is a genuine one, then contract Labour (Regulation & Abolition) Act 1970 becomes applicable. Under this Act, the contractor and upon his failure, the principal employer has to provide for welfare facilities like canteens, rest rooms, wholesome drinking water, latrines and urinals, washing facilities, first aid facilities etc. Similarly, contractor and principal employer are liable for payment of wages to contract workers. However, if the Government, upon recommendation of the Central or State Advisory Board and after due consideration to the conditions of work and benefits provided to contract labour, the necessity of work performed by contract labour in relation to the main work of the industry or establishments, nature of work performed by contract labour-whether perennial or not, whether such work is ordinarily done through regular workmen or not and whether such work is sufficient to employ considerable number of whole time workers, considers it expeditent to prohibit employment of contract labour for any work, process or operation, it may issue a notification of that effect. When such notification is issued, the contract labour has to be absorbed as regular workmen of the establishment.

However, it is to be noted that there are some conflicting judicial opinion regarding the fact whether when a person has worked for more than 240 days in a year, does it or does it not entitle him to become regular workmen of the establishment or industry. The other conditions, as discussed above have to be examined in deciding about the status of the workman as contract or regular.

DIFFICULTIES IN PRACTICAL IMPLEMENTATION OF LEGAL PROVISIONS AND JUDICIAL PRONOUNCEMENTS - A CASE STUDY

When it comes to practical implementation of judicial pronouncements and legal provisions serious difficulties are encountered by the contract workers in realising the benefits under such provisions and judgements. A case study of contract labour employed by art silk processing houses in Surat in South Gujarat, who fought and won the legal matter for abolishing of contract labour in the processing houses is presented to demonstrate the practical difficulties encountered by the union as well as the workers.

The art silk textile industry in Surat and surrounding areas, situated in South Gujarat State, comprise about 400 processing houses engaged in dyeing, printing, bleaching and finishing of man made fibre. The size of the unit varies from small scale to large scale, which process about 2000 to more than 25000 metres of gray cloth per day.

These units employ on an average 300 to 400 workers. Thus approximately 1,50,000 workers are employed in this industry. The majority of the work force is migrant labour from Bihar, Orissa, Uttarpradesh and other backward states of India.

These processing houses obtained gray cloth from traders who manufacture these cloth on power looms. The dyeing, bleaching and printing on this cloth is to be done according to specification by gray cloth traders. The gray cloth is made from man made fibre. However, the domestic supply of gray cloth is short of its demand, hence it is also imported from other countries. The finished fabric is sold in other states like Maharashtra, Karnataka, Tamil Nadu etc.

The textile processing industry is covered by the Bombay Industrial Relations Act, 1946. This is a regional I.R.Law which is different from the National I.D.Act,1947. The definition of workman under section 3(13) includes contract workers under this law. This act provides for recognition of a representative union on behalf of workers in any particular industries.

The dyeing, bleaching and finishing are regular continuous work of this processing houses. Till early seventies permanent workers were employed for this work. When they raised demands for increasing wages due to rise in cost of living, the owners of the units terminated the then existing regular work force by payment of their legal dues. The processes were continued with the help of employing contract labour through contractors who handled recruitment of migrant labour force. This provided a cost effective option for owners as they were absolved from responsibilities of various social security provisions under labour laws as well as regular increments in wages.

The representative union of workers of these process houses raised an industrial dispute on behalf of the contract labour that

1. The workers in the processing houses were wrongly appointed as contract labour, where in fact they were doing the work of the regular work force. They were appointed as working under different contractors for different purposes to avoid the applicability of Contract Labour Act, which requires employment of 20 or more workers on any day during preceding 12 months.

2. The services of this workman were terminated before completion of 240 days to avoid their entitlement to get the legal benefits.

The state government referred the case for the opinion of a State Tripartite Contract Labour Advisory Board which is headed by a retired High Court judge. The Board after investigation advised the government to abolish contract labour system from the four processes in the processing houses. The government issued a notification for abolition of contract labour system. This notification was challenged by the Employers Association in the High Court as being discriminatory because it did not apply to other areas of the State. The government made second reference to the Board for processing houses in other areas of the state. The Board advised abolition of contract

labour in all the processing houses in all areas of the state. The opinion of the Board was based upon the following findings which are required under the law for prohibition of contract labour.

1. The activities/process were of perennial nature
2. There was sufficient work to employ considerable number of whole time workman.
3. The processes were ordinarily carried on through regular workforce.
4. The processes were incidental to and necessary for the industry.

The Employers Associations challenged the Notifications in the High Court on the following ground :

1. No opportunity of hearing was provided by the government before issue of the notification.
2. The notifications are violative of articles 14 and 19 (1) (g) of the Constitution of India.
(Article 14 guarantees equal treatment to equals by the law and article 19 (1)(g) guarantees fundamental rights to carry on business freely without unreasonable restriction in India)

The High Court negatived both these challenges. The issue of notification under the law does not require opportunity of hearing as it is a quasi - legislative function of the government and not an administrative or judiciary exercise of power. All the processing houses, though different in size, have the essential common nature of business and hence putting them on equal footing does not violate article 14 and the state action of prohition of contract labour after following due procedure under law does not violate article 19(1)(g).

The Employers Associations challenged the judgement in the Supreme Court also but they lost. There is no provision in Indian Judiciary system of challenging the judgement beyond the Supreme Court level. Hence it can be said that in the present case the legal battle was finally decided in favour of the contract labour for their permanancy rights. It took 13 years for these legal victory for the union.

However, as disclosed during personal interview with the union officials in spite of an existing legal prohibition for employment of contract labour in the four processes of the processing houses, no processing house has granted permanancy rights to their contract labour. This is due to the fact that employment of permanent work force increases considerably the financial burden for the owners, there are problems regarding labour turnover and enforcement of discipline due to migrant nature of work force and the implementation machinery of the government faces various constraints like adequate man-power, authority to actually enforce the provisions and judgements etc. The penalty prescribed under the law for the breach of provisions or non compliance with the orders is not adequate to deter the offending party from committee such breaches.

EMPLOYMENT SECURITY FOR HOME BASED WORKERS - LEGAL PROVISIONS

The different unorganised sector employment in various activities as described above has no single national law applicable due to the diversity of nature of work and geographical location. A major group amongst the unorganised sector comprise of Beedi and Cigar workers for whom a separate law has been enacted to regulate their conditions of employment, health safety and welfare etc.

Under this law the home workers who are given raw materials either by an employer or a contractor for being made into Beedi and Cigar at home are afforded a measure of employment security. Section 31 of the act protects an employee from discharge, dismissal or retrenchment without being given one month's notice if he has completed period of six months of employment. However, there is no bar on dismissal, discharge or retrenchment, if the services of an employee are terminated after conducting a proper enquiry wherein charges of misconduct are supported by satisfactory evidence. This act unlike the I.D.Act,1947, does not provide for any compensation on termination.

They are various provisions related to health and safety like cleanliness, ventilation, over crowdy, drinking water, washing facility, creches, first-aid, canteens in this act. There are also provisions regarding working conditions like hours of work, wages, weekly holidays, spread over prohition of employment of women and young persons, annual leave with wages etc.

Another legislation covering another category of unorganised sector workers - the building and construction workers has been recently enacted in 1996 which provides for registration of construction establishment, constitution of construction worker welfare board, regulation of conditions of service and welfare measures of construction workers, safety and health measures, responsibility for payment of wages by establishment employeeing ten or more building or construction workers on any day of the preceding 12 months. However, this act does not provide for any security of employment to this class of workman.

A mention here can be made of regional legislation Maharashtra Mathadi Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969. This Act provides for economic and social security to hamals who are load carriers in the urban unorganised sector. These workers form large bulk of contract workers working as load carrier in the service industries in Maharashtra. The act provides for registration of both the employers and the hamals with tripartite district level boards comprising of the representative of employers, workers and the state. The hamals and the employers contribute towards creation of a fund for looking after the welfare of the hamals. Even in absence of establishing a definite employer and employee relation this act compels the employer to accept responsibilities for workers' economic security and welfare. What is noteworthy about this act is that it owes its creation to powerful organisation of the workers themselves called "hamal panchayat". The mobilisation of these hamals by the panchayat into a powerful collective body has helped into constant efforts to

persuade the state to work for the welfare of hamals. It is a pointer to the fact that organisational strength is the only weapon available to informal sector labourers to make the state work for them.

PROVISIONS FOR PAYMENT OF REMUNERATION :

There are two legislations which regulate payment of wages to workers.
1. Payment of Wages Act, 1936
2. Minimum Wages Act,1948.

The Minimum Wages Act, 1948, prescribed a minimum statutory wage for workers covered in the scheduled employment. The Minimum Wages Act, 1948, is applicable to even the home workers who are given the material or articles by the employers. The scheduled employment under the act include large number of organised as well as unorganised sector employment and the list of employments can be increased by the appropriate government. The law requires revision of the minimum wage a periodical intervals. However, there are major problems with the implementations of the provisions as there is no inspectorate machinery available under law.

The Payment of Wages Act is applicable to certain classes of persons employed mainly in the organised sector employment. This law provides for fixation of responsibility for payment of wages, time limit for payment of wages and permissible deduction by the employer from the wages. However, since it does not apply to most of the unorganised sector employment the workers in this sector do not get any protection with respect to their wages.

FREEDOM OF ASSOCIATION AND SCOPE FOR COLLECTIVE BARGAINING UNDER VARIOUS CONSTITUTIONAL AND LEGAL PROVISION

Right to freedom of association has been granted under article 19(1)(g) of the Constitution of India. All the citizen of India have a fundamental rights to form association or unions subject to restriction imposed by clause 19(4) on the grounds of sovereignty and integrity of India, public order or morality. Restriction can be imposed only by the state as defined under article 12. The executive can not impose any restriction on fundamental rights.

This freedom to form associations or unions is available irrespective of status of employment, whether regular salaried or casual. It is also available to the self employed categories of workman.

The right under the freedom includes a right to start an association, to continue it and to refuse it to be a member of it. But it does not include any fundamental rights to strike. It includes right of peaceful demonstration as its integral part.

The legislation which regulates the right of individuals to form an association or union is the Trade Union Act,1926. It applies to all of India provides for registration of unions. Any seven or more persons may form a union by applying for registration. There is no provision for compulsory recognition of registered unions by the management for negotiation or collective bargaining under Trade Union Act, 1926. This restricts the effectiveness of the union as a bargaining agent.

Two major rights granted under the act to the union and the officials of the union are
1) Creating a separate political fund for political activities of the union
2) Immunity to union officials against criminal action and from civil suits for acts of inducing others to break a contract of employment, interference with the trade,

   business or employment of other persons.

Because of absence of compulsory recognition of unions for negotiation purposes a situation of multiple unionism exist in both public as well as private sector. Moreover, the unions have been successful where there is adequate employment security. In absence of protection of employment and compulsory recognition as bargaining agent trade unionism cannot succeed as the threat of loss of employment in a country like India where the unemployment levels are high and increasing is sufficient to deter the workers from organising into association or unions.

Some regional legislation like Bombay Industrial Relations Act, 1946, or Madhya Pradesh Industrial Relations Act, etc., provide for compulsory recognition of representative union as bargaining agent. This helps in increasing the credibility of union as bargaining agent. This legislation gives sole right of appearance on behalf of individual employees to representative union to the exclusion of all other unions or individual employees. This promotes industry vise unions to represent the collective cause of all the workmen in that industry.

The suggestion pertaining to inclusion of similar recognition provisions in the I.D.Act, have been made from time to time. However, they have not been so far implemented.

The effective access to the freedom of association and collective bargaining is possible only in cases of adequate security of employment. The major unions in India draw their strength from political patronage. There are very few industry level unions who are in a position to protect the interest of the workers in absence of either legal provisions protecting collective bargaining institutions or strong political patronage. Ironically it is the unorganised sector workforce which requires strong unions but is not able to develop trade unionism in its true spirit. The existing unions hardly make any effort to unionised these workers.

SOCIAL SECURITY FOR WORKERS IN INDIA :

In India the approach to extend some measure of social protection is through three mechanisms : (1) legislation and statutory schemes mainly covering the organised

workers (2) social assistance through targeted programmes for weaker sections of the society and (3) self-financing mechanism established by different agencies and groups.

DEFINING SOCIAL SECURITY :

Boardly, social security is a support for a dignified life which would include viable income or employment support and support to acquire basic capabilities together with food and shelter.

However, in operational terms it covers narrower field of protection against injury during employment, death or disability, survivor benefits, old age pension, maternity benefit and medical care.

The extent of coverage and the quality of these services as well as its level of support depends on the state of development. The delivery of the services is affected by a variety of factors including political will, accountability of bureaucracy, awareness among the target group and presence of their organisation and so on.

In view of slow trickle down of the benefits of growth the need to ensure a minimum level of social protection to the people is accepted universally as a priority.

In India the state supported existing social security schemes and welfare benefits are described as under :

The employees' Provident Fund (EPF) Act :

The employees' Provident Fund is a statutory scheme and is the most desirable way to cover the entire working class. However, due to the nature of economic activity and its pattern the statutory schemes are restricted, by and large, to the workers in the 'organised sector'. The workers without employment security but who may be working in the organised sector establishment are generally denied this benefit in reality.

Under the Employees' Provident Fund Act the benefits now are in terms of a comprehensive pension scheme in addition to the provident fund, family pension, and deposit linked insurance. After the Amendment of 1995 the scope of the Act was enlarge and it increased the benefits for the survivors.

COVERAGE :

The EPF covers factories and establishments employing 20 or more workers is scheduled industries. 177 industries have been notified so far by the Central Government.

WAGE CEILING :

The wage ceiling for the purpose of eligibility is Rs.5000/- per month. Employees contribute 8.33 or 10% of the wages. It is deducted at source and deposited in the PF account of the employer. The matching contribution of the employer is now deposited in the new pension fund. It is an all India fund covering 20 million employees in 2,64,000 establishments. For the purpose of eligibility under the EPF a minimum service of 10 years is necessary for pension. However, it is only after the age of 58 years that employees start receiving pension. Under the Act 19.5 million government employees are also covered. Similar benefits are also available to workers of coal-mines and Assam tea plantations for which there are separate Acts.

Under the EPF periodic partial withdrawal are also allowed for the purposes such as Life Insurance, house building, medical treatment etc.

Among the different employment sectors the largest share is manufacturing (51%) followed by mining and quarrying (20%). The agriculture and allied field covers only 5.7%. What is striking is that the unorganised sector workers as a whole accounts for 10-11% of all EPF subscribers. Even among the unorganised workers a majority is bidi workers and among the bidi workers only 30% out of 4.2 million are covered.

The EPF also makes voluntary coverage. There are about 16,000 establishments covered under the voluntary basis.

The coverage under the EPF in terms of the entire working population in India is only 6.4%. About 2 million unorganised employees to whom EPF is extended represent not even a fraction of 1% of the total estimated unorganised workers of 332.33 million in 1997.

An internal committee appointed by the planning commission had gone into the question of extending the coverage of EPF to smaller establishments employing five or more workers. However, this has not found favour with the Employees State Insurance Corporation as it was felt that it will further complicate the implementation. The view was to improve the quality of services. Thus, while this is the single most important measure of social security its coverage is highly restricted to 12-13% of the total workers in India.

EMPLOYEES' STATE INSURANCE SCHEME (ESI) :

The ESI scheme is applicable to non seasonal factories using power and employing 10 or more workers and non power using factories and certain establishments employing 20 or more persons. Benefits are given in terms of medical treatment including hospitalisation expenses cash benefit for wage loss if any and for medicine maternity benefits are also extended.

The ESI scheme is operated in 640 centres situated in 22 states. As on March 1998, there were 8.36 million employees and 35.29 million beneficiaries covered under the scheme. The benefits are extended to the workers and their dependents.

PERFORMANCE STATUS :

During 1997-98 29 additional centres and 33,500 employees were covered.

There was a marked increased in the number of insured women from 14.154 lakh in 1996-97 to 15.24 lakh by March 1998. As on March 1998, there were 2.13 lakh factories and establishments. Covered under the scheme.

Two new hospitals and 7 service dispensaries were commissioned last year (1997-98). The extended sickness benefit increased from 125 percent to 140 percent of the standard benefit rate.

During 1997-98 the total amount paid on account of cash and other benefits was Rs.323.69 crores.

The number of claimants for permanent disablement benefit increased from 1.04 lakh in 1996-97 to 1.14 lakh by March 1998.

During 1997-98 3.53 lakh patients were admitted to ESI hospitals and 1.37 lakh cases were referred for specialist investigation. The total attendance at ESI facilities was 50 million patients.

During 1997-98 over 1000 cases relating to open heart surgery, kidney and advance treatment for cancer were referred to the institutions in the country. The total expenditure for medical benefits (Corporation share, cash benefits, administration etc.) amounted to Rs.932.38 crores. The income by way of contribution was 1187.32 crores.

Apart from the two statutory schemes, viz the Employees Provident Fund and the Employees State Insurance, the employees of factories, mines, plantation, railways and other scheduled employments are covered under the Workman's Compensation Act of 1923, under which compensation is paid either to the worker or to the survivor for the injuries and occupational diseases sustained in the course of employment. The schedule of employments now also includes certain hazardous agricultural and forestry operations.

Similarly the Payment of Gratuity Act 1972 is applicable to various establishments having a minimum of ten employees.

The Maternity Benefit Act provides maternity protection before and after child birth in terms of a multiple of wages and certain other benefits Women employee of factories, mines and other commercial establishments are covered under the Act. However, the take up of claims at all India level is also 00.5 per cent, as against under some other Acts. For example, under ESI it is 2.5 per cent, under Plantation Labour Act it is 12.8 per cent and under Mines Act it is 8 per cent. The maternity benefits to bidi workers

who constitute a bigh chunk in the Un-organised sector are available through their common welfare fund.

The feature of these Acts is that they are employers' liability and there is no organisation to administer that. The courts and other competent authorities deal with only specific case of violation. There are separate authorities under EPF and ESIC Act to try cases of violation of provisions of the Act. However, it is not always feasible for a poor illiterate worker to bring such cases before the authorities. There have been suggestions to integrate this component as a part of Social Security Scheme covering also the contribution of the employees.

EXTENSION OF STATUTORY SCHEMES OF SOCIAL PROTECTION :

On the whole only 13 per cent of the Indian workers are covered under the schemes mentioned above. In principle, these major social security laws do not distinguish between organised sector and unorganised sector and hence can be applicable even to the casual workers and contract workers covered in the establishments. They can be also extended to home based, contract workers in bidi, construction and khadi and village industries. In reality, however, only a fraction of such workers stand covered and derive benefit. This is in spite of the fact of various judicial pronouncement from time to time. In the case of Padiyur Sarvodaya Sangh v/s. Union of India and others (1999-LIC-1991 Mad. H.C.) The question to be decided was whether artisans or weavers of the Sarvoday Sanghas which are small scale sector, no profit no loss service oriented units engaged in production and sales of Khadi and Village industries are covered by the definition of employee or not. Generally these artisans are given raw materials at a price and they sell their finished products to the Sangh and are treated as self-employed home based workers in the economic census. The court held this artisans to be included in the definition of employee under the EPF Act and directed the employer - the Sanghas to extend the benefits of the Act to these weavers. Similarly in the case of ESIC v/s. Mr. Virgilio Velho (1999-LIC-2123-Bom.H.C.) the sales persons employed at different counters of the departmental stores at Panaji for trading purposes where held to be employees under ESIC Act in absence of any direct nexus between the owner of the departmental store and the sales persons attached to different trading counters in the store.

The establishment of employer - employee relationship, organising system of collecting contribution, complex procedures all militate against the extension of such coverage.

Moreover, these statutory schemes have certain limitations as they cover only scheduled industries and establishments, are applicable only up to a ceiling of wages and above all, the self employed who account for more than 50 per cent of the workforce do not become eligible under current regulations.
Among the unorganised workers, the bidi workers whose number is about 4.5 million in India have been able to get the advantage under Provident Fund Scheme particularly in the state of Andhra Pradesh. This was possible because about 4 lakh bidi workers

out of 4,50,000 in Andhra Pradesh were issued identity cards. As a result of the formal sector benefits could be extended even to these workers.

It is suggested that the linkages of the some of the schemes with the informal sector workers can be facilitated through the specially constituted welfare fund and group insurance schemes.

The estimated number of 65.75 million agricultural labourers in India in 1997 is the single largest class of wage employees in India. They lack enough work, mostly get wages, which are lower than the minimum prescribed, lack education and skill and hence circumstances leading to occupational diversification are unfavourable. In fact, in view of the growing pressure on the population of land, there is growing casualisation of labour.

Although as a principal activity, they get recorded in one or the other occupation, their activities and occupations go on changing seasonally. They are sometimes minor forest produce gatherers, home based bidi workers, construction workers, migrant contract workers and so on. Their employment status does not remain stable, but shifts from wage labour to paid labour or unpaid workers. The self employed in tiny enterprise are the largest in terms of enterprises and seasons working as already noted.

It is under this peculiar feature of employment, activities and occupations as well as lack of human capital and skill that we need to device a suitable system of social protection for the unorganised workers.

WELFARE FUND AND GROUP INSURANCE SCHEMES :

With a view to extend certain welfare and social protection benefits to the specific categories of unorganised labour, statutory welfare funds have been constituted for workers employed in Bidi, cemet and mining industries. Five such welfare funds have been constituted by the Government of India under the Ministry of Labour. The benefits in terms of housing, medical care, scholarships for children education etc. are made available for the class of a worker as a whole and not on the basis of direct employer-employee identification.

Similarly, Group Insurance Scheme was introduced for bidi workers the premium for which was paid out of the fund. Recently a new welfare fund law for the construction workers has been enacted. While the funds have been constituted under the central law, the welfare funds are set up and operated by the central and state governments. The state of Kerala has been regarded as pioneer in the welfare fund related activities in India.

STATE LEVEL ACTION :

The state governments also constitute welfare funds and the group insurance schemes. The national social assistance programme provides old age pension and maternity benefit. The state governments also have their own group insurance schemes for the

various categories of weaker sections. One of the most striking feature in the welfare schemes for the unorganised sector is plethora of schemes involving overlapping jurisdiction, high overhead cost, separating too thinly. In many of these schemes since two beneficiaries are not putting any contribution the accountability of the administrators is absent.

What is striking is that we have not fully explored the whole insurance sector for an effective health insurance scheme. Although the Life Insurance schemes provide the benefit to the family on the death of insured person.

The welfare funds mainly concentrate on welfare activities by way of direct funding of the above mentioned activities and also by way of providing grants to institutions for relevant schemes such as housing, water supply, school etc. As regards insurance the welfare funds provide some contribution for premium for life insurance. The details of the working of these funds are give in Table....

GROUP INSURANCE SCHEMES :

We have noted earlier that due to the nature of occupation and uncertain income and employment the unorganised workers find it difficult to go for any systematic social security for them. The individual attempts to take out insurance policies like the life insurance have been rare and those who have taken have a tendency to drop out mid-way due to inability to pay premium year after year. This funding was clear as we interviewed some of the informal sector workers like rickshaw pullers, self-employed vendors selling vegetables and fruits, automobile garage boys, washermen and domestic servants. We interviewed about 20 of them and found that not even 10% had even life insurance cover.

They have no health insurance. Only in times of crisis they go to Government hospitals but it involves loss of working days and wages which they can ill afford. So they have a tendency to go to private clinics.

The Government of India's approach to provide some measure of social security for the unorganised workers besides welfare fund is in terms of providing life insurance cover in case of natural death as well as accident by implementing life insurance schemes for different categories of occupations of unorganised workers like the agricultural labourers. The scheme for agricultural labourers is the central scheme as well as is implemented in several states like Gujarat. It gives between Rs.20-25,000 in the event of death and the premium is paid by the state.

The Life Insurance Corporation of India has identified 24 occupations such as bidi workers, handloom workers, handicraft artisans, fishermen, primary mil producers, cobblers, etc. As on March 1998 about 5.00 million workers have been covered under this social security scheme of the Life Insurance Corporation of India (Table.....). Similar schemes are implemented also at the state level. The Government of Gujarat implements the schemes for landless agricultural labourer, forest labourer, fishermen and slat workers, in all covering about 3.5 million workers in the State (Table...).

Under all these schemes financial benefits of insurance is made available in the event of either natural death or due to accident. The premium for these policies is paid by the State.

Regarding welfare and social security for the unorganised workers, the striking but confusing situation is the existence of plethora of schemes and welfare programmes. It gives an impression of scarce resources being too thinly spread leading to overlapping less than expected results and probably too many people are administering limited resources. The health care in particular need to be implemented through an insurance company. Life cover to workers like agricultural workers and bidi workers through the Life Insurance Corporation of India are right type of approaches to be extended for the health care in particular. In such a system the target group can be given more choice for selection of hospital, doctors and so on. The scheme can be in two parts with one part contributory for premium and providing higher level of insurance, while the other part can be a general scheme. For the unorganised workers health insurance, old age pension, cover for death either natural or accidental and maternity benefit up to deliveries is perhaps the effective way for the unorganised workers.

Simultaneously in the economic policy side the need is to fix minimum wages, keeping in view the basic minimum needs of the family, ensure its effective implementation by involving social partners and follow a housing programme for masses in a cost effective manner.

In an unorganised employment the issue of social security is complex one because in security of employment prevents unionisation and paradoxically without mobilisation of workforce into unions implementation of social security sponsored by state is rare possibility. The increasing informalisation within the organised sector employment raises complex issues related to attributes necessary for enabling access to social security schemes. This is particularly true in cases of "new industrialisation" where flexible specialisation in work processes and new methods of organising work has become a necessity.(New industrialisation referred to industrialisation in the changing structure of the economy which is least regulating and which is being located in new townships)

LEGISLATIVE PROTECTION FOR LABOURING WOMEN IN INDIA :

The labouring women were in a situation of deprivation and exploitation. A series of laws to protect their status as workers, to increase their remuneration and to ensure certain benefits have been passed in India.

Among all these, the Minimum Wages Act 1948 is considered to be the most important and relevant to the unorganised workers. This is important both for the self employed as well as wage paid workers.
There are many weaknesses even in the respect of coverage and implementation of this critical piece of legislation, particularly in respect of women workers.

1) For example, a large number of the employments including those in which women have sizeable percentage have not been included for schedule.

2) The level at the minimum wage are fixed is low and revisions are delayed.

3) Even such low of minimum wages are not effectively implemented, the defaults often takes place in activities where the government is the employer in activities like construction, forestry, railways, demonstration farms, free trade zones etc.

The other progressive legislations are the Equal Remuneration Act 1976; the Contract Labour Abolition & Regulation 1970; the Interstate Migrant Workers Act 1979 and Maternity Benefit Act 1961.

Apart from ineffective implementation employers resort to retrenchment in women workers or avoid employing them to avoid statutory responsibility.

In all these legislations the key aspect is often the employer-employee relationship, which is a vague and the courts highlight these aspects from time to time through pronouncing judgements on case by case basis. It may be noted that in the unorganised sector both in respect of casual labour and self employment the units of activity are too small. the self employed entrepreneur often becomes a worker and vice verse. Thus in the unorganised sector it is not only the vastness of the workers but also the enterprises. Hence unless these micro enterprises are found working for the establishments in the organised sector it is extremely difficult to enforce any decisions regarding the social security or security of the employment. It is from this angle that the National Commission on self employed women emphasized the need for some kind of self regulating mechanism in which the women can play an important role. Among the recommendations made by the Commission the following are relevant and important.

1) It recommended the establishment of tripartite boards for protecting economic, social and welfare rights of the workers.

2) The Commission recommended setting up of a central fund from which welfare and social security measures for women workers can be financed and implemented.

3) The Commission also recommended to go for a drive for legal literacy for women workers etc.

CONCLUSION :

With respect to security of employment the wage/salaried workman are, though legally protected, in practice the benefits of protection are available only to very small fraction of this class. As discussed above the proportion of salaried workforce as percent of total workforce across economic activities is on the decline. The benefits and protection with respect to conditions of employment, remuneration, health and safety,

social security flow from the basic security of employment. Though legally it is available to some segments of informal sector workforce also, the practical implementation of legal provisions generally remain restricted to organised employment. This is due to the fact that the organisational strength of informal sector workforce is low. The legal provisions regarding freedom of association and collective bargaining are inadequate even for this class of workers as there is no statutory right of recognition for the unions.

For workers in triangular relationships, which is known as contract relationship in India the legal provisions are contained in the Contract Labour Act. The legal provisions contain elaborate protection of conditions of employment, remuneration, health, safety, welfare etc. There are some specific laws for certain class of employees like beedi & cigar workers, mathadi workers which provide for employment conditions of these class of workers. However, practical implementation of laws with respect to these employees is highly dependent on collective organisation strength of workers. The legal frame work for freedom of association and collective bargaining are inadequate to protect the interest of the workers belonging to this class. The judicial arrangement for resolving disputes of this class of workers is unsatisfactory as it involves a lengthy procedure and high degree of dependance on the state machinery.

The self employed category is outside the purview of legal frame work. Majority of work force in this category is involved in activities which do not fall within the legal parameters of number of persons required for applicability of labour laws. The workers in this category may be employers or workers or both.

The self employed in a situation of economic dependancy (independent - dependent workers) are through judicial interpretation of existing legal provisions for establishing employer and employee relationships being included in the definition of workers for the entitlement to legal benefits. However, for establishing this relationships again access to collective organisational strength through unions or otherwise is a sine qua non. This class of workers do not form a separate and stable category under law but are treated as part of the self employed category. However, through judicial interpretation their class is differentiated from independent self employed workers and courts have been taking views that they should be treated at par with regular workers. With respect to their condition of employment, remuneration, health, safety, and social security some efforts have been made to legally prescribe rules and regulations. However, in abscence of adequate machinery for implementation these provisions have not been useful in practice. The nature of their work makes it very difficult for them to organise into association and unions and resort to collective bargaining processes.