International Journal of Technical Research and Applications e-ISSN: 2320-8163,
www.ijtra.com Special Issue 17 (June, 2015), PP. 25-31

ROLE OF JUDIACIARY FOR THE SOCIAL SECURITY AND PROTECTION OF WOMEN LABOUR IN INDIA

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ABSTRACT- Judiciary is the third pillar of democracy in India and guardian of fundamental rights of people. Judiciary in India plays a pivotal role to establish economic and social justice in a democratic set up. Through its various pronouncements of judgments it upholds the spirit of social equity and justice and protects the interests of vulnerable groups like unorganized labour, women and children. In this article efforts have been made to bring to the lime light the contribution of judiciary in India in protection of women and unorganized labour and in providing social security to such weaker section of the Indian society.

Key Words: social justice, democratic, social equity, unorganized labour.

I. INTRODUCTION:

The judiciary in India under its ambit of policy for bringing about social justice has been very particular to give effects to the rights of unorganized labour. A scanning of numerous rulings of the apex court of India reveals the issues of minimum wages, equality, social security, health care and maternity with regard to unorganized and women labour.

The judicial pronouncements on the right to social security have been very scanty. The court has admitted the fact that it is only in the 20th century the concepts of social justice and social security, as integral parts of the general theory of the Welfare State, were firmly established. The right to social security has been recognized in order to ensure means of livelihood in loss of employment or disablement during employment.

The Court in *Life Insurance Corporation of India* v. *Consumer Education and Research Centre* observed that social security has been assured under Article 41 and Article 47 and it imposes a positive duty on the State to raise the standard of living and to improve public health.

The basic right to enjoy means of livelihood from cradle to grave fails to attract attention of the 'activist judiciary' in India. The activist judiciary needs to revisit its strategy in the matter of social security. There is no denial of the fact that the right to life impregnates right to social security because standard of living and decent life is unqualified and unconditional right of every individual irrespective of earning capacity of individual.

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

In interpreting the 'social security legislation' the Indian judiciary, considering it a piece of beneficial legislation, has been benevolent to protect the interest of the down-trodden section of the society and at the same time avoided to become benevolent despot. It always kept in view the broader objective of various enactments of social security and to interpret them within the framework of the ideals and principles enshrined in the supreme law of the country, the Indian Constitution. Further to make the most difficult process of adjustment a reality it attempted to keep itself free from the tyranny of dogmas or subconscious process of preconceived notions and adopted a flexible and pragmatic approach. It also emphasized that socio-economic values created by our Constitution are to be translated into practice through the instrumentality of social security legislation. This trend is clearly discernible from *Royal Talkies* case and *Orango Chemical Industries and another* v. *Union of India* decided in the later seventies by the apex court.

Judiciary based its decisions on the principles of social justice and attempted to create a value system which takes care of interests and rights of a large number of people who are poor, ignorant or in a socially and economically disadvantageous position. Two decisions of the Supreme Court of India testify this trend. Justice P.N.Bhagawati in case of *People's Union for Democratic Rights and Others* v. *Union of India* asserted that time has come when the courts must become the courts for poor and struggling masses of the country. They must shed their character as upholders of the established order and status quo. The rule of law does not mean that protection of law must be available to the fortunate few or that the law should be allowed to be prostituted by the vested interests for protecting and upholding the status quo under the guise of enforcement of their civil and political rights. The poor too have civil and political rights and the rule of law is meant for them also. The spirit was maintained by Supreme Court in its subsequent case of *Sanjit Roy* v. *State of Rajasthan* Again it was stressed that State cannot be permitted to take advantage of the helpless condition of the affected persons and deny the advantage of labour legislation to helpless labour. No work of utility and value can be allowed to be

constructed on the blood and sweat of persons who reduced to a state of helplessness on account of drought and scarcity conditions. Thus the trend of judiciary has been to make sincere efforts for achieving a coherent socio-economic order based on social justice and basic human values.

It laid adequate emphasis on the implementation aspect of social security legislation. In doing so it stressed on the observance of the principles of natural justice so as to avoid arbitrary and unjustified imposition of penalties for the enforcement of social security legislation. It has given new orientation to the interpretation of social security legislation and thereby evolving 'new labour jurisprudence' which emancipated labour law from the clutches of the concept of laissez faire and advancing respond to the demands of 'Welfare State'. Thus the judiciary has gradually shifted from doctrinaire approach to the pragmatic approach which was conducive to all interests in the society.

The bonded labour system is the relic of feudal exploitative system resulting in domination of a few socially and economically powerful persons over the large number of illiterate, socially and economically weak people. Till recently, there existed in India a system of 'usury' under which the debtor or his descendants or dependants has to work for the creditor without reasonable wages or with no wages in order to pay back the debts. This system implied infringement of basic human rights and destruction of the dignity of human labour. In order to prevent exploitation of bonded labour the Constitution contains several provisions. Thus clause (1) of Article 23 prohibits traffic in human beings and other similar forms of forced labour. Further Article 21 guarantees that no person shall be deprived of his life or personal liberty except according to procedure established by law.

Bandhua Mukti Morcha v. *Union of India* is a landmark decision in the area of bonded labour wherein the Supreme Court has stretched its protective arms to various aspects such as, its identification, release and rehabilitation. It was held that when an action is initiated in the Court through Public Interest Litigation alleging the existence of bonded labour, the Government should welcome it as it may give the Government an opportunity to examine whether bonded labour system exists and as well as to take appropriate steps to eradicate that system. This is the Constitutional obligation of the Government under Article 23 which prohibits 'forced labor' in any form. Article 23 has abolished the system of bonded labour but unfortunately no serious effort was made to give effect to this Article. It was only in 1976 that the Parliament enacted the Bonded Labour System (Abolition) Act, 1976 providing for the abolition of bonded labour system with a view to preventing the economic and physical exploitation of the weaker section of the society.

In *Neeraja Chaudhury case* (Neeraja Chaudhury v. State of M.P. AIR 1984 SC 1099.)a writ petition was filed by a journalist in the form of a letter to Supreme Court complaining that about 135 bonded labourers within the meaning of Bonded Labour System (Abolition) Act,1976, working in the stone quarries of Faridabad, had been released by the Supreme Court's order and had been brought back to M.P. with a promise of rehabilitation by the Chief Minister, but had not been rehabilitated even after six months of their release and were living in conditions to dire poverty. Giving suitable directions to the State of M.P. the supreme Court observed, "It is a requirement of Articles 21 and 23 of the Constitution that bonded labourers must be identified and released and on release, they must be suitably rehabilitated freedom from bondage without effective rehabilitation would frustrate the entire purpose of the Act, for, in that event the freed labourers will slide back into bondage again to keep body and soul together."

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

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

The evil of employment of children in agriculture and industrial sectors in India is a product of economic, social and inadequate legislative measures. The founding fathers of the Constitution, being aware of the likely exploitation by different profit makers for their personal gain specially prohibited employment of children in certain employment. Quite apart from this the Indian Constitution, inter alia seeks to protect the interests of children through fundamental rights and the directive principles of state policy. Article 15(3) provides special treatment to children.

Article 23 guarantees the right against exploitation. Further Article 24 of the Constitution prohibits the employment of children below the age of 14 years in factory or mine or in any other hazardous employment. Quite apart from these fundamental rights, part IV of the Constitution seeks to provide that the health and strength of the workers both men and women and the tender age of the children are not be abused. Further Article 39(f) provides that "children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment." The incorporation Article 39(f) seems to be inspired by the provisions contained in Article 41 of the International Labour Convention which provides for abolition of child labour and imposition of certain limitations on employment. In *Sheela Barse* v. *Union of India*, The Supreme court found that though several States have enacted Children Acts for the fulfillment of constitutional obligations for welfare of children under Article 39(f), yet it is not enforced in some States.

In *People's Union for Democratic Rights* v. *Union of India*, The Supreme Court ruled that Article 24 is enforceable against everyone and by reasons of its compulsive mandate no one can employ a child below 14 years in a hazardous employment. The aforesaid view was reiterated in *Salal Hydro Project* v. *State of Jammu & Kashmir* where the Supreme Court held that construction work being hazardous employment, no children below the age of 14 can be employed in such work because of constitutional prohibition contained in Article 24.

The Supreme Court in its landmark judgement in *M.C.Mehta* v. *State of Tamilnadu***,** after going through the report and recommendations of the committee which visited Sivkashi where the manufacture of match boxes in large scale takes place and where child labour is employed in violation of various constitutional and statutory provisions prohibiting employment of children opined:

> "Till an alternative income is assured to the family, the question of abolition of child labour will really remain a *will-o-the wisp*. Now if employment of child below the age of 14 is a constitutional indication insofar as work in any factory or mine or engagement in other hazardous work, and if it has to be seen that all children are given education till the of 14 years in view of this being a fundamental right now, and if the wish embodied in Article 39(e) that the tender age of children is not abused and citizens are not forced by economic necessity to enter avocation unsuited to their age, and if children are to be given opportunities and facilities to develop in a healthy manner and childhood is to be protected against exploitation as visualized by Article 39(f), it seems to us that the least we ought to do is see to the fulfillment of legislative intendment behind enactment of the Child Labour (Prohibition and Regulation) Act,1986. Taking guidance there from, we are of the view that the offending employer must be asked to pay compensation for every child employed in contravention of the provisions of the Act a sum of Rs 20,00/- and the Inspectors whose appointment is visualized by Section 17 to secure compliance with the provisions of the Act, should this job."

Contract labour is one of the most exploited sections of human labour. For several years they have been paid low wages, employed for longer hours of work, placed in unsanitary working conditions and denied benefits and facilities equal to their counterparts who are employed under regular contract of service. Further there is no security of tenure. Instances are not lacking where they have been victimized. Moreover they are not entitled to other benefits and amenities to which the regular workmen of the company are entitled. Thus there is wide disparity in emoluments and working conditions between contract labour and direct labour and they are not treated at par with direct labour. Article 21 of the Constitution lays down that no person shall be deprived of his life and personal liberty except according to the procedure established by law.

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

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

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

II. JUDICIARY FOR THE PROTECTION OF WOMEN LABOUR AND UNORGANISED LABOUR:

A. Sexual Harassment at Work Place:

A three judge bench of the Supreme Court in *Vishaka* v. *Union* of India made a significant contribution in evolving the code against sexual harassment. While emphasizing the need to have guidelines the Supreme Court observed:

> "The primary responsibility for ensuring such safety and dignity through suitable legislation, and the creation of a mechanism for its enforcement is of the legislature and the executive. When, however, instances of sexual harassment resulting in violation of fundamental rights of women workers under Articles 14,19 and 21 are brought before us for redress under Article 32, an effective redressal requires that some guidelines should be laid down for the protection of these rights to fill the legislative vacuum."

The aforesaid guidelines and norms must be strictly observed at all work places for the preservation and enforcement of the right to gender equality of the working women. These directions according to the court would be

binding and enforceable in law until suitable legislation is enacted to occupy the field.

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

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

B. Right to Equality:

In the context of equality between men and women workers the Supreme Court in the case of *Air India* v. *Nargesh Mirza* observed that Article 14 of the Constitution of India forbids hostile discrimination and not reasonable classification and the Article 14 of the Constitution would be involved where equals are treated differently without reasonable basis. In case the class or categories of service are different in purpose and spirit, Article 14 would be attracted. Article 15 of the Constitution of India provides that the State would not discriminate on the basis of sex but if the welfare state frames any special scheme which might be aimed at ensuring welfare the women the same would be valid and in accordance with Article 15 of the Constitution of India. In this context it was observed by the Supreme Court in case of *Yusuf* v. *State of Bombay* that if any general or Customary law discriminated between male and the female on the basis of some rationale for such discrimination then it would be valid one but on the other hand if it was in the favour of the male person only on the basis of sex it would contravene Article 15 of the Constitution of India and hence held void. Similarly in case of *Smt. Anjili Rai* v. *State of West Bengal*, it was observed by the Calcutta High Court that the discrimination is forbidden Article 15 of the Constitution would be only that which might be solely on the ground of a person belonging to a particular race or caste or a particular religion or place of birth or that of a sex of a person but it would be possible to hold reasonable discrimination to be valid one under clause (3) of Article as it would be obviously be an exception to clauses (1) and (2) of Article 15. The Purpose of clause (3) of Article 15 was to authorize what was otherwise forbidden so its meaning could be presumed that notwithstanding clauses (1) and (2) of Article 15 which prohibited discrimination on the ground of sex, the State might discriminate against male by making reasonable provisions in favour of female. Therefore the meaning of Article 15(3) of the Constitution would be that a special provision in favour of women would be valid even if it implied discrimination against women. In furtherance of the object of preventing discrimination against women and the children it has been provided in Article 15(1) that equal opportunity shall be provided to all citizens and Article 16(2) provides that the women shall not be discriminated against or declared to be ineligible for any employment or on the ground of sex by the State.

C. Equal Pay for Equal Work:

Judiciary has played an active role in enforcing and strengthening the constitutional goal of 'equal pay for equal work' to both men and women. A milestone in the area of implementation of equal pay was reached with the pronouncement of the Supreme Court in *People's Union for Democratic Rights* v. *Union of India*. The Supreme Court ruled that equal pay for equal work is based on principle of equality embodied in article 14 of the Constitution which finds expression in the provision of the Equal Remuneration Act, 1976. In other words non observance of the Act would be violative of the principles of equality before the law enshrined in article 14.

In *Randhir Singh* v. *Union of India*, construing articles 14 and 16 in the light of the preamble and article 39(d), the Supreme Court ruled that that the principle of 'equal pay for equal work' is deducible from articles 14 and 16 and may be properly applied to cases of unequal scales of pay based on no classification or irrational classification.

Again in *Bhagwan Dass* v. *State of Haryana* the Supreme Court ruled that: (i) Persons doing similar work cannot be denied equal pay on the ground that mode of recruitment was different.(ii)A temporary or casual employee performing the same or similar duties and function is entitled to the same pay as paid to regular or a permanent employee.

But daily wagers cannot be treated at par with regular employees holding similar posts.(State of Haryana v. Jasmer Singh [1996] 11 SCC77.), can be made in respect of wages between casual workers appointed directly by the employers and casual workers employed by contractor in the same go down and on the same work. The principle of equal pay for equal work should be extended even to daily wagers/casual workers employed through contractors. (Food Corporation of India v. Shyamal K. Chatterjee [2000] LLR 1293)

D. Minimum Wages:

The Minimum Wages Act, 1948 empowers the appropriate government to fix minimum rates of wages in certain employments. The Act also imposes an obligation on the employer to pay not less than the statutory wages. Further sections 3 and 27 confer extensive power of choosing employments for the implementation of the Act. But these objectives cannot override the express provisions of the Constitution. The Supreme Court, in a series of decisions, has examined the provisions of the Act in the light of the constitutional provisions.

The earliest case in this regard was *Bejay Cotton Mills Ltd.* v. *State of Ajmer*. The principal issue before the Supreme Court in this case was whether the provisions of the Minimum Wages Act, 1948, providing for fixation of minimum rates and imposing penalty for nonpayment, violates the rights of the employer and the employed under Article 19(1)(g) of the Constitution. It was observed by the Supreme Court:

> "It can scarce be disputed that securing of living wages to labourers which ensure not only bare physical subsistence but also the

> maintenance of health and decency, is conducive to general interest of the public. This is one of the Directive Principles of State Policy, embodied in Article 43 of our Constitution. It is well known that in 1928 there was Minimum Wage Fixation Machinery Convention held at Geneva and the resolutions passed in that convention were embodied International Labour Code. The Minimum Wages Act is said to have been passed with a view to giving effect to these resolutions vide *South India Estate Labour Relations Organisation* v. *State of Madras* If labourers are to be secured in the enjoyment of minimum wages and they are to be protected against exploitation by their employers, it is absolutely necessary that restraints should be imposed upon their freedom of contract and such restrictions cannot in any sense be said to be unreasonable."

On the contention that the provisions of Minimum Wages Act were hard and oppressive to employers who were unable to pay the minimum wages simply on account of economic reasons, the court observed that:

> "It is in the interest of general public that labourers be secured adequate living wages and such the intentions of employers whether good or bad, are irrelevant. Although it may be difficult for individual employers to pay the least minimum rates of wages, it does not make sufficient ground for striking down the law itself an unreasonable. The Supreme Court Accordingly held that restrictions imposed under the Act are reasonable and protected the interests of the general public."

This decision of the Supreme Court reveals some complexities of judicial review of social welfare legislation.

The question relating to the constitutional validity of several provisions of the Act came for discussion in *Bhikusa Yamasa Kshatriya* v. *Sangamner Akola Taluka Bidi Kamgar Union.* In this case the government of Bombay fixed minimum wages for workers of beedi manufacturers for certain localities by notification on the report of a committee. In pursuance of the order, the workers of certain beedi manufacture claimed payment of wages at the rate fixed by the government the management filed a writ petition before the Bombay High Court and then the Supreme Court. They challenged the several provisions including the power of fixation for different areas and categories to be violative of Articles 14 and 19 of the Constitution. The Supreme Court held that the restriction on the freedom of contract under Article 19(6) created by provisions of this Act was reasonable. The court further affirmed its previous decision in *Unichoyi* v. *State of Kerala*.

In *T.G.Lalkshmaiah Setty & Sons* v. *State of Andhra Pradesh*, the minimum wage rates for all oil mills were notified and fixed. The validity of the notification was challenged on the grounds of guarantee under Article 19(1)(g). The court held that minimum wages did not violate fundamental rights, rather they fulfill in part the obligation of the state under the directive principles of state policy.

In *Sanjit Roy* v. *State of Rajasthan*, the vires of Rajasthan Famine Relief Works Employees (Exemption from Labour Laws) Act, 1964 was challenged on the ground that provisions of Section 3 of the said Act provided for a payment of less than minimum rates of wages and, therefore, contravene Article 14 of the Constitution. Accepting the contention, the Supreme Court observed:

> "The right of all the workers will be the same, whether they are drawn from an area affected by drought and scarcity conditions or come from elsewhere. The mere circumstance that a worker belongs to an area affected by drought and scarcity conditions can in no way influence the scope and sum of those rights. In comparison with a worker belonging to some other more fortunate area and doing the same kind of work, is he less entitled than the other to the totality of those rights? Because he belongs to a distressed area, is he liable, in the computation of his wages, to be distinguished from the other by the badge of his misfortune? The prescription of equality in Article 14 of the Constitution gives one answer only, and that is categorical negative."

The court found no justification in denying minimum wage to each worker merely because the employment was provided as a measure of famine relief.

People's Union for Democratic Rights v. *Union of India*is an epoch judgment of the Supreme Court which has not only made a distinct contribution to labour law but has displayed the innovative attitude of the judges to protect the interests of the weaker sections of society. Further the court has given a new dimension to minimum wage by enlarging the contours of 'traffic in human beings and forced labour' provide under the Constitution when it observed:

> "What Article 23 prohibits is 'forced labour' that is labour or service which a person is forced to provide and 'force' to make such labour or service 'forced' may arise in several ways. It may be physical force which may compel a person to provide labour or service to another or it may be force exerted through a legal provision such as a provision for imprisonment or fine in case the employee fails to provide labour or service or it may even be compulsion arising from hunger and poverty, want and destitution…The word 'force' must therefore be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice or alternative to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage."

The court added:

> "Where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words 'forced labour' under

> Article 23. Such a person would be entitled to come to the court for enforcement of his fundamental right under Art. 23 by asking the court to direct payment of the minimum wage to him so that the labour or service provide by him ceases to be 'forced labour' and the breach of Art. 23 is remedied."

E. Right to Medical Care:

The Court has taken a holistic view regarding health and labour welfare. In *Calcutta Electric Supply Corporation* v. *Subhash Chandra Bose*, Justice K. Ramaswamy in his dissenting opinion observed that health and strength of the workers is an integral facet of right to life.

The juristic formulation regarding health as an investment which not only boosts productivity but also augments good industrial relations in the right direction is commendable. Investment in workers' health is like 'gift-edged security' as it would yield immediate return in the increased production. While dwelling upon health, environment and industrial relation the learned Judge proceeded to observe:

> "Medical care and health facilities not only protect against sickness but also ensure stable manpower for economic development. Facilities for health and medical care generate devotion and dedication to give the worker's best, physically as well as mentally, in productivity…. The medical facilities are, therefore, part of social security and like gift-edged security,, it would immediate return in the increased production or at any rate reduce absenteeism on ground of sickness, etc….Just and favorable condition of work implies to ensure safe and healthy working conditions to the workmen. The periodical medical treatment invigorates the health of the workmen and harnesses their human resources."

The copious references to health, productivity and industrial relation manifest the passion of judiciary. In *Consumer Education Research Centre* v. *Union of India*, the apex court went to the extent of declaring right to health as a part of right to livelihood and life under Article 21 read with Article 39(e),41,43, 48-A of the Constitution.

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

F. Maternity Benefit:

The Maternity Benefit Act, 1961 was enacted to regulate the employment of women in certain establishments for certain periods before and after child birth and to provide for maternity benefit and certain other benefits.

The Maternity Benefit Act is intended to achieve the object of doing social justice to women workers. Therefore in interpreting the provisions of this Act beneficent rule of construction, which would enable the woman worker not only to subsist but also to make up her dissipated energy, nurse her child, preserve her efficiency as a worker and maintain the level of her previous efficiency and output, has to be adopted by the Court.

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

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

III. CONCLUSIONS

An analysis of the various cases reveals that the judiciary has done a commendable job for the protection of the rights of unorganized labour. The *Crown Alluminium Works*, *People's Union for Democratic Rights*, *Sanjit Roy*, *Salal Hydroelectric Project, Bandhu Mukti Morcha, Neeraja Choudhury* and two cases of *M.C. Mehta* are the landmark decisions of the Supreme Court wherein several rights of the individual especially the workers in the unorganized sector have been upheld and safeguarded.

Keeping pace with the changing concept of social change and ILO's influence, the Supreme Court of India has delivered a series of landmark judicial verdicts such as : *C.B.Muthumma* v. *Union of India, M/S Mackinon Mackenzie and Co. Ltd.* v. *Andrey D' Costa and Others*, *Air India v. Nargesh Mirza, People's Union for Democratic Rights* v. *Union of India, Neera Mathur* v. *LIC of India, Smt Soumitri Mathur Vishnu* v. *Union of India, Maya Devi* v. *State*, *Vishaka* v. *State of Rajasthan* and *Apparel Export Promotion Council* v. *A.K.Chopra* created some of the new order of labour jurisprudence to provide gender justice. These judicial pronouncements reiterate the Constitutional promise to prevent the discrimination on the ground of sex, against women in the matter of employment and for the matters connected therewith and incidental thereto.

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