Chapter- IX

DATA ANALYSIS AND SOLUTIONS

1. It is rudimentary to state that Construction Workers Act, 1996 applies suomoto to the establishment(s) on fulfilling the mandatory requirement i.e. employment of ten or more workers with the Establishment. Consequent on the applicability of the Act the statutory liability is cast upon the employer for payment of cess @ 1% on the cost of the construction work. On rendering compliance by way of remittance of Cess to the Welfare Fund as determined by the authorities, the role of the employer is limited in filing of returns and he is relieved of looking into the welfare provisions as envisaged under the Act. It needs to be seen that in case of The Tamil Nadu Manual Workers (Regulation of Employment and Conditions of Work)Act, 1982 (Tamil Nadu Act 33 of 1982), though the employer has been made liable for payment of cess, care has been taken by the law makers to ensure that the Act in principle applies to every worker (as per the Schedule – I of the Act) [194] thereby all the building construction and other manual workers are brought under the ambit of the Tamil Nadu State Construction Welfare Board. **The gap between the area of applicability of the Act to an establishment and the enforcement of welfare provisions to the said manual workers is minimized in** case of State Legislation. Whereas in the case of the Central legislation i.e. The Construction WorkersAct, 1996, passive compliance by the employer has resulted in accrual of financial resources with the State Welfare Board and disbursal of welfare benefits to the building workers has been disproportionate and

this is resulting into an uneven development in the administration of Welfare Board. State-wise position of number of workers registered with Welfare Boards under Building & Other Construction Workers Act, 1996 and quantum of cess on 31.03.2010 [195]

Table -68 Collection of Cess All India

Sl. No.	*Name of the States/UTs.*	*No. of workers registered with the Board*	*Amount of cess collected (In Crores)*
1.	Andhra Pradesh	7,91,759	358.00
2.	Arunachal Pradesh	95	4.50
3.	Assam	0	16.02
4.	Bihar	5,857	75.03
5.	Chhattisgarh	574	3.11
6.	Goa	0	0.57
7.	Gujarat	36,972	146.62
8.	Haryana	96,642	191.1
9.	Himachal Pradesh	0	24.71
10.	J&K	0	0
11.	Jharkhand	13,981	8.2
12.	Karnataka	**1,05,799**	420.06
13.	Kerala	**15,82,309**	377.31
14.	Madhya Pradesh	10,40,000	254.29
15.	Maharashtra	19101	10.53
16.	Manipur	0	0
17.	Meghalaya	0	0
18.	Mizoram	0	0
19.	Nagaland	0	0
20.	Orissa ,	35,633	24.86
21.	Punjab	6,085	36.14
22.	Rajasthan	9,248	1.05
23.	Sikkim	0	0
24.	Tamilnadu	**19,88,882**	321.01
25.	Tripura	4,918	15.57
26.	Uttar Pradesh	0	0.04
27.	Uttarakhand	0	2.40
28.	West Bengal	1,16,783	149.75
29.	Delhi	25,682	389.21
30.	A & N Island	0	2.37
31	Chandigarh	0	0.41
32.	Dadra and Nagar Haveli	0	0.01
33.	Daman and Diu	0	0.0098
34.	Lakshadweep	0	0
35.	Puducherry	25,340	18.63
	Total	59,05,660	**2837.4198**

If we look at the data, it is apparent that there is increase in financial strength of the Welfare Board(s) and at the same time statistics relects little about the expenditure met with in providing the welfare benefits to the construction work force. In the preceding chapter mention is made about expenditure of welfare boards of Tamil Nadu, Kerala, (all other states the expenditure is marginal) and on summation of these figures it can be asserted that the expenditure at national level may be approximately Rs. 100-200 crores. This makes explicit that on one hand the implementation of the Act has become meaningful in accumulating the financial resources with the welfare fund and on the other millions of building construction and manual workers remains distanced from the reach welfare benefits of the welfare Board. The reason for the lacuna **is due to non applicability of Act directly to the manual workers** and it has resulted in low coverage of beneficiaries to the welfare Fund. This makes us to understand that there is a need for amendment in the central Act akin to the state legislation of Tamil Nadu so that more and more number building and other construction workers are brought under the umbrella of the welfare Board and in such a event the disbursement of welfare benefits will commensurate with the fund sources. This aspect can be supported with the working of Kerala State Construction Workers Welfare Board and the financial statement shows equilibrium between the in flow and out flow of fund whereby the benefits reach to a maximum number of building and other construction workers.

2. There needs a mention about working of few existing beneficial legislations such as E.S.I.Act,1948, Workmen'sCompensation Act,1923,

Motor Vehicles Act in the domain of medical relief, financial relief to the insured members, victims and their dependents.

Before going into the specific proviso of these Acts, it needs to be stressed that various courts have held that liberal construction of the proviso of beneficial legislation needs to be made in tune with the object and reasons of the legislation and also in the interest of the work force. The Object and Reasons of The Employees' Compensation Act, 1923 [196] The growing complexity of industry in the country, with the increasing use of machinery and consequent danger to workmen, along with the comparative poverty of the workmen themselves, renders it advisable that they should be protected, as far as possible, from hardship arising from accidents. An additional advantage of legislation of this type is that, by increasing the importance for the employer of adequate safety devices, it reduces the number of accidents to workmen in a manner that cannot be achieved by official inspection. Further, the encouragement given to employers to provide adequate medical treatment for their workmen should mitigate the effects of such accidents as do occur. The benefits so conferred on the workmen added to the increased sense of security which he will enjoy, should render industrial life more attractive and thus increase the available supply of labour, at the same time, a corresponding increase in the efficiency of the average workmen may be expected. A system of insurance would prevent the burden from pressing too heavily on any particular employer.

In ***Devshi Bhanji khona*** **v.** ***Mary Burno*** [197] Hon High Court of Kerala has observed that "The object behind the legislation being protection to

the weaker section with a view to do social justice, the provisions of the Act have to be interpreted liberally. So that, other things being equal, the leaning of the court as to be towards the person for whose benefit the legislation is made".

In ***Kochu velu* V. *Purakkattu joseph*** [198] Division Bench decision of the Kerala High Court envisages "that the Act is intended to provide for payment of compensation by certain classes of employers to their workmen. Such a measure has to be continued giving the widest scope to the ameliorative and beneficial provision intended by the legislation. A pedantic approach to the statute to give a construction which does not serve its object should be avoided".

In ***Sarup singih sher singh Ramgarhia* V. *Mukund Lal*** [199] his lordship I.D. Dua.J. of the Punjab High Court expressed the view that in a welfare state which is being progressively industrialized, Legislative measures like the Workmen's Compensation Act should be construed in a more liberal sense in favour of the workmen so that deserving workmen get full and speedy benefit and advantage of these beneficial measures. Such liberal interpretation would accomplish the humane and beneficial purpose of this legislation, the provisions of which are truly responsive to the social and economic needs which have been recognized by our society and by our constitution. The rights of workmen deserve to be generously treated while applying the statutory provisions because the procedure under the statute provides a speedier, simpler, cheaper and more efficient machinery for the determination and payment of compensation to the workmen". The learned Judge further

observed that judicial and quasi- judicial officers should, therefore , not treat matters of procedure so rigidly as to deprive the citizens of the advantages and benefits of this beneficial legislation and on unsubstantial and technical grounds. It is of the utmost importance that no construction on provisions relating to procedure should sacrifice the rights of the poor workmen due to the technical mistakes, omissions or inaccuracies. Provisions relating to limitation have, as already noticed, also to be construed with a liberal spirit so that, consistently with the language of statute, if interests of real justice can be promoted, such a result should be sought to be achieved".

In Pine Chemicals* V. *Assessing Authority [200] the High Court of Punjab and Haryana has observed that "The Workmen's Compensation Act was enacted with the object of realization that regulation was necessary for the achievement of the ideals of social security of the workmen employed in the industry, and the Act deals with the subject of protecting their hardships arising from accidents. It assumed greater importance after the Constitution has provided for achieving socialistic society in the country. Any person engaged in the premises of the employer who is contributing for the intended manufacturing process should be deemed to be workmen for the purpose of the Act (Chowkidar in this Case).

- (A) For instance if a comparison is made between the two legislations namely the Employees State Insurance Act ,1948 and the Workmen's compensation Act,1923, it is apparent from the proviso of Sec 53 of the E.S.I Act, [201] that the insured member/beneficiaries are allowed to

claim benefits through the E..S.I schemes only and the victim/beneficiary is restrained from preferring claim of compensation under the Workmen's Compensation Act, 1923.

Various High Courts have held that victim/beneficiary is not permitted to prefer claim under both the Acts and instead the victim/beneficiary is directed to avail the benefits flowing out the E.S.I. Scheme in case the worker/employer was a insured member to the E.S.I. Fund.

In Bharagath Engineering **v** ***R.Ranganayaki*** [202] the Supreme Court has observed that "where one Balakrishnan was employed by the appellant. He lost his life in an accident which was claimed to be arising out of and in the course of employment with the employer. The respondent filed an application for compensation before the Commissioner under the Workmen's Compensation Act,1923. The employer questioned the maintainability on the ground that section 53 of the Employees State Insurance Act, 1948 clearly barred entertainment of such an application. The stand was accepted by the Commissioner holding that the deceased employee was covered by the Act and was an insured person under Sec.2 (14) of the E.S.I. Act. [203] But the High Court held that section 53 of the Act had no application. The Supreme Court considered the statutory provisions of the ESI Act and held that the payment or non payment of contributions and action or non-action prior to or subsequent to date of accident is really inconsequential. The deceased employee was clearly an insured person and as the deceased person has suffered an employment injury, by operation of

permissible nor proper to infer a different intention by referring to the previous history of legislation. That would amount to bypassing the bar and defeating the object of the provision. In view of the clear language of the section we find no justification in interpreting or constructing it as not taking away the right of the workman who is as an insured person and as a employee under the E.S.I. Act to claim compensation under the Workmen's Compensation Act. We are of the opinion that the High Court was right in holding that in view of the bar created by Section 53 the application for compensation filed by the appellant under the workmen's compensation Act was not maintainable".

- (B) On comparison between the Employees' Compensation Act 1923 and the Motor Vehicles Act 1939, it would be seen that the victims /beneficiaries are allowed to claim the financial relief/ medical claims under either of the legislation(s). The observations made by various Courts need a reference.

In ***Ved Prakash Garg*** **v.** ***Premi devi*** [208] Supreme Court has observed that " The two claim petitions came to be filed by the heirs and legal representatives of deceased driver and cleaner under the Compensation Act before the Commissioner for Workmen's Compensation, Rajgarh district, Sirmur, Himachal Pradesh.The said applications were moved presumably by exercising option available under section 167 of the Motor Vehicle Act which lays down that notwithstanding anything contained in the Workmen's Compensation Act,1923 where the death of, or bodily injury to any person gives rise to a claim for compensation under this Act and also under the Workmen's

Compensation Act,1923, the person entitled to compensation may without prejudice to the provisions of Chapter claim such compensation under either of those Acts but not under both. Thus these two applications were in substitution and in place of otherwise legally permissible claims before the Motors Vehicles claim Tribunal functioning under the Motor Vehicles Act".

In ***Rita Devi*** **v.** ***New India Assurance Co Ltd.*** [209] the Supreme Court has observed that "In our opinion, the relevant objects of both the Acts are to provide compensation to the victims of accidents. The only difference between the two enactments is that so far as the Workmen's Compensation Act is concerned, it is confined to workmen as defined under the Act while the relief provided under Chapter X to XII of the Motor Vehicle Act is available to all the victims of accidents involving a motor vehicle. In this conclusion of ours we are supported by Sec 167 of the Motor Vehicle Act as per which provision, it is open to the claimants either to proceed to claim compensation under the Workmen's Compensation Act or under the Motor Vehicles Act. A perusal of the objects of the two enactment's clearly establishes that both the enactment's are beneficial enactment's operating in the same field hence judicially accepted interpretation of the word ' death' in the Workmen's Compensation Act is, in our opinion, applicable to the interpretation of the word death in the Motor Vehicle Act also.

In ***Noorulla*** **v.** ***P.K. Prabhakar*** [210] the Division Bench of High Court of Karnataka has observed that " keeping in view the legal

framework called out as above, it has to be held that the person who is a workman within the meaning of the Compensation Act and has suffered bodily injury arising out of and in the course of his employment and has proved negligence on the part of the driver/owner of the vehicle involved compensation VIII of the Act or under the Compensation Act but because of Section 110 AA of the Act [211] not under both. The controversies in this regard noticed in various judicial pronouncements have been set at rest by insertion of Section 110 AA by Act of 1969 which reads thus " In so far as the first question is concerned, our learned Brother has taken the view that under Section 95 (1) of the Motor Vehicles Act,1939 [212,] it is mandatory for the owner of a goods vehicle to get insured against the risk of death or bodily injury of his employees arising out of and in the course of their employment because of the use of the vehicle in a public place. We respectfully concur with the views expressed by our learned Brother".

In ***Trading Engineering, New Delhi*** **V** ***Smt. Nirmala Devi*** [213] The Punjab and Haryana High Court has observed that" one Shri. Ram Chanderm workman... and also stressed that the application was barred under section 110 AA of the Motor Vehicles Act. It may be observed that while section 3(5) of the Workmen's Compensation Act [214] compels a workman to choose between a common law suit an a proceeding under that Act, a corresponding restriction was wanting in respect of a claim under the Motor Vehicles Act an a claim under the Workmen's Compensation Act. In order to allow a claim only under one of the two Acts, the motors Vehicles (Amendment) Act, 1969, inserted section 110-

AA in the Motor Vehicles Act. The section provides: The amendments came into effect on March 2nd 1970. With effect from that date a person entitled to compensation can make a claim either under the Workmen's compensation Act or under the Motor Vehicles Act. He cannot claim compensation under both Acts and thus obtain compensation twice over"

3. Though employer is required to remit the cess @ 1% on the cost of building work so as to extend welfare benefits to the construction work force by the welfare board, yet he saddled with further statutory liability and required to remit contributions @ 12% on wages towards the employee and employer share in compliance with the provisions of Sec 6 of The Employees Provident Fund and Miscellaneous Provisions Act, 1952. This statutory liability is borne by the employer as an additional financial burden and complies for the welfare of same building and other construciton workers due to the fact that establishment engaged in construction sector employs more than nineteen employees and as such the employer is bound to meet this additional liability. Due to **multiplicity of labour laws** and by its distinct enforcement, the employer is left with no other alternative but to make compliance under two separate laws and to reduce the expenditure the employer makes attempts to evade the liability by manipulation of records.

While bringing the construction workers under the ambit the E.P.F Act, 1952, the construction worker is entitled to become member from day one of his joining to the establishment. In case of Construction Worker Act, 1996 the construction worker is required to work for ninety days and above in the preceeding year.

In ***J.P. Tobacco Products*** **v.** ***Union of India,*** [215] the Supreme Court has observed that "The question before the High Court was whether the amended paragraph 26(2) of the Employees' Provident Fund Scheme, 1952 (the scheme) framed u/s.5 of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 (the Act) was in invalid and unconstitutional. The High Court answered the question in the negative." (Page: 369, Para:2)

"We have heard learned counsel for the parties The validity of paragraph 26(2) of the Scheme was challenged before the High Court on the following grounds:

- The amendment to paragraph 26(2) of the Scheme is invalid for non-compliance of Sec.7 (2) of the Act.
- The compulsory contribution amounts to denial of minimum wages.
- The amendment is impracticable and unworkable.
- The amendment is ultra vires the Act and Art.1 and Art. 19(1) (g) of the Constitution.

By a detailed and well reasoned judgment, the High Court has rejected all the four contentions noted above. We see no ground to interfere with the impugned judgment of of the High Court. He agrees with the reasoning and the consequences reached by the High Court therein. "(Page: 369, Para: 2)

The workers are at a disadvantage with the extension of the existing legislations to the Construction industry. In specific terms, thus, owing to the fragmentation of labour, phase-wise formation of the product,

unregulated employment, no direct links of labour with the principal employer, frequent change of job-sites and piece-rate jobs in this sector, legal provisions made for the protection of the rights and the welfare of these workers cannot be suitably met. A high degree of casualisation and contractualisation in construction industry has a direct bearing on the wages, working conditions, provision of social security and opportunities for skill development. The industry structures the labour market in such a way that the labour force remains fragmented and flexible. Workers are either hired by contractors on a semi-permanent basis, or registered as casual workers.

Contractual construction work falls within the domain of certain labour legislations i.e Minimum Wages Act, Equal Remuneration Act, Contract Labour (Regulation and Abolition) Act, Workmen's Compensation Act. Despite the existence of rules and regulations on wages and conditions of work, the effectiveness in its implementation is subject to critics from different quarters of the society. Further beneficial legislations relating to social security like the Employees Provident Fund Act, 1952, the Employees State Insurance Act, 1948 and the Payment of Gratuity Act, 1972 are based primarily on the premise of an enduring visible employer-employee relationship which is not fairly apparent in the construction industry, its implementation squarely depends on the enforcement machinery of the these legislations. The existing laws for contract labour and for minimum wages or equal remuneration are supposed to work on the basis of inspection-prosecution-fining while the work itself may be over before the end of

the legal process. These laws do not protect workers against victimization thus they have become unsuited to protect the labour. Also the employer employee relation changes and work place also shifts constantly while the existing social security laws are not suited for this changing situation As far as central enforcement machinery is concerned, the annual rate of inspections during the last three years has been around 25,000. The total number of contractors who had been licensed by the Central machinery was 26, 2040 at the end of 1985. Thus the Central machinery was able to inspect only 10 per cent of the contractors' establishments covered by the Act tragically enough all the establishments which were inspected were found to violate the law. [216]

The recent changes in the industry-its rapid globalization and development of increasingly competitive market and renewed emphasis on subcontracting of construction activities through a chain of foreign companies, builders, contractors and sub-contractors would accentuate the contractualisation, flexibilisation and casualisation of labour in a big way.This change in the economy has further increased the task of the enforcement machinery of the labour laws and reach of welfare benefits to the construction work force depends entirely on the involvement of this government machinery.

A repeated comment on the labour regulations in India is that there are too many labour laws. Quoting the Report of the Commission on Review of Administrative Laws, Debroy (2005) notes that in all there may be up to 2500 central laws and as many as 30,000 state-level laws in India. Of course, this also includes laws other than those relating to

labour and industry. In the same article, Debroy lists 45 central acts and 16 associated rules that are directly related to labour. According to Labour Bureau there are 236 important labour acts as on March 2003 (Labour Bureau, 2004). Of these 76 are in the central sphere and 160 in the state sphere.

Not only are the laws numerous, they overlap; there is multiplicity of laws, detailed and elaborate stipulations and many definitional and conceptual inconsistencies. Multiplicity of laws often covering the same subject makes compliance difficult for the employers and also gives scope for exclusion of many workers. .

The most important limitation of the existing labour regulation lies in its limited coverage. Most laws apply only to relatively bigger establishments employing beyond a certain number, usually 10 workers. Thus, there is no regulation of conditions of work and no provision for social security of any kind for the workers working in establishments employing less than 10 workers. And they constitute an overwhelming majority-92 per cent of all workers and 84 per cent of all wage earners. The degree of 'flexibility' for this category of workers is so high that they are left completely unprotected from vagaries of the market and any arbitrary actions of the employers.[217]

"The unorganized sector is in no way an independent and exclusive sector. It is linked to, or in many cases, dependent on the organized sector and the rest of the economy through a variety of linkage. It depends on the organized sector for raw materials and other capital requirements, generation of employment, marketing facilities, and so on.

The subcontracting model is used by the formal sector for engaging labour in the unorganized sector. It cannot be defined that the unorganized sector does not get enough protection through labour legislation. Despite the existence of labour laws, for various reasons, the workers in this sector do not get social security and other benefits , as do their counterparts in the formal sector. Here, workers are highly exploited by entrepreneurs. They are employed on a casual basis. With the exception of very few case (where organization like SEWA are present), there is hardly any trade union or other institutional machinery to fight for the workers. Up to now, collective bargaining has not been able to get any visible space in the unorganized sector. As the workers in the unorganized sector, particularly women, have not been able to organize themselves, they are further discriminated against in the sector. Thus, this is a sector in which workers do not have protection or adequate bargaining power. In the organized sector too, there is a section of permanent workers who are getting casulised and contractualised as a consequence of the new economic and industrial policies. At the same time, there are sections of workers in the unorganized sector who are organized and unionized as for example the Head Load Workers in some of the industrial and trade centres. However, for practical purposes, we propose to look upon unionized workers too as part of the workers in the unorganized sector. Thus, workers in the unorganized sector includes all the workers of the unorganized sector as well as casual and contract workers in the

organized sector who, for one reason or another, have failed to get the benefits of protective legislation or laws on social security.

In a sense, all workers, who are not covered by the existing social security laws like The Employees State Insurance Act, Employees Provident Fund and Miscellaneous Provisions Act, Payment of Gratuity Act, and Maternity Benefit Act, can be considered as part of the unorganized sector.

Perhaps, then, the unorganized sector is a term that eludes definition. Its main features can be identified, and sectors and processes where unorganized labour is used can be listed, though not exhaustively. Apprentices, Casual and contract workers, home-based artisans, and a section of self-employed persons involved in jobs such as vending, rag picking and rickshaw pulling come in the unorganized sector. Agricultural workers, construction workers, migrant labour and those who perform manual and helper jobs also come in the category of unorganized sector workers.

In practice, the provisions of this Act are beneficial only to the skilled workers and those who work continuously in the industry. Unskilled workers, who do not work with a construction establishment continuously, may not get the benefits available under the Act. It will not be possible for those unskilled, uneducated and purely casual workers to make regular, timely contributions to the fund as per the provisions of the law. The responsibility for collecting of contributions form workers and remitting the same to concerned welfare boards requires to be entrusted to the employer.

The Voluntary organization e.g National Campaign Committee, Nirman Mazdoor Panchyat etc have demanded that the Act should be made applicable to the construction of residential houses without limit of Cost. There should be provision in the Act for the regulation of employment of building workers, and the welfare boards prescribed under the Act should be set up on the lines of boards constituted under the Maharashtra Mathadi and other Manual workers Act by amending the Central Act. [218]

In order to reduce the financial burden and in the interest of the Employer there is need for streamlining the regulations and the authorities are required to **review the existing welfare provisions** so as to impose reasonable financial burden on the part of the employer The State of Tamil Nadu while formulating the Tamil Nadu Manual Workers (Construction Workers) Welfare Scheme, 1994 has categorically made a provision stating wherein that the employees/manual workers who are availing the welfare benefits under any of the Central Act are restrained from getting registered as beneficiary with the State Construction Workers Welfare Board. This provision of exclusion of those workers who are already in enjoyment of welfare benefits under the said law i.e. The Employees Provident Fund and Miscellaneous Provisions Act,1952 helps in **reducing the financial exchequer** on the part of the Welfare Board thereby financial discipline is maintained while extending the welfare benefits to the manual workers employed in the construction industry.

Whereas in the case of the applicability Construction Workers Act,1996 the Employer is mandatory required to comply with the two distinct legislation as the existing laws also support this aspect. In ***K.K.Bhaskara*** **v.** ***State of Kerala*** [219] the High Court of Kerala has observed that "Assuming there is repugnancy, it is saved by virtue of the assent given by the president to the Act on 11th April, 1969 as visualized by Art.254 (2) of the Constitution." (Para 8, Page 207)

"We, therefore, think that the two enactments provided for the same matter provident fund, and even so there can be no invalidity so far as the Act is concerned in view of the assent given by the President." (Para 8, Page 207)

The ratio of the said case no doubt assists in extending the benefits to the construction workers on the other this decision compels the employer to bear avoidable financial burden without looking to the financial strength of the establishment.

While understanding the importance of the growing construction work force, the Government by notification dated 16.01.1981 has removed the condition of 'minimum qualifying service' of employee for becoming member of fund is not ultra vires Art.14 and Art.19(1)(g) of Constitution In ***Khemchand Motilal Tobacco Products Ltd.*** **V.** ***Union of India,*** [220] case the Madhya Pradesh High court has observed that "Learned counsel for the petitioners contended that the purpose of this Act is to provide retirement benefits to the employees and the scheme of the amended provision which does not require a minimum qualifying service of an employee for becoming member of the fund is contrary to the above

purpose. According to the amended impugned provision, an employee becomes eligible for becoming a member of the fund with effect from the date of joining the factory or establishment. It is contended, even if he leaves employment in few days, the Scheme would apply. This, it is alleged, is to only ultra vires the Act, but also unworkable and impracticable "(Page: 1007, Para: 15)."his recommendation was based on the experience of the Commissioners in the field where some unscrupulous employers, especially those in unorganized sectors, terminated service of their workers just before they complete the qualifying period of service, re-engage them after giving break in service or change their names at the time of reemployment, thereby preventing them form completing the qualifying period of service. The Board indicated that total removal of the qualifying period of service may create some problems in establishments which are purely seasonal in nature and in case where **the worker are highly mobile as in construction industry**, but this cannot be avoided if the objective of the organization to ensure universal coverage under the Employees' Provident Fund, especially for those who are the most exploited, is to be ensured. All these aspects were referred to in the agenda of the meeting. The Board accepted the proposal in the agenda. The Government also agreed that the term 'regular basis' is not generally used in relation to employment in the private sector and evasions of the type mentioned by the committee generally take place in employment which are on casual or short term contract basis. It was on the basis of these exercises that the impugned amendment was made." (Page: 1008, Para: 18)

"We are unable to agree that the impugned provision is ultra vires of the Act or is impracticable. There are also no materials placed before the Court to support the contention that the impugned provision violates Art.14 or Art.19 (1) (g) of the Constitution." (Page: 1009, Para: 20)

On this analogy it would be appropriate if an amendment is made in the Construction Workers Act, 1996 so that the building and other construction workers who are already identified themselves as organized through the employer can get benefit from the enforcement of one legislation only and thereby the Welfare Board can extend the benefits to those needy unorganized construction work force. As per the prevailing scenario, any organization engaged in construction activity requires registration under five different legislations, apart from obtaining licenses under three enactments and being subject to inspection under 12 laws. Further, there are 27 statutes pertaining only to labour. The multiplicity of laws and authorities, anomalies in the existing legal systems and the complexities thereof suggest the need for a **Unified Construction Law** along with the formulation of a single window arrangement. The Unified Construction Law should have chapters pertaining to national construction policy and plan; constitution and functions of Central and State construction authorities; dispute resolution and arbitration; grants, funds, accounts, audit, and report; registration and other provisions.[221]

It should be the endeavour of the Government to evolve an integrated comprehensive scheme of social security by combining, in a single legislation, the provisions of all existing social security schemes. This

would definitely result in increased coverage, reduced overhead costs and improvement in content and quality of the programme.

There is a need for a strong agency at the centre which will be concerned with horizontal and vertical coordination of social security planning, review of policy and implementation of programmes. We recommend that a separate ministry of social security or a department of social security should be set up preferably with the ministry of labour.

The high powered National Social Security Authority of India should be created for formulating a policy on social security and coordinating various programmes at the central and state levels.

A Central Board of Social Security at the Centre and a State Board of Social Security in each state should be set up as autonomous bodies with professional experts.

There is a need for functional integration of the various organizations administrating social security schemes and to constitute divisions such as medical benefits, collection of contributions etc in the central board of social security. After functional integration of various schemes as recommended earlier, every employer may be required to maintain only one set of records and submit only one return in respect of all social security schemes.

If welfare activities are combined with the regulation of employment through welfare boards, whereby the employers as well as workers would be required to register compulsorily and also to obtain licence and permits, it would be possible

To collect contributions

To ensure regularity of employment

To fix and revise wages on rational basis compensating the workers for increase in the cost of living and also giving them the benefit of higher productivity and profitability.

To provide for all the essential welfare benefits. [222]

4. During the field study it is noticed that employer engages inter-state migrant workers for carrying out the construction work for completion of work as per their time schedule and to reduce the labour cost. It is revealed that they are required to deposit a substantial amount as security deposit as per the provisions of the Inter-State Migrant Workers Act,1979. At the same time the employer is supposed to meet the expenditure for providing amenities to the construction work force such as subsidy food/ration, canteen, shelter, tools etc. It is felt by the employer that this aspect **is also an additional financial burden** to be incurred by him so as to keep the construction worker accessible to the work sites and to retain these workers till the completion of the building work. Some of the employers have expressed that these amenities can be provided by the Welfare Board under the provision of Grant –in-aid supplemented by the Central Government for ameliorating the living conditions of the construction workers so as to maintain the efficiency and stability of labour force. There is no guideline in this regard to understand as to whether the amenties provided by the employer is **fit consideration and entitles the employer for grant in aid**. The welfare board may energise to look into the area of concern and to scrutinise the

cases where the employers deserve such financial support or in the alternative to arrange for adjusting such expediture to the quantum of cess already paid by the employer so that the Employer will be impressive of this positive approach and will be earnest in rendering compliance of the provisions of the Act.

5. The Act stipulates that employer as well as the contractor are liable for payment of cess and in case there is any dispute as regards the assessment of cess made by the authorities, then it is difficult to make a particular person be responsible for payment of the determined dues The samples collected from the employers reveals the fact that building work is executed in most of the cases through the involvement of the Contractor and the contractor plays a pivotal role. The ambiguity in the definition of Employer i.e. Sec 2 (i) of the Act [223] is causing a hurdle in fixing the liability of the employer/contractor as the execution of construction invariably involves the participation of the contractor and due to which the employer attempts to pass over the liability on the contractor. The employer has taken the advantage of this dual responsibility and accordingly the terms of contract are tailored in a manner that compliance of the labour laws and it is usually the contractor who is made liable for meeting the fulfilling the statutory obligations. On the contrary the contractor also attempts to evade the liability on the pretext that the monetary gain made by him in his endeavour is marginal and he not in a position to bear the burden of paying the cess. This tiding effect is passed to the building workers as a result there is a decrease in payment of wages and many a times the

quantum of wages falls down the minimum wages. Further the distracted contention made by either of the parties in the proceedings makes the assessment of cess a lengthy drawn and cumbersome process and the enforcement machinery finds no time to inspect the terms of contract and to set right of the liability. The view point reflected herein is endorsed by most of the Labour Officers while soliciting their responses to the questionnaire from them.

6. On perusal of the Construction Workers Act, 1996 it can be noticed that certain provisions are made for encouraging the building construction worker for getting registered as beneficiary with the Welfare Board. At the same time the membership of the construction worker **ceases due to non payment of contribution if the period exceeds beyond one year**. The welfare Board is required to extend the benefits to these construction workers who fulfill the conditions and excepting these the functions of Welfare Board has no role in regulating the employment of the construction work force. On comparison with the functions of Kerala Head Load workers Welfare Board, it is imperative that the Local Committee constituted by the Welfare Board undertakes the job of providing the employment to these head load workers and also emerge as a platform for disbursement of wages as per norms. **The Local committee holds the responsibility** of collecting the cess/contributions from the registered establishments and also maintains the employers master details so as to keep track for demand of head Load workers. In this way the Head Load Workers Welfare Board through its constituents has been successful in regulating the

employment of these workers and ensuring that the payment of wages does not fall below the minimum wages. The road map shown by this Welfare Board will also be helpful in regulating the employment of construction work force provided the Welfare Boards established in all states examine the functioning of the Head Load Workers Welfare Board and adopt the procedure in this direction. It is seen from the earlier paras that the Government being the biggest employer and its agencies such as local municipal bodies, panchayats being its organs, there should not be a hindrance in collecting the names of the employees and getting these workers registered as beneficiary with the Welfare Board. The twin **objective of regulation of employment** and identification **of construction worker** can be achieved and also assist in extending the welfare benefits in furtherance of the Construction workers Act,1996. The efforts of the Welfare Board will go a long way in lessening the hardship of the deserving construction work force. This measure will look into the fact that collection of Cess from the Employer would not be a means of enhancing the financial resources rather it would be regulation of employment besides extending welfare benefits to the building workers. If these activities are simultaneously performed than the functioning of the welfare board will be rational and in consonance with the intent of the beneficial legislation.

7. The provisions of Sec 12 of the Construction Workers Act,1996 [224] stipulates that building workers who were in **employment for more than ninety days** in the preceding twelve months are alone entitled for

getting registered as beneficiary with the Welfare Board. The constructor worker approaches the Trade Union leaders for obtaining the employment certificate and also certain employers while forwarding the application for registration as beneficiary take care to enclose this certificate. Whereas the data collected from the entities makes it imperative that the construction work force being much fragmented and for each category of work a separate cluster of workers are engaged by the employer. Moreover workers hailing from different states are employed for a definite period/short duration by the employer through the contractor and their physical efforts are utilized to a maximum extent even by making these migrant workers to work beyond the normal working hours. Since there is no employer and employee relationship and to due discontinuous nature of employment it would not be possible for the employer to know about the antecedents of the building workers and issues the employment certificate in a casual manner relying on the statement made by the constructor worker. In the absence of any documentary support the mode of issuing employment certificate has become a blind process and as a result the purpose of issuing such certificate is leading towards a futile exercise. Moreover, it s established fact that the awareness of construction worker is very low and most of the workers are migrated from different states. These grounds makes explicit that the veracity of employment certificate and the tenure of employment need a scrutiny and this will lead to further complications. It is not clear as to how the fulfillment of this mandatory regulation helps the Welfare Board in keeping a check on the entry of work force other than the

construction workers. On the other hand if we look at the provisions of para 26 B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 where it is clear that the employees are entitled to become members of Fund from the date of joining of the job.

The same construction worker who is identified himself with the establishment becomes member of fund from the date of joining where as he has to wait for a period ninety days and on submission of employment certificate he will be registered as beneficiary with the Welfare Board. It would be suggestive that requirement of furnishing **employment certificate** needs to be dispensed with so that the construction workers who otherwise entitled and needy are deprived of such welfare benefits for non compliance of the said proviso. The proviso seems to be extraneous to the intent of the beneficial legislation.

8. It is noticed from the view points expressed by the functionaries of the Construction Welfare Board of the states of Tamil Nadu as well as Kerala Welfare Board that construction workers are required to remit the contributions to the Welfare Board and accordingly entries are made in the pass books. Moreover every construction worker is required to renew registration for every two years thereby the promptness of the construction in adherence of the directions is duly considered and honored by granting the welfare benefits as and when need arises. This fact will help in ascertaining the actual number of building construction workers on the rolls of the Welfare Board and also reduce in avoiding the frivolous claims. The mode of retention of membership by making **renewal of registration** also helps the Welfare Board in reckoning the

contributory service rendered by the construction worker and thereby welfare benefits reach to the maximum number of construction workers This provision of retention of membership is lacking in the Construction Workers Act,1996 and it would be suggestive for suitable amendment in this direction.

9. The Construction Workers Act, 1996 stipulates mandatory direction on the part of the employer for payment of cess to the Welfare Board on the cost of the building work and the deductions are made by the concerned agencies at the time of approval of the building plan/grant of permission for carrying out construction work. The enforcement of the Act in this direction is instant and proceeds to augment the financial resoueces of the Welfare Board. The same momentum is missing while enrolling the construction workers as beneficiary with the Welfare Board. The proviso of Sec 12 of the Construction Workers Act, 1996 reveals that **construction worker on his own volition may approach** the welfare board and there is no legal binding for making registration compulsory so as to maximize the number of beneficiaries with the Welfare Board. The registrations that are being made at the moment are very few and this is done at the insistence of few employers and by the involvement of the Trade Union. There is hardly any one case to emphasize that construction worker has come out voluntarily for getting registered as beneficiary with the welfare Board. This kind of voluntary act by the construction worker is a rarely noticed and above all the construction worker being unware of the rules and procedures show scant interest in adhering to the directions. The construction workers

while directing all his efforts in accomplishing his basic needs finds no time to leap towards the activities of the Welfare Board. It is only due to the exigencies and situations warrants him to enquire into the means of getting relief either by monetary support or medical assistance through his colleagues and trade union representative etc.At this juncture the building worker approaches the welfare board without any back up of registration/completion of eligible service. This is a situation which demands serious concern and the only redressal of this kind of circumstances is to take a lenient view by the functionaries of the Welfare Board for mitigating the stress of the building worker. To avoid such unhealthy development and to proximate the building worker for getting registered as beneficiary the only legal recourse is to enforce a direction and make **registration as compulsory** with the Welfare Board. This measure will help the building worker in realizing the importance of the functions of the Welfare Board and also about the role of the employer by paying Cess to the Fund for the cause of the construction work force. Also the act of compulsory registration will increase the number of beneficiaries and will be in tune with the collection of cess thereby the gap between the two areas of concern i.e. collection of cess on one hand and providing welfare benefits will be lessened and streamlined so that Welfare Board can discharge its functions in an amicable manner and be able to serve the construction work force in the path put forth by the beneficial legislation.

10 The importance of Trade Union in support of cause for construction workers can be understood if its participation is noticed particularly in

the state of Kerala and Tamil Nadu. Most of the trade unions raise their demands and show their concern at various forums and thereby the exploitation of physical labour by Employers/Developers is minimised in the state of Kerala. This makes us to understand that the construction workers being unorganized and prone to exploitation due to various factors such as caste, sex, and illiteracy, poverty etc, the trade union involvement in airing the voices of construction workers and placing their demands for payment of minimum wages, better working conditions, provision of social security and welfare benefits through Welfare Boards etc before the appropriate authorities is impressive and in protection of rights of these construction workers and assiss in inviting attention from the organs of the Government.

11. It is noticed from the samples collected from the establishments that 69% of workers employed in the construction sector are inter-state migrant workers. These migrant workers on carrying out their specific job leave to their native place and it is not known whether they return to the same station after some time or change their vocation due to circumstances and the reasons are best known to them. The return of migrant workers is uncertain and the period of intervention is also not computable. The number of workers who responded to this query reveals that in most of the cases it is likely that the period unemployment during this intervening period is beyond ninety days. If we look at the provision of Sec 14 of the Act [225] it specifies that the membership ceases if the construction worker is not engaged in employment for a period beyond ninety days and this mandatory has become a major hindrance

particularly for the migrant workers. As the reasons for unemployment during the intervening period may be attributable to domestic reasons, ill health etc and due to which the building worker is e bound to forego the membership. The period for which the building worker retained the membership is left incomputable. As there is no for return of contributions and construction worker is deprived of benefit due to the reasons of non employment and cessation of membership seems to be unreasonable restriction and the only relief against this mandatory direction would be negativing this provision by making suitable amendment Since the rules of the Welfare Board expects remittance of regular contributions and retaining the beneficiary with the Board for a definite period and this can be made out by encouraging compulsory deduction of contributions from the wages of the building worker and remittance of the same to the Fund. In the interest of the building workers it would be suggestive for **removal of the direction i.e. cessation of membership** so that construction worker is not deprived of the welfare benefits for non employment due to the compelling circumstances.

12 At the cost of repetition it needs to be stressed that the data collected from the construction workers reveals the fact that most of the contractors and major Builders prefer for recruitment of migrant workers for expediting the work and to reduce the labour cost. Further these migrant construction workers move to different places at the command of the contractor and when circumstances force them they may return to native place to meet the exigency. The period of transit from one place

to another and the lapse of time spent in carrying out the domestic obligations etc many a times exceeds more than one year and as such he is unable to remit the contributions to the fund and as a consequence of which the construction worker looses his membership. Further the feedback collected from the construction workers support the fact that these construction workers work at different sites and on change in job there is period of unemployment due to lack of opportunities. When the construction worker is in dire need of employment to earn his bread, it would not be appropriate to expect that the construction worker makes regular remittances of contributions to the Fund without any lapse and always remain vigilant in fulfilling the mandatory requirement. As the construction workers finds no time in relieving his physical stress as no paid holiday is granted and he will not be in a position to meet the authorities and submit his explanation for non payment of contributions or delay in remittances etc. at the cost of skipping his daily wages. While looking into the working conditions of the building workers it would be suggestive for review of the directions i.e. section 17 of the Act [226] (**Effect of non payment of contributions**. By issuing directions to the employer for making compulsory deductions of contributions from the wages and remitting the same to fund would be more preferable as the chances of evasion by the employer will be negligible since the quantum of contributions to be remitted to the Fund will less when compared to the fine imposed by the penal provisions. This measure will facilitate the construction workers and assist in retention of membership

despite the stress and strain which he faces in carrying out the construction work.

13. As per Rule 241 (2) of the Building and other Construction workers Rules, 1998, [227] there is a provision for issue of service certificate reflecting the details about the period of employment, reasons for leaving the service, whether the construction has got registered as beneficiary with the Welfare Board etc. The fact remains that is there any **viability of issuing such service certificates** to those construction workers who change the jobs frequently and also have little knowledge and its utility. To comply with this direction neither there is time and manpower for the employer nor there a demand from the construction workers of receipt of such certificates. As the rate of registration of construction workers as beneficiary with the welfare Board is very low when compared to the total employment of workers in the construction sector, the purpose of such provision will only be served when the employer is made to follow the direction by making him aware the usage of it. At the same time the construction worker must be encouraged to collect such certificates and produce the same at the new place of work site so that the issue of continuity of employment can be easily be computed while releasing the benefits Since the voluntary registration of construction workers is negligible and by making the necessary changes in the service certificate the employer may reflect the quantum of contributions paid in respect of such construction workers so that the period of employment can be properly reckoned and due regard be given to the service rendered by him. This mode of

computation of service will be in true spirit and mere payment of contributions and getting registered as beneficiary without looking to the vocation of the construction work force would lead to misuse and give room for unscrupulous claims.

In case of Inter-state Migrant Workmen Act, 1979 also there is a similar provision for issuing the service certificate and if the certificate issued under two separate legislations are co-related by the successive employers then the problem of reckoning continuity of service is reduced for these migrant workers. If this measure is compulsorily followed by all the employers then there will be less difficulty for the labour department in identifying the migrant workers as well as for honoring the benefits. Hence there is a need for cohesion records and a direction by the appropriate Government is warranted in this regard. Further this measure will arrest the issue of false employment certificate as the service certificate reflects the details of contributions paid which can be easily verified by the Welfare Board. The role of the employer will be appreciable if the procedure is scrupulously followed and service certificates are issued for future reference to construction worker and this step will inturn reduce the procedure of issuing the employment certificate by the Trade Union. Above all the service certificate issued by the employer will be more authentic as the certificates issued by the Trade unions are obtained through political affiliations and thus there can be balance in adhering to the guidelines and the entry of construction workers as beneficiary with the Welfare Board will be rational and meaningful in this aspect. Also it is learnt through interaction with the

officials working with Welfare Board and representatives of Trade Union that service certificate/employment certificate is issued relying on certain basic documents such as address proof/ration card. Since these documents are hardly produced by the inter-state migrant workers and due to which these migrant workers are unable to get registered as beneficiary with the welfare board.

Considering the seriousness of the problem and the large number of workers migrating each year as **dadan labour**, there is scope for trade union movement among them. The union leaders should extend their activities from industrial sector to this rural unorganized sector to increase their membership, strengthen the union and serve the poor labour by guaranteeing them their due rights. A process of motivation and mobilisation is required to enlighten these masses to enable them to understand their rights and obligations. The National Literacy Mission should extend the facilities of literacy campaign to the migrant labour. The Government, trade unions and voluntary organizations should come forward to educate them in this regard.

To conclude, inter-state migration of workmen is a national problem rather than the problem of a particular State. So any single State cannot handle or solve the issues independently. The matter therefore needs careful handling at the national and regional level and with mutual co-operation.[228]

14. It is evident that construction workers are prone to the indispensable impediments and due the inseparable characteristics such as casual

nature of employment, no employer-employee relation and there is a need to look into the following aspects.

Construction workers are highly vulnerable with respect to their employment security. But these workers are, in general, high-wage earning groups and therefore, they are somehow able to offset the periods of unemployment. They are also a relatively easier group of workers to bring into the organized sector and this is already happening in the case of workers to bring into the organized sector who are part of construction companies. There are several trade unions involving these workers, as also laws regarding their conditions of work, payment of wages, accident compensation, etc. The important point here is that while these protective aspects of employment security are not unimportant, as a first step, attempts must be made to ensure continuous employment to these workers. Currently, only an 'elite' section of the construction workers enjoys the benefits of the social security policies of the government, because they are registered and they are also employed throughout the year. For the large majority, who work for an assortment of contractors for daily wages, these policies will be irrelevant and also difficult to implement in the absence of continuous employment. It is guaranteed employment that will not only enable them to learn steady incomes, but also help them move closer to the organized sector. [229]

Construction workers have been contributing substantially to the infrastructural development of nation by contributing their labour to building work Where as the socio-economic development of these poor people have remained inadequate in spite of their productive contribution

to national development. They are burdened with indebtedness and poverty, their nutritional levels are low, their bodies are weak and they are overwhelmingly illiterate. They are not only discriminated but also exploited by the contractors/employers by taking benefit of their poor bargaining and socio-economic conditions. They are compelled to work on lower wages and under unhygienic conditions without proper facilities of housing, washing, bathing, latrines, urinals, other sanitary arrangements and social security measures. Frequent changes in their work place and instability of their work deprive them and their children from primary facilities like health, education and food subsidy from ration cards.

Under such circumstances it should be the primary responsibility of the government and the civil society to ensure the welfare and development of this poor and deprived section of the society. The state with the help of professional social workers or through non governmental organizations need to create awareness about the rights of workers working in unorganized sector and also set up mechanisms of redresser by encouraging them to form trade unions and co-operative societies to enhance their bargaining power. Schools should be set up for the education of children of construction workers in areas of their habitations. The primary concerns of the state should be to ensure decent working conditions and proper contract systems, providing social security and basic health care for their families together with educational opportunities.[230]

Normally construction workers are employed through contractors, who exploit them for their benefits. Though there are various protective

enactments for these workers, but ground realities are totally opposite from legal provisions on the subject Whenever they fall sick or become disabled they are thrown out of the employment without paying any social security benefits as specified under the Building and other Construction Workers (Regulations of Employment and Conduct of Service) Act, 1996 or Contract Labour Act, 1970. Moreover there is no single agency, which ensures the effective and efficient implementation of relevant schemes. It is the need of the hour to formulate a Comprehensive protection law covering all construction workers for all adversities, not only at work place but also afterward. The proposed scheme should be equipped with single enforcement mechanism. Success of any scheme depends upon its implementation; otherwise the legislation remains a piece of paper for workers.[231]

The construction activities are rapidly increasing, requiring a huge labour force to carry out the works. Since the entire contracting process operates on a 'lowest bidding' basis, the contractors tend to minimize costs on labour by preferring low wage labourers who are drawn from the rural areas.

Thus, the key distinction between various types of casual employment in construction is the predominance of 'fragmentation of economic relationship' within a work site, virtually making it impossible to enforce any meaningful labour welfare legislation. A striking feature in the construction industry is the increasing proportion of women working as casual labourers.The entire labour market in the construction industry functions on extended family or village relationships, fictive kinship,

credits and choice of contracts.The process of contracting out, mostly to the lowest bidder among competing contractors, has an impact on the labour policy of the contractors. If the contractor is not fully satisfied with the profit margins, he tries to maximize his profits by reducing the labour component in the assignment.[232]

Passing of legislations alone doesn't take care of everything. The enforcement agencies must intensify its implementation in practical aspects. The ground realities are quite different from the legislative aspects. Mainly it is due to ineffective enforcement mechanism and lack of awareness among the workers about their rights and liabilities of employers under relevant statutes. There is a need for a unified legislation on construction workers that must provide an independent enforcement authority for its enforcement at states as well as district level. [233]

National Campaign Committee for Central Legislation on Construction Labour had suggested that in the absence of a sense of responsibility on the part of principal employers and contractors for the labourers, a participatory tripartite mechanism would have to pin down everyone's responsibility to protect and provide for the labourers. Registration of all workers and employers regulation of employment through the Board and social security measures such as crèches and housing to be provided by the board through a very of two percent of the estimate cost to be collected from all constructions before plan sanction, compulsory registration of accidents and strict supervision of safety and provision of skill training to workers especially women. The Board would have

substantial representation of workers, with proportionate representation for women. The Board must be constituted to State District, Taluka and Local levels.

A majority of construction workers live at the construction site itself. Contractors rarely build temporary sheds for workers and even these sheds lack basic amenities and have no proper sanitary or lighting facilities.Workers always have to live with the non-availability of fuel and drinking water. As usual, it is the women workers who bear the brunt of this lack of basic facilities. All these factors directly contribute to the poor health of the workers and their children.

According to the provisions in the Factories Act (1948) and the Building and Construction Workers (Regulation of employment and conditions of service) Act (1996). The employers are bound to provide separate water and toilet facilities for men and women workers. These are seldom adhered to.

Towards strengthening of provisions:-

The labour organizations have raised many objections. The main objections are,

i) The normal wage component in construction activity is around 20 per cent, a minimum levy of 7 per cent is essential to make the legislation workable.

ii) There are no obligations in the contract the contractors should provide crèches, toilets, drinking water, canteens, pay minimum wages and implement other welfare measures, and then costs should be included in the cost of the project. In fact, the procedure of calling

in the lowest tender in construction makes the builders to cut down projected costs by cutting down on labour welfare provisions and wages.

iii) The Board must take legal personality and sue against the Employers for the benefit of the work force. [234]

15. The redressal grievance machinery needs to be set up with the ambit of the welfare board so that the grievances of the beneficiaries of the welfare board can be redressed with out much litigation. As the construction worker find no means to resort to the legal hurdle, it would be suggestive for setting up of an ombudsman for resolving the disputes between the parties which will consume little time and money. Also encouragement to Non government organizations needs to be given for extending their services in helping the unorganized sector and in particular to the construction force so that they can reap the benefits extended by the welfare board.

The law commission while placing its recommendations for creating office of Ombudsman [235] has also referred to Nathulal case.[236] The Madhya Pradesh high court had the occasion to consider the question of entitlement of the employee to payment of the entire amount for the relevant period i.e. his contributions as well as the employer's contributions on the failure of the employer to credit the same to the fund. The High Court after considering the relevant provisions of the Act and the scheme framed there under has held that" We are of the opinion that the stand taken by the respondents is devoid of any substance because the employee, for no fault of his, cannot be;

allowed to suffer in this manner as he is entitle to the payment of the entire amount for the period for which he has put up his claim in this petition. Obviously, the petitioner had become a member of the scheme in the hope that on retirement he would get all his dues as amount from his wages was regularly deducted by the employer and he could have no reason to imagine that the employer might not have remitted his contributions so deducted as also the share of the employee to the said fund because that is one of the allurements to the employee that on retirement in addition to his own contribution, he will get much more by way of contributions of the share of his employer also because in such a case he would not get any pension from the employer but has to depend solely on his provident fund on which his livelihood in future would depend"

16. It is a matter of fact that illiteracy rate of construction workers is high and due to which there is exploitation of contractors and builders by making wages payments less than minimum wages, extracting work beyond normal working hours etc. It is noticed that the agitations made by the construction workers for getting minimum wages and better amenities etc requires the assistance Trade Union or the interference of Government Authorities and in realizing these demands much effort and resources are consumed which cannot be spent frequently by the Construction workers. To some extent awareness can be brought by conducting training programmes relevant to their sphere of activity. The role of construction Industry Development Council (CIDC) and the training centres such as M/s. L

& T Construction workers Training Centre etc needs to be appreciated and there services are to be utilized in the interest of the construction work force. The Welfare Board should come out with a direction to all the major builders to arrange for establishment of such Training Centres an as a part of curriculum the construction workers can be enlightened about the provisions of the beneficial legislations an also about the welfare benefits extended by the Welfare Board. The cost incurred for imparting training if borne by the Welfare Board and also the Grant-in Aid provided by the Central Government can be utilized for the said purpose then the efforts in this direction and the expenditure met with will be meaningful and in furtherance of the intent of the Construction workers Act,1996.

17. A comparative analysis of working of the welfare boards of Kerala, Tamil Nadu and Karnataka assists in bringing out modes and means for augmentation of financial resources, avoidance of duplicity of benefits and providing relief to maximum number of construction workers.

Table-69

Comparitive Statement about the performance of Welfare Boards of Kerala, Tamil Nadu and Karnataka. **(As on 30.9.2010)**

Sl.No	State Construction Workers Welfare Board(s)			
	Area of concern	**Kerala**	**Tamil Nadu**	**Karnataka**
01	Objectives	I. Payment of pension on retirement II Payment of Insurance due to accident III Financial Assistance a) On death of a beneficiary b) For Marriage self & for son or daughter c) For education for son or daughter d) To meet funeral expenses e) Construction of House f) Delivery of child or termination of pregnancy.		
02	Year of commencement	01.01.1990	30.11.1994	01.11.2006
03	Number of construction workers employed in the state(approximate)	15 lakhs	20.75 lakhs	15 lakhs
04	(a)Number of Construction workers registered with the are board (b) In State capital	11,58,040 16198 (In Trivandrum)	20,34,859 7044 (In Chennai)	1,14,392 20,716 (in Bangalore)
04	Ccess collected	Rs. 520 crores	Rs. 359 crores	Rs. 577 crores
05	Expenditure met with in providing benefits. as on	Rs. 55,24,76,012	Rs.109,38,17,633	Rs.74,56,607
06	Financial resources	Rs. 465 crores	Rs.251crores	Rs. 576 crores

Table-70

Different kinds of benefits to construction workers by the Welfare Boards of the States of Kerala, Tamil Nadu and Karnataka- Expenditure Statement

(Rs. in Crores)

Sl. No	Types of benefits	State Construction Workers Welfare Board(s) Quantum of benefit					
		Kerala		**Tamil Nadu**		**Karnataka**	
		No.of Benfcs.	**Amt**	**No. of Benfcss**	**Amt**	**No.of Bs**	**Amt.**
01	Death/ accident	11409	1,95,84,718	989	10,08,78,000	31	30,30,000
02	Injuries/major disease	1230	29,68,891	182	51,79,050	11	3,70,000
03	Natural death	2585	03,01,71,210	27673	42,66,02,160	255	8,46,000
04	Marriage	27223	6,66,44,800	59374	11,87,44,200	379	18,95,000
05	Delivery of Child	2766	74,21,000	8987	4,90,17,430	-	-
07	Education			23102	2,31,02,000		
	a) 10 Std. pass	14320	3,07,04,355	98029	9,80,29,000	44	5,88,750
	b) 12th Std. pass	376	83,11,709	63444	9,51,80,500	75	2,25,000
	c) Higher studies	10315	88,59,780	54596	10,93,44,162	151	5,00,500
08	For eye spets	-	-	5228	23,90,062	--	---
09	Pension	99576	3,96,72,032	6756	6,63,99,020	--	--
10	Funeral expenses	1864	34,63,006	--	--	78	
11.	House building Assistance	07	4,301	--	--	---	---
12	Others	907	69,00,918		10,47,951		
	Total	1,72,579	55,24,76,012	348360	109,38,17,633	1024	74,56,607

These figures undoubtedly support the fact that functioning of Welfare Boards of Kerala and Tamil Nadu have set an example and if all the state construction workers welfare boards of the country follow suit, than in that event, it can be claimed that flow of financial resources in the form of social security and welfare benefits is evenly perceolated and rational across the country.

18. Before departing from the aspect of data analysis, it is emphasized that characteristics of construction industry is not confined to territories of any region, state or nation. On the other, it has taken centre stage of international concern and in this direction a study on the plight of construction workers in ASEAN region [237] will support the international issue and reminds to all stake holders of construction sector that there is dire need for initiating tangible welfare measures to the vulenrale construction work force. The observations of the study is placed herein. According to the International Labor Organization (ILO), there are more than 100 million Construction workers worldwide. More than half of these workers are found in Asia, home to two of the biggest developing countries, China and India. The construction industry thrives in places with great need for physical infrastructure development, in both the private and in the Southeast Asian region, Indonesia, with a total of 4.4 million workers, absorbs the largest number of construction workers. At a global scale, construction workers account for seven percent of the labor force.

It is also interesting to note that current unemployment levels in the foregoing Southeast Asian countries are quite high. As construction work is often project-based and seasonal, construction workers have been considered as making up the bulk of the pool of surplus labor abundant in the region. One of the unique features of the construction industry is the fact that products are often produced or assembled at the point of consumption, requiring the workforce to be highly mobile. The industry thus employs a significant number of migrant workers,

especially from developing countries. Some also come from South Asian countries such as Bangladesh, Pakistan and India. Across sectors, Southeast Asia is known to have absorbed most migration flows in Asia largely due to widening income differentials, demographic factors, and in some instances by the violence of internal strife. Malaysia, Thailand, Singapore and Brunei are the main receiving countries while the Philippines, Indonesia, Burma, Vietnam, Cambodia, Laos and East Timor are the sending countries.

According to the BWI study on Global Construction and Asian Workers, the construction site is increasingly becoming a site where informal labor meets global capital. Because of economic globalization, there is now increased pressure on individual construction firms to keep labour as informal as possible so as to cut off production costs. Keeping labour informal. primarily refers to employers obscuring employee-employer relationships through subcontracting and hiring migrant workers from developing countries where unemployment and underemployment levels are high. Although subcontracting is a common business practice outside Asia it takes center stage in the construction industry in Asia, including Southeast Asia.

The centrality of subcontracting is best explained in the BWI study: What is particular about Asia is this: lacking pressure from unionised workers, the Asian construction industry has traditionally been using subcontractors rather than direct employment for most of its labour supply, even before the restructuring trend became widespread. Thus, indirect hiring is the norm rather than the exception in this part of the

world. Recruiting workers has become the job of subcontractors rather than major construction companies or contractors. The hiring and management of workers have been decentralized to multiple layers within subcontracting chains. The most unfortunate are those who find themselves at the bottom of the subcontracting ladder. Indeed, construction workers in Southeast Asia are probably the worst victims of subcontracting. Irregular and informal work essentially means unprotected labour: low wages, unhealthy working conditions, long work hours, and the absence of entitlements such as paid days-off and vacation-sick leaves, health insurance, **social security benefits and pension funds.** A worker who does not 'know' who her/his employer is would not know where to file claims for proper pay and other rights and entitlements. Needless to say, work contracts are often verbal, neither written nor legally binding. Large-scale construction projects are said to consist of major contractors at the top of the subcontracting chain, and subcontractors and working units of 10 to 20 workers at the bottom of the chain. Thus, a project with 500 workers would involve 10 to 15 subcontractors in 3 to 4 layers. In each of these layers, there is an informal team leader charged by subcontractors to hire general workers those at the bottom of the chain. This team leader's often hire workers with whom they have personal ties, such as those who share the same hometowns or work in similar trades. Most of the general workers in these sites are migrant workers, employed on a per project basis through subcontractors or agents. Even professional workers such as crane

operators have to confront the multiple layers of the subcontracting chain.

Problems Faced by Migrant Construction Workers

The trend of employment patterns becoming more informal is evident in the plight of migrant workers in the construction industry. Migration of construction workers is an irreversible trend. Migrant workers are paid lower wages for the same kind of work done by local workers. On top of lower wages, migrants often have to pay wrongful deductions or levies. Needless to say, they do not enjoy "economic benefits" other than their low wages. Their living conditions are often as bad if not worse than their working conditions. Migrant workers are often deprived of labour rights, particularly the right to join unions, and thus are often unable to protect themselves and their jobs. Moreover, most of these workers often have very little knowledge about their rights and entitlements. Most employers do not treat migrant workers well. Abusive practices by employers often start at the hiring process. This is often done in connivance with recruitment agents. Employers often hold the passports of their employees. Employers are very smart in escaping from or circumventing the law and the bureaucracy. Most governments neglect the plight of migrant workers. Problems suffered by migrant workers often begin back home (i.e in sending countries). Sending countries are often developing countries where the unemployment rate is high. Nationals leave these countries in search of better economic opportunities. Most of the migrant workers are cheated by recruitment agencies in the sending country. Moreover, it is very

difficult for migrant workers to organize themselves into trade unions. The BWI raised this reality during the 2nd Global Forum on Migration and Development (GFMD) held in Manila in October 2007. "One of the major obstacles to organizing migrant workers is the existence of clauses in employment contracts that prohibit migrant workers from joining trade unions. This is the case in Malaysia, for example, even though this contravenes provisions in the Industrial Relations Act and the Trade Union Act of Malaysia, which allow migrant workers to join trade unions. BWI affiliates have been faced with situations where their successful organizing drives among migrant workers are thwarted by *employers* utilizing this infamous clause to fire and deport the workers concerned."

Occupational Safety and Health Issues

According to the ILO, some two million deaths due to work-related causes are reported each year and around 3,54,000 of these are due to fatal accidents. Moreover, around 3,40,000 million workers die each year because of exposure to hazardous substances. The rate of fatal accidents in developing countries is four times higher than that in developed countries. In the developing countries, the most accidents occur in construction, farming, fishing, logging and mining industries. Construction work is known to be dirty, difficult and dangerous. The construction industry is a major source of pollution and construction workers are constantly exposed to chemicals and dusts. Construction work is difficult, often involving manual handling of heavy materials and equipment, and also dangerous, as it includes having to climb high

scaffoldings or taking on otherwise risky physical activities. According to the BWI, at least 1,08,000 workers are killed in construction sites every year. This figure represents some 30 percent of all fatal injuries. These occupational deaths and injuries may be caused by a variety of work-related incidents such as falls, being struck by falling objects, the collapse of building or structure, electrocution, suffocation, and exposure to hazardous chemicals such as asbestos. In Southeast Asia, occupational safety and health in the construction industry is definitely a grave concern for workers and unions. Moreover, most of the deaths and injuries in the construction sector are highly preventable. Construction workers, especially those hired through subcontracting and other irregular hiring practices are often not provided with the appropriate safety tools and equipment. In many instances, employers and subcontractors view safety mechanisms as unnecessary costs rather than as necessary investments or part of their accountability in keeping to safety standards.

Working Conditions and Safety Measures- *Construction Workers*

The working conditions of the construction workers are no better than that of the shipyard builders. These workers often work a minimum of 10 hours per day and often have to put in extra-labor or overtime work without clearly-defined corresponding compensation. They do not enjoy rest day pay or holiday pay. Construction workers often experience illnesses due to continuous exposure to direct sunlight during the day. Safety gadgets and other protection gear are limited, and in some instances, the shipyard company does not issue safety shoes, helmets or

leather gloves. Consequently, there are rampant cases of accidents such as cut fingers or hands, wounds, and even deaths due to falls or being struck by heavy metals that fall from the buildings. Furthermore, the workers who experience these accidents, or their families, are often not justly compensated for their woes. For temporary shelter at the construction site, most workers are made to live in large container vans or small tents that serve as barracks. These unsafe and unplanned shelters create environments that cause illnesses among the workers. However, these workers do not have much choice as they often live far from the site. Renting houses near the site is not an option given that workers receive very little pay and no housing allowance.

Construction-Related Trade Unions in Southeast Asia

Given the context of construction workers in the Southeast Asia, particularly the irregularity and flexibility of construction work, union organizing in the region has been an uphill struggle. Moreover, unions have had to deal with the issue of highly mobile construction workers, and local/national unions have had to factor in inter-country or intra-regional dynamics. Some of the unions have come up with very innovative ideas such as the BWI passport. Which contains information about the rights of migrants and serves as an information kit for migrant construction workers. Unions at the national and regional levels have also been active in advocating for occupational safety and health, particularly against the hazards of exposure to asbestos.

Construction unions in Southeast Asia are embedded in the broader environment of industrial relations systems in the various Southeast

Asian countries that are evidently lacking, from the perspective of workers'rights and interests, either in substance or in implementation. Trends of unionization in the construction industry in Southeast Asia also reflect the general decline that unions across industries are now suffering in the region. Moreover, at the ASEAN level, construction unions have yet to participate in ASEAN processes in a more structural and deliberative matter.

a. The construction industry is vital to development efforts at the national and regional levels. Despite the recent global financial crisis, this industry will remain a major contributor to economic and social development in Southeast Asia. The construction industry is capital and labor-intensive. It spans private investments, public initiatives and public-private partnerships. Key investors include governments, Multinational corporations, local contractors, joint ventures between local contractors and multinational corporations, joint ventures between private companies and governments, and partnerships between governments and international financial institutions. It also involves huge infrastructure projects that require large numbers of construction workers, both professional and general workers.

b. Although vital to the construction industry in the region, construction workers are unfortunately among the most vulnerable and exploited of workers. This is true especially for migrant workers in the industry. As shown in many studies, including this one, such vulnerability often stems from the practice of illegal. Subcontracting that make workers

prone to exploitation, low wages, poor and unsafe working conditions and job instability. Limitations on the multiple layering of subcontracting and impose penalties for violations by subcontractors. **Governments must also find a way to exact accountability from main/principal construction contractors** who often refuse responsibility for the actions of their subcontractors.

Moreover, even though many ASEAN member-governments invest in construction activities to ease unemployment and boost domestic consumption, they often do not question the quality of employment being generated by these projects, i.e. whether or not these activities result in good and decent work. Some governments also talk about providing green jobs but unfortunately such pronouncements are often rhetorical rather than substantive commitments.

c. ASEAN economic integration must take on the intra-regional migration of Construction workers and its attendant problems as a central concern. ASEAN agreements often refer to skilled labor or professional services but the reality in the construction sector points to the fact that the intra-regional flow of labor is mostly that of unskilled labor.

(iii) ASEAN economic integration will have to consider the reality that the construction industry involves movement of goods, investment, capital and services. The plight of the industry must be seriously considered in the implementation of the various ASEAN agreements particularly the ASEAN Free Trade Area –Common Effective

Preferential Tariff (AFTA-CEPT) and most especially the ASEAN Framework Agreement on Services (AFAS).

d. Evidently, local construction companies cannot match the resources or technologies of foreign companies and some, in fact, have opted to serve as the local counterparts of these foreign companies and have gone into joint ventures with them. The possibility of having more and more construction companies serving as partners or adjuncts of foreign companies will have severe effects on the construction workforce. Under such arrangements, foreign companies merely put in the capital, claim the designing and knowledge production part of the construction process and leave the rest to local companies. This could mean that local companies will have to downsize their local staff, including their professional staff, and instead hire general workers on seasonal and project-basis. This could also lead to the exacerbation of the problem of **subcontracting practices that is at the root of a lot of vulnerabilities that construction workers face**. Local contracting companies, after all, could and do in fact hire workers indirectly through subcontracting layers. Thus, national governments should also consider the state of local companies in the course of regional economic integration. More importantly, they should look into the business practices of these companies, especially those pertaining to hiring general workers.

e. In this sense, the ASEAN agreement with the most impact on construction workers is the AFAS that is modeled after the General Agreement on Trade in Services under the World Trade Organization (GATS-WTO) that in turn specifies four modes of supply of services.

Under the AFAS, ASEAN countries should go beyond their WTO-GATS commitments. This means that ASEAN members should commit themselves to reducing or eliminating discriminatory measures, including market-access restrictions like the acquisition of business permits and licensing of professionals which restrict trade in services, and thereby improve the efficiency and competitiveness of ASEAN service suppliers. According to the ASEAN official website, since January 1, 1996, seven packages of services commitments have been concluded through five rounds of negotiations. These packages were signed by the ASEAN Economic Ministers (AEM) and provide the details of commitments made by ASEAN countries to each other in the area of business service and construction services. Construction services therein refer to construction of commercial buildings, civil engineering, installation works, rental of construction equipments, etc.

The AFAS will definitely increase intra-regional flow of general construction workers, especially in terms of negotiations for commercial presence. (i.e. suppliers establish local offices or subsidiaries to provide supply of services) and presence or movement of natural persons. (Suppliers are physically present on at temporary basis). Without the ASEAN insisting on labor standards for both local and foreign construction workers most of whom are contractual or project-based the idea of national treatment will be pure rhetoric. As it is, construction workers in Southeast Asia, especially migrant workers, are clearly discriminated against in terms of economic benefits and other entitlements.

f. The ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers is a step in the right direction but the fulfillment of commitments therein must be strictly monitored. More importantly, ASEAN must insist on the right of migrant workers to join unions and other workers'associations. These groups would allow migrant workers access to vital information, such as their rights as migrant-construction workers and the courses of action available to them, especially in cases of work-related problems. Union membership may be the worker's best guarantee of protection and Security, especially given temporary work contracts and obscure employee-employer relationships.

g. Given the character of construction work as dirty, difficult and dangerous. and given the high numbers of preventable deaths and injuries, the issue of occupational safety and health should also be high on the agenda of ASEAN. This issue is most crucial to the construction industry, given the context of rampant subcontracting and obscure employee-employer relationships that enable main-and subcontractors to evade their accountability.

h. ASEAN must take into consideration the welfare of construction workers who will build and develop such physical infrastructure.ASEAN should also work closely with international financial institutions and international aid agencies such as the Asian Development Bank, World Bank in terms of ensuring that labor standards, particularly the ILO core

conventions, will be complied with in the implementation of infrastructure projects. It should also be noted that all ASEAN countries are members of the ILO and therefore, should comply with the core labour standards and insist that all other pertinent institutions do so as well.

I). It is evident in this study that East Asian countries -- Japan, South Korea and China – are investing heavily in the construction sector. Thus, ASEAN Plus three will be crucial to the industry and most especially to construction workers.

J). The Socio-cultural Community Blueprint, not just the economic blueprint, contains several provisions that affect construction workers in both direct and indirect ways. Workers should be cognizant, for example, that there are provisions on urban development, safer cities and environmental sustainability that are likely to impact on their lives as construction workers. For one, much of construction work is in urban centers. Moreover, the construction industry in its production of building materials and in actual infrastructure development produces a lot of pollutants and this should be a collective concern of workers, employers/investors, and governments.

k). Construction companies have been able to participate in the ASEAN process in a more structured manner. The ASEAN Constructors'Federation (ACF), for example, has been accredited as a social dialogue partner of ASEAN. This development should lead to discussions on how construction workers, through local/national unions and global union federations such as the BWI, can participate more

substantially in ASEAN processes. In this area, ASEAN may well learn from the experiments of its European counter parts, such as the European Works Councils that serve as the institutional forum and facilitates consultation between employers and employees within and across national borders upon the directive of the European Commission. ASEAN must draw lessons from both the strengths and weaknesses of such European initiatives. To ensure that ASEAN economic integration does not neglect the plight of construction workers, the **voice of construction workers must be heard** in pertinent bodies such as the Construction Committee of the Coordinating Committee on Services under the Senior Economic Officials Meeting of the AFTA Council.

Finally, information on ASEAN and its agreements should be disseminated to the broadest possible number of construction workers in a popularized manner. These **workers must be made aware** of the effects of regional economic integration and of the fact that the ASEAN could be another platform upon which they can forward their collective voice and interests.

On review of the literature, facts and figures, it is imperative that working of any Social Security Law legislation relating to welfare of construction workers can be effective so long as it provides the welfare benefits in the midst of work culture of Construction Sector.