

Supreme Court of India

Air India Statutory Corporation vs United Labour Union & Ors on 6 November, 1996

Author: K Ramaswamy

Bench: K. Ramaswamy, B.L. Hansaria, S.B. Majmudar

PETITIONER:

AIR INDIA STATUTORY CORPORATION.

Vs.

RESPONDENT:

UNITED LABOUR UNION & ORS.

DATE OF JUDGMENT: 06/11/1996

BENCH:

K. RAMASWAMY, B.L. HANSARIA, S.B. MAJMUDAR

ACT:

HEADNOTE:

JUDGMENT:

THE 6TH DAY OF DECEMBER, 1996.

Present :

Hon'ble Mr. Justice K. Ramaswamy Hon'ble Mr. Justice B.L. Hansaria Hon'ble Mr. Justice S.B. Majmudar Ashok Deasai, Attorney General, T.R. Andhyarujuna, Solicitor General, P.P. Malhotra, Ms. Indira Jaising, K.K. Singhvi, Sr. Advs., M.D. Sisodia, K. Swamy, Lalit Bhasin, Ms. Nina Gupta, Ms. Kiran Bhardwaj, Vineet Kr., Ms. Ethel Pereira, Ms. Ritu Makkar, P.P. Singh, G. Nagesware Reddy, C.V.S. Rao Ms. Anil Katiyar, Ms. Anita Shenoi, Sanjay Parikh, B.N.

Singhvi, Sanjay Singhvi, Anil K. Gupta, Ms. Pushpa Singhvi, T. Sridharan, P.K. Malhotra, S.R. Bhat, Brig Bhushan, R.N. Keshwani, and Ms. C. Ramamurthy, and A.K. Sanghi, Advs. with them for the appearing parties.

J U D G M E N T S The following Judgments of the Court were delivered"

WITH CIVIL APPEAL NOS. 15536-37, 15532-15534 OF 1996 (Arising out of SLP (C) Nos.

7418-19/92 and 12353-55/95) J U D G M E N T K. Ramaswamy, J.

Leave granted.

These appeals by special leave arise from the judgment of the Division Bench of the Bombay High Court dated April 28, 1992 made in Appeal No. 146 of 1990 and batch. The facts in appeal arising out of S.L.P. 7417/92, are sufficient to decide the questions of law that have arisen in these appeals. The appellant initially was a statutory authority under International Airport Authority of India Act, 1971 (for short, 'IAAI Act') and on its repeal by the Airports Authority of India Act, 1994 was amalgamated with National Airport Authority (for short, the 'NAA') under single nomenclature, namely, IAAI. The IAAI is now reconstituted as a company under Companies Act, 1956.

The appellants engaged, as contract labour the respondent union's members, for sweeping, cleaning dusting and watching of the building owned and occupied by the appellant. The Contract Labour (Regulation and Abolition) Act, 1970 (for short, the 'Act') regulates registration of the establishment of principal employer, the contractor engaging and supplying the contract labour in every establishment in which 20 or more workmen are employed on any day of the preceding 12 months as contract labour. The appellant had obtained on September 20, 1971 a certificate of registration from Regional Labour Commissioner (Central) under the Act. The Central Government, exercising the power under Section 10 of the Act, on the basis of recommendation and in consultation with the Central Advisory Board constituted under Section 10(1) of the Act, issued a notification on December 9, 1976 prohibiting "employment of contract labour on and from December 9, 1976 for sweeping, cleaning, dusting and watching of buildings owned or occupied by the establishment in respect of which the appropriate government under the said act is the Central Government". However, the said prohibition was not apply to "outside cleaning and other maintenance operations of multi- storeyed building where such cleaning or maintenance cannot be carried out except with specialised experience." It would appear that Regional Labour Commissioner (Central) Bombay by letter dated January 20, 1972 informed the appellant that the State Government is the appropriate Government under the Act. Therefore, by proceedings dated May 22, 1973 the Regional Labour Commissioner (Central) had revoked the registration. By Amendment Act 46 of 1982, the Industrial Disputes Act, 1947 (for short, the 'ID Act') was made applicable to the appellant and was brought on statute book specifying the appellant as one of the industries in relation to which the Central Government is the appropriate Government and the appellant has been carrying on its business "by or under its authority" with effect from August 21, 1982. The Act was amended bringing within its ambit the Central Government as appropriate Government by amendment Act 14 of 1986 with effect from January 28, 1986.

Since the appellant did not abolish the contract system and failed to enforce the notification of the Government of India dated December 9, 1976, the respondents came to file writ petitions for direction to the appellant to enforce forthwith the aforesaid notification abolishing the contract labour system in the aforesaid services and to direct the appellant to absorb all the employees doing cleaning, sweeping, dusting, washing and watching of the building owned or occupied by the appellant-establishment, with effect from the respective dates of their joining as contract labour in the appellant's establishment with all consequential rights/benefits, monetary or otherwise, The

writ petition was allowed by the learned single judge on November 16, 1989 directing that all contract workers be regularised as employees of the appellant from the date of filing of the writ petition. Preceding thereto, on November 15, 1989, the Government of India referred to the Central Advisory Board known as While Committee under section 10(1), which recommended to the Central Government not to abolish the contract labour system in the aforesaid services. Under the impugned judgment dated April 3, 1992, the learned judges of the Division Bench dismissed the appeal. Similar was the fate of other appeals. Thus these appeals by special leave.

Shri Ashok Desai, the learned Attorney General, Shri Andhyarujina, the learned Solicitor General, Appearing for Union of India and the appellant respectively, contended that the term "appropriate Government" under section 2 (1)(a) of the Act, as on December 9, 1976, was the State Government. The appellant was not carrying on the business as an agent of the Central Government nor the Central Government was its principal. This Court, in Heavy Engineering Majdoor Union v. The State of Bihar & Ors. [ (1969) 3 SCR 995 (for short, the "Heavy Engineering case")], had interpreted the phrase "the appropriate Government" and held that the Central Government was not the appropriate Government under the ID Act. The ratio therein was followed in Hindustan Aeronautics Ltd. v. The Workmen & Ors. [(1975) 4 SCC 679] and Rashtriya Mill Mazdoor Sangh v. Model Mills Nagpur & Anr. [1984 Supp. SCC 443] and food Corp. of India Workers' Union v. Food Corp. Of India & Ors. [(1985) 2 SCC 294], It is thus firmly settled law that the appropriate Government until the Act was amended with effect from January 28, 1986. Therefore, the view of the High Court that the appropriate Government is the Central Government is not correct in law. The learned Attorney General Further argued that the interpretation of this Court in Heavy Engineering case has stood the test of time and the parties have settled the transaction its basis. It would, therefore, not be correct to upset that interpretation. The learned Solicitor General contended that the notification published by the Central Government under Section 10 of the Act on December 9, 1976 was without jurisdiction. The Advisory Board independently should consider whether the contract labour in each of the aforesaid services should be abolished taking into consideration the perennial nature of the work, the requirement of number of employees in the respective specified services in the establishment of the appellant. The Advisory Board had not adverted to the prescribed criteria of Section 10 (2) of the appellant's establishment. Mohile Committee after detailed examination, had recommended to the Central Government not to abolish the contract labour system in the aforesaid services. It was contended that the notification dated December 9, 1976 is without authority of law or, at any rate, is clearly illegal and so the direction by the High Court to enforce the offending notification is not correct in law. It was come into force from January 28, 1986, the Central Government being the appropriate Government, had accepted the recommendation of Mohile Committee of not abolishing the contract labour system. The notification dated December 9, 1976 no longer remained valid for enforcement. The High Court, therefore was not right in directing the appellant to enforce the notification. Alternatively, it was contended that even assuming that the notification is valid and enforceable, it would be effective only from January, 1986. However, by abolition of contract labour system, the workmen would not automatically became the employees of the appellant. In Dena Nath and Ors. [(1992) 1 SCC 695], this court had held that the High Court, in exercise of its power under Article 226, has no power to direct absorption of the contract labour as its direct employees. The impugned judgment was expressly disapproved in Dena Nath's case. Therefore, its legality has been knocked off its bottom. It was further contended that the Act, on

abolition of the contract labour system, does not envisage to create direct relationship between the principal employer and the contract labour. The erstwhile contract labour have to seek and obtain industrial award under the ID Act by virtue of which the appellant would be entitled to satisfy the Industrial Court that there was no need to absorb all the contract labour but only smaller number is required as regular employees. On recording finding in that behalf, the industrial court would make his award which would be enforceable by the workmen. This court in Gujarat Electricity Board v. Hind Mazdoor Sabha & Ors. [(1995) 5 SCC 27] had pointed out the lacuna in the act and given directions of the manner in which the industrial action has to be taken on abolition of the contract labour system. The High Court, therefore, was not right in its direction that the workmen require to be absorbed in the respective service of the establishment of the appellant. It is also contended that the appellant, though initially was a statutory Corporation under the IAAI Act, on its abolition and constitution as a company, is entitled to regulate its own affairs on business principal and the direction for absorption would lead to further losses in which it is being run. The learned Solicitor General has, therefore, submitted a scheme under which its subsidiary, namely, Air Cargo Corporation would take the workmen and absorb them into service, subject to the above regulation. It has to consider as to how many of the contract labour require to be absorbed. Prescription of qualification for appointment was necessary; the principle of reservation adopted by the Central Government requires to be followed; their names require to be called from Employment Exchange. The workmen should be absorbed on the principle of "last come first go" subject to their fitness, qualifications and probation etc. Shri K.K. Singhvi and Mrs. Indira Jai Singh, learned senior counsel and A.K. Gupta, learned counsel for the respondents, contended that the appellant is an industry carrying on its business of Air Transport Services. Prior to the IAAI Act, it was under the control of Civil Aviation Department, Government of India; after the IAAI Act, the appellant has been carrying on its industry by or under the authority of the Central Government. The relevant provisions in the IAAI Act would establish the deep and pervasive control the Central Government has over the functions of the appellant. Whether the appellant is an industry carrying on business by, or under the authority of the Central Government, must be determined keeping in view the language of the statute that gave birth to the Corporation, and the nature of functions under the IAAI act and the control the Central Government is exercising over the working of the industry of the appellant to indicate that right from its inception the appellant has been carrying on its business, by or under the authority of the Central Government. Rightly understanding that legal position, the Central Government had referred the matter to the Central Advisory Board under Section 10(1) of the Act and on the basis of its report had issued the notification dated December 9, 1976 abolishing the contract labour system in the aforesaid services. Therefore, it is valid in law. The Bench in Heavy Engineering case narrowly construed the meaning of the phrase "the appropriate Government" placing reliance on the common law doctrine of "principal and agent". The public law interpretation is the appropriate principle of construction of the phrase "the appropriate Government". In view of internal evidence provided in the IAAI Act and the nature of the business carried on by the appellant by or under the control of the Central Government, the appropriate Government is none other than the Central Government. In particular, after the development of law of "other authority" or "instrumentality of the State" under Article 12 of the Constitution, the ratio in Heavy Engineering case is no longer good law. In Hindustan Aeronautics Ltd. and Food Corp of India cases, this court had not independently, laid any legal proposition. Food Corporation of India case was considered with reference to the regional warehouses of the FCI situated in different States and in this

functional perspective, this court came to the conclusion that the appropriate Government would be the State Government.

This Court in *Sukhdev Singh & Ors. v. Bhagatram Sardar Singh & Anr.* [(1975) 3 SCR 619]; *R.D. Shetty v. Airport Authority & Ors.* [(1979) 3 SCR 1014]; *Managing Director, U.P. Warehousing Corporation & Anr. v. V.N. Vajapayee* [(1980) 2 SCR 733]; *Ajay Hasia etc. v. Khalid Mujib Sehravardi & Ors. etc.* [(1981) 2 SCR 79] - wealth of authorities - had held that settled legal position would lend aid to interpret the phrase "appropriate Government" in public law interpretation; under the Act the Central Government is the appropriate Government to take a decision under section 10 of the Act to abolish the contract labour system. It is further contended that the central Government, after notifying abolition of contract labour system is devoid of power under section 10(1) to appoint another Advisory Board to Consider whether or not to abolish the same contract labour system in the aforesaid services in the establishments of the appellant. The recommendation of the Mohile Committee and the resultant second notification were, therefore, without authority of law. The two Judge Benches in *Dena Nath* and *Gujarat Electricity Board's* cases have not correctly interpreted the law. After abolition of the contract labour system, if the principle employer omits to abide by the law and fails to absorb the labour worked in the establishments of the appellant on regular basis, the workmen have no option but to seek judicial redress under Article 226 of the Constitution. Judicial Review being the basis feature of the Constitution, the High Court is to have the notification enforced. The citizen has a fundamental right to seek redressal of their legal injury by judicial process to enforce his rights in the proceedings under Article 226. The High Court, therefore, was right to dwell into the question and to give the impugned direction in the judgment. The workmen have a fundamental right to life. Meaningful right to life springs from continued work to earn their livelihood. The right to employment, therefore, is an integral facet of right to life. When they were engaged as contract labour and were continuously working in the establishments of the appellant, to make their right to social and economic justice meaningful and effective, they are required to be continuously engaged as contract labour so long as the work is available in the establishment. When work is of perennial nature and on abolition of contract labour system, they are entitled, per force, to be absorbed labour system, they are entitled, per force, to be absorbed on regular basis transposing their erstwhile contractual status into that of an employer - employee relationship so as to continue to eke out their livelihood by working under the employer and be entitled to receive salary prescribed to that post. Thereby, they became entitled to be absorbed without any hiatus with effect from the date of abolition. If any action is needed to be taken thereafter against the employee, it should be only in accordance with either the statutory rules or the ID Act, if applicable. In either event, the right to absorption assures to the workmen the right to livelihood as economic empowerment, right to social justice and right to dignity of person which are the concomitants of social democracy. These facets of constitutional rights guaranteed to the workmen as their Fundamental Rights should be kept in view in interpreting the expression "appropriate Government" enjoined under Section 10(1) of the Act and other regulatory provisions in relation to the employment of the workmen. Therefore, the view in *Dena Nath's* case is not correct in law and requires to be overruled.

There is no hiatus in the operation of the Act on abolition of the contract labour system under Section 10. The object and purpose of the Act are twofold. As long as the work in an industry is not

perennial, the Act regulates the conditions of the workmen employed through the contractor registered under the Act. The services of the workmen are channelised through the contractor. The principle employer is required to submit the number of workmen needed for employment in its establishment who are supplied by the contractor, an intermediary; but the primary responsibility lies upon the principle employer to abide by law; the violation thereof visits with penal consequences. The Act regulates systematic operation. Wages to the contract labour should be paid under the direct supervision of the principle employer. The principle employer is enjoined to compel the contractor to pay over the wages and on his failure, the principle employer should pay and recover it from the contractor/intermediary. The principle employer alone is required to provide safety, health and other amenities to ensure health and safe working conditions in the establishment of the principle employer. This would clearly indicate the pervasive control the principle employer has over the contract labour employed through intermediary and regulation of the work by the workmen during the period of service. On advice by the Board that the work is of perennial nature etc, and on being satisfied of the conditions specified under Section 10(2), the appropriate Government takes a decision to abolish the contract labour and have the decision published by a notification. It results in abolition of the contract labour. Consequently, the linkage of intermediary/contractor is removed from the operational structure under the Act. It creates direct connection between the principle employer and the workmen. There is no escape route for the principle employer to avoid workmen because it needs their services and the workmen are not meant to be kept in the lurch. The words "principal employer" do indicate that the intermediary/contractor is merely a supplier of labour to the principal employer. On effacement of the contractor by abolition of the contract labour system, a direct relationship between the principal employer and the workmen stands knitted. Thereby the workman becomes an employee of the principal employer and it relates back to the date of engagement as a contract labour. The details of the workmen, the requirement of the work force, duration of the work etc, are regulated under the Act and the Rules. The Act, the Rules and statutory forms do furnish internal and unimpeachable evidence obviating the need to have industrial adjudication; much less there arises any dispute. There is no machinery for workmen under the ID Act to seek any industrial adjudication. If any industrial adjudication is to be sought, it would be only by a recognised union in the establishment of the appellants who are unlikely to espouse their dispute. Therefore, the methodology suggested in Gujarat Electricity Board's case, by another bench of two Judges, apart from being unworkable and incongruous, is not correct in law. On abolition of the contract labour, the principle employer is left with no right but duty to enforce the notification, absorb the workmen working in the establishment on contract basis transposing them as its regular employee with all consequential rights and duties attached to a post on which the workmen working directly under the appellant was entitled or liable. The Act gave no option to pick and choose the employees at the whim of the principal employer. The view of the High Court, therefore, is correct to the extent that the notification should be enforced with effect from date of abolition, namely, December 9, 1976. The subsequent amendment with effect from January 28, 1986 is only a recognition of ad superimposition of preexisting legal responsibility of the Central Government as the appropriate Government. It does not come into being only from the date the amendment came into force. Consequently, the workmen, namely, the members of the respondent-Union must be declared to be the employees with effect from the respective dates on which they were discharging their duties in the respective services of the appellant's establishment either as Sweeper, Duster, Cleaner, Watchman etc. The view, therefore, of the High Court to the

extent that they should be absorbed with effect from the date of the judgment of the learned single Judge, is not correct in law. Therefore, to do complete justice, direction may be given to absorb the workmen with effect from the date abolition, i.e. December 9, 1976 under Article 142 of the Constitution.

The respective contentions would give rise to the following questions:

1. What is the meaning of the word "appropriate Government under Section 2(1) (a) of the Act,
2. Whether the view taken in Heavy Engineering case is correct in law?
3. Whether on abolition the contract labour are entitled to be absorbed; if so, from what date ?
4. Whether the High Court under Article 226 has power to direct their absorption; if so, from what date ?
5. Whether it is necessary to make a reference under Section 10 of the ID Act for adjudication of dispute qua absorption of the contract labour?
6. Whether the view taken by this Court in Dena Nath and Gujarat State Electricity Board's case is correct in law ?
7. Whether the workmen have got a right for absorption and, if so, what is the remedy for enforcement ? Section 2 (1) (a) of the Act defines "appropriate Government" to mean-

""(1) in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947 (Act 14 of 1947), is the Central Government, the Central Government;

""(2) in relation to any other establishment, the Government of the State in which that other establishment is situated."

Prior to the Amendment Act 14 of 1986, the definition was as under :

"2 (1) (a) "Appropriate Government" means-

(1) in relation to -

(i) any establishment pertaining to any industry carried on by or under the authority of the Central Government, or pertaining to any such controlled industry as may be specified in this behalf by the Central Government, or

(ii) any establishment of any railway, Cantonment Board, Major port, mine or oil-field, or

- (iii) any establishment of a banking or insurance company, the Central Government,
- (2) in relation to any other establishment the Government of the State in which that other establishment is situate."

Section 2(a)(i) of the ID Act defines "appropriate Government" thus : "... Unless there is anything repugnant in the subject or context, "appropriate Government" means, in relation to any Industrial Disputes concerning any industry carried on by or under the authority of the Central Government or by a railway company for concerning any such controlled industry as may be specified in this behalf by the Central Government..." and India Airlines and Air India Corporation established under Section 3 of the Air Corporation Act 1953 are enumerated industries under Amendment Act 46 of 1982 which came into force with effect from 21.8.1984.

In Heavy Engineering case (supra), industrial dispute was referred under Section 10 of the ID Act by the State Government of Bihar to the Industrial Tribunal for its adjudication. The competency of the State Government was questioned by the Mazdoor Union contending that the appropriate government to refer the dispute was the Central government. The High Court negated the contention and had upheld the validity of reference, On appeal, a Bench of two Judges had held that the words "under authority of" means pursuant to the authority, such as an agent or a servant's acts under or pursuant to the authority of its principal or master. The Heavy Engineering Company cannot be said to be carrying on its business pursuant to the authority of the Central Government. Placing reliance on common law interpretation, the Bench was of the opinion that the company derived its powers and functions from its Memorandum and Articles of Association. Though the entire share capital was contributed by the Central Government and all the shares were held by the President and officers of the Central Government were in-charge of the management, it did not make any difference. The company and the share holders are distinct entities. The fact that the President of India and certain officers hold all its shares did not make the company an agent either of the President or of the Central Government. The power to decide how the company should function ; the power to appoint Directors and the power to determine the wages all salaries payable by the company to its employees, were all derived from the Memorandum of company and Articles of Association of the Company and not by the reason of the Company being the agent of the Central Government. The learned judges came to that conclusion on the basis of concessions and on private law of principal and agent and as regards a company registered under the Companies Act, on the basis of the power of internal management. In Hindustan Aeronautics Ltd. case (supra), learned judges merely followed the ratio of Heavy Engineering case. It further concluded that the enumeration of certain statutory Corporations in the definition would indicate that those enumerated Corporations would come within the definition of the "appropriate Government" without any further discussion. In Rashtriya Mill Mazdoor Sangh's case, a Bench of three judges, while interpreting Section 32 (iv) of the Payment of Bonus Act, considered the purpose of the expression "under the authority of any department of the Central Government for purpose of payment of bonus". The meaning and scope of the expression "industry carried on by or under the authority of any department of the Central Government", was examined and it was held that the industrial undertaking retains its identity, personality and status unchanged though in its management, the Central Government exercised the power to give a direction under section 16 and the management is subjected to regulatory control. It is seen that the above decision was reached in



the context in which the payment of bonus was to be determined and paid to the employees by the department. In Food Corporation of India's case (supra), a Bench of two Judges was to consider whether regional office of the Food Corporation of India and the warehouses etc. were an "establishment" within the meaning of Section 2(i)(e) of the Act and whether FCI is an industry carried on by or under the authority of the Central Government. Following the aforesaid three decisions, it was held that a bare reading of the definition under the Act means inter alia any place, any industry, trade, business, manufacture, warehouse, godown or the place set up by the corporation where its business is carried on. Though for the purpose of industrial disputes the Central Government is an appropriate Government in relation to Food Corporation of India, its establishment at various places is not under the control of the Government of India. Therefore, appropriate Government under the Industrial Disputes Act is the state Government. In that behalf, the learned Judges, undoubtedly, relied upon Heavy Engineering case. It would thus be seen that the construction adopted on the phrase "appropriate Government" under the ID Act was considered with reference to its functional efficacy. The Heavy Engineering case, as held earlier, had proceeded on common law principles and the concession by the counsel.

As noted, the appellant, to start with, was a statutory authority but pending appeal in this court, due to change in law and in order to be in tune with open economy, it became a company registered under the Companies Act. To consider its sweep on the effect of Heavy Engineering case on the interpretation of the phrase 'appropriate Government', it would be necessary to recapitulate the Preamble, Fundamental Rights (Part III) and Directive Principle (Part IV) - trinity setting out the conscience of the Constitution deriving from the source "We, the people", a charter to establish an egalitarian social order in which social and economic justice with dignity of person and equality of status and opportunity, are assured to every citizen in a socialist democratic Bharat Republic. The Constitution, the Supreme law heralds to achieve the above goals under the rule of law. Life of law is not logic but is one of experience, Constitution provides an enduring instrument, designed to meet the changing needs of each succeeding generation altering and adjusting the unequal conditions to pave way for social and economic democracy within the spirit drawn from the Constitution. So too, the legal redressal within the said parameters. The words in the Constitution or in an Act are but a framework of the concept which may change more than words themselves consistent with the march of law. Constitutional issues require interpretation broadly not by play of words or without the acceptance of the line of their growth, Preamble of the Constitution, as its integral part, is people including workmen, harmoniously blending the details enumerated in the Fundamental Rights and the Directive Principles. The Act is a social welfare measure to further the general interest of the community of workmen as opposed to the particular interest of the individual entrepreneur. It seeks to achieve a public purpose, i.e., regulated conditions of contract labour and to abolish it when it is found to be of perennial nature etc. The individual interest can, therefore, no longer stem the forward flowing tide and must, of necessity, give way to the broader public purpose of establishing social and economic democracy in which every workmen realises socio- economic justice assured in the preamble, Articles 14,15 and 21 and the Directive Principles of the Constitution.

The founding fathers of the Constitution, cognizant of the reality of life wisely engrafted the Fundamental Rights and Directive Principles in Chapters III and IV for a democratic way of life to every one in Bharat Republic, the State under Article 38 is enjoined strive to promote the welfare of

the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political shall inform all the institutions of the national life and to minimise the inequalities in income and endeavour to eliminate the inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations, Article 39(a) provides that the State shall direct its policies towards securing the citizens, men and women equally, the right to an adequate means of livelihood; clause (d) provides for equal pay for equal work for both men and women; clause (e) provides to secure the health and strength of workers. Articles 41 provides that within the limits of its economic capacity and development, the state shall make effective provision to secure the right to work as fundamental with just and human conditions of work by suitable legislation or economic organisation or in any other way in which the worker shall be assured of living wages, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities to the workmen. The poor, the workman and common man can secure and realise economic and social freedom only through the right to work and right to adequate means of livelihood, to just and human conditions of work, to a living wage, a decent standard of life. education and leisure. To them, these are fundamental facets of life. Article 43A, brought by 42nd Constitution (Amendment) Act, 1976 enjoins upon the State to secure by suitable legislation or in any other way, the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry. Article 46 gives a positive mandate to promote economic and educational interest of the weaker sections of the people. Correspondingly, Article 51A imposes fundamental duties on every citizen to develop the scientific temper, humanism and to strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavour and achievement. To make these rights meaningful to workmen and meaningful right to life a reality to workmen, shift of judicial orientation from private law principles to public law interpretation harmoniously fusing the interest of the community. Article 39A furnishes beacon light that justice be done on the basis of equal opportunity and no one be denied justice by reason of economic or other disabilities. Courts are sentinel in the quiver of the rights of the people, in particular the poor. The judicial function of a Court, therefore, in interpreting the Constitution and the provisions of the Act, requires to build up continuity of socio-economic empowerment to the poor to sustain equality of opportunity and status and the law should constantly meet the needs and aspiration of the society in establishing the egalitarian of the society in establishing the egalitarian social order. Therefore, the concepts engrafted in the statute require interpretation from that perspectives, without doing violence to the language. Such an interpretation would elongate the spirit and purpose of the Constitution and make the aforesaid rights to the workmen a reality lest establishment of an egalitarian social order would be frustrated and Constitutional goal defeated.

Keeping this broad spectrum in view, let us consider whether the interpretation given in Heavy Engineering case is consistent with the scheme and spirit of the Constitution. In Rajasthan State Electricity Board, Jaipur v. Mohan Lal & Ors. [(1967) 3 SCR 377, a Constitution Bench, composing the learned judges who formed the Bench in Heavy Engineering case, considered the issue interpretation and Bhargava, J. speaking on behalf of the majority, had held that "other authority" within the meaning of Article 12 of the Constitution need no necessarily be an authority to perform governmental functions. The expression 'other authority' is wide enough to include within it every

authority created by a statute on which powers are conferred to carry out governmental functions or the "functions under the control of the Government". It is not necessary that some of powers conferred be Governmental sovereign function to carry on commercial activities. Since the State is empowered under Articles 19 (1) (g) and 298 to carry on any trade or business, it was held that Rajasthan State Electricity Board was "other authority" under Article 12 of the Constitution. The significance of the observation is that an authority under the control of the State need not carry on Governmental functions. It can carry on commercial activities. At this juncture, it is relevant keep at the back of our mind, which was not brought to the attention of the Bench which decided Heavy Engineering case, that Article 19(2) of the Constitution grants to the State, by clause

(ii) thereof, monopoly to carry on, by the State or by a Corporation owned or controlled by the State, any trade, business, industry or service whether to the exclusion, complete or partial, of citizens or otherwise. The narrow interpretation strips the State of its monopolistic power to exclude citizens from the field of any activity, to carry on any trade, business, industry or service, total or partial. A reverse trend which would deflect the constitutional perspective was set in motion by the same Bench in *Praga Tools Corporation v. C.V. Imanuel* [(1969) 3 SCR 773] decided on February 19, 1969, 24 days prior to the date of decision in Heavy Engineering case; in which it was held in main that writ under Article 226 would not lie against a company incorporated under Companies Act and the declaration that dismissal of the workmen was illegal, given by the High Court was set aside. But the operation of the above ratio was put to stop by the Constitution Bench decision in *Sukhdev Singh & Ors. v. Bhagat Ram & Anr.* [(1975) 3 SCR 619]. In that behalf, the interpretation given by Mathew, J. in a separate but concurrent judgment is of vital significance taking away the State action from the clutches of moribund common law jurisprudence; it set on foot forward march under public law interpretation. Mathew, J. had held that the concept of State had undergone drastic change. It cannot be conceived of simply as a cohesive machinery yielding the thunderbolt of authority. The State is a service Corporation. It acts only thorough its instrumentalities or agencies of natural and juridical person. There is a distinction between State action and private action. There is nothing strange in the notion of the State acting through a Corporation and making it an agency or instrumentality of the State with an advent of the welfare State. The framework of the civil service administration became increasingly insufficient for handling new tasks which were often of a specialised and highly technical character. Development of policy of public administration, through separate Corporations which would operate largely according to business principles and separately accountable though under the Memorandum of Association or Articles of Association become the arm of the Government. Though their employees are not civil servants, it being a public authority and State Corporation, therefore, is subject to control of the Government. The public corporation, being a corporation of the State, is subject to the constitutional limitation as the State itself. The governing power, wherever located, must be subject to the fundamental constitutional limitations. The Court, therefore, had laid the test to see whether the Corporation is an agency or instrumentality of the Government to carry on business for the benefit of public. Thus, the ratio in *Praga Tools* case, no writ would lie against the Corporation is not a statutory body, as it is not a authority, it is an instrumentality of the State.

In *R.D. Shetty v. International Airport Authority of India & Ors.* [(1979) 3 SCR 1014], this Court had held that due to expansion of welfare and social service functions, the State increasingly controls

material and economical resources in the society involving large scale industrial and commercial activities with their executive functions affecting the lives of the people. It regulates and dispenses special services and provides large number of benefits. When the Government deals with the public, it cannot act arbitrarily. Where a corporation is an instrumentality or agency of the Government, it would be subject to the same constitutional or public law limitation as the Government. The limitations of the action by the Government must apply equally when such action are dealt with by Corporation having instrumentality element with public and they cannot act arbitrarily, Such a functioning cannot enter into relationship with any person it likes at its sweet will. Its action must be in conformity with some principle which meets the test of reason and relevance. Therefore, the distinction between a statutory corporation and the company incorporated under the Companies Act was obliterated.

In *Managing Director, U.P. Warehousing Corpn. v. V.N. Vajpayee* [(1980) 2 SCR 773], Chinnappa Reddy, J. in this separate but concurrent judgment laid down the relevant principles. The Government establishes and manages large number of industries and institutions which have become biggest employer and there is no good reason why the Government should not be bound to observe the equality clause of the Constitution in a matter of employment and its dealings with its employees; why the Corporation set up or owned by the Government would not equally be bound and why instead such Corporation would become citadels of patronage and arbitrary action. Such a distinction perhaps would mock at the Constitution and the people; some element of public employment is all that is necessary to take the employee beyond the reach of rule which denies him the protection of Articles 14 and 16. Independence and integrity of the employees in the public sector should be secured as much as the independence and integrity of the Civil servants. it was, therefore, held that a writ would lie against the warehousing corporation.

In *Ajay Hasia etc. v. Khalid Mujib Sehravardi & Ors. etc.* [(1961) 2 SCR 79], a Constitution Bench was to consider whether a Society registered under the J & K Societies Registration Act would be a State under Article 12 of the Constitution amenable to the reach of the writ jurisdiction. The Constitution Bench laid the following tests to determine whether the entity is an instrumentality or agency of the State : (1) if the entire share capital of the corporation is held by the Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government ; (2) where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation being impregnated with governmental character; (3) it must also be relevant factor whether the corporation enjoys monopoly status which is State conferred or State protected; (4) existence of deep and pervasive State control may afford an indication that the corporation is a State agency or instrumentality (5) if the functions of the corporation are of public importance and closely related to governmental functions, it would be a relevant factor in classifying the corporation as a instrumentality or agency of Government ; (6) specifically, if a department of Government is transferred to a corporation, it would be a strong factor supportive of the inference of the corporation being an instrumentality or agency of Government. In *Delhi Transport Corporation v. D.T.C. Mazdoor Corpn.* [AIR 1991 SC 101], it was held that the State has a deep and pervasive control over the functioning of the society and, therefore, is an agency of the state. In *Som Prakash Rekhi v. Union of India & Ors.* [(1981) 2 SCR 111], it was held that the settled position in law is that any authority under the control of the Government of India comes within the definition of a State.

Burmashell oil Co, was held to be an instrumentality of the State though it was a Government company. The authority in administrative law is a body having jurisdiction in certain matters of public nature. Therefore, the ability conferred upon a person by a law is to alter his case own will directed to that end. The rights; duties and liabilities or other legal relations, either of himself or other person must be present to make a person an authority. When the person is an agent or functions on behalf of the State, as an instrumentality, the exercise of the power is public. Sometimes, the test is formulated by asking whether corporation was formed by or under the statute. The true test is not how it is founded in legal personality but when it is created, apart from discharging public function or doing business as the proxy of the State, whether there is an element of ability in it to effect the relations by virtue of power vested in it by law. In that case, it was held that the above tests were satisfied and the company was directed to pay full pension.

In *Manmohan Singh Jaitla v. Commissioner. Union Territory of Chandigarh & Ors.* [(1984) supp. SCC 540], it was held that an educational institution receiving 95% of the grant-in-aid from the Government is "other authority" under Article 12 of the Constitution. It was, therefore, held that the termination of the service without enquiry was without jurisdiction. Dismissal from service without enquiry was declared illegal under Article 226. In *P.K. Ramachandra Iyer & Ors. v. Union of India & Ors.* [(1984) 2 SCC 141], ICAR, a Society registered under the Societies Registration Act, was held an adjunct of the Government of India. Its budget was voted as part of the budget of the Ministry of Agriculture. It was held that it was the State under Article 12 and was amenable to jurisdiction under Article 32 of the Constitution. The Project and Equipment Corporation of India which is subsidiary owned by State Trading Corporation was held by this Court in *A.L. Kalra v. Project and Equipment Corpn. of India Ltd.* [(1984) 3 SCR 316], to be an agency of the Government within the meaning of Article 12 of the Constitution of India. In *Central Inland Water Transport Corpn. Ltd. & Anr. v. Brojonath Ganguly & Anr.* [(1986) 3 SCR 156], a Government Company incorporated under Companies Act was held to be an instrumentality or agency. In this case, this court construed the Fundamental rights under Articles 14 to 17, the Director Principle under Article 38, 41 and 42, the Preamble of the Constitution and held that the River Steam Navigation Co. Ltd, was carrying on the same business as the corporation was doing. A scheme of arrangement was entered into between the corporation and the company. They were managed by the board of Directors appointed and removable by the Central Government. It was, therefore, held that it was an agency or instrumentality of the State under Article 12. In that behalf this court pointed out that the trade or business activity of the State constitutes public enterprise; the structural forms in which the Government operates in the field of public enterprises are many and varied. They may consist of governmental department, statutory body, statutory corporation or government companies etc.; immunities and privileges possessed by bodies so set up by the Government under Article 298 are subject to Fundamental Rights and Directive Principles to further the State policy. For the purpose of Article 12, the Court must see necessarily through corporate veil to ascertain behind the veil the face of instrumentality or agency of the State has assumed the garb of a governmental company, as defined in Section 3(7) of the Companies Act, it does not follow thereby that it ceases to be an instrumentality or agency of the State. Applying the above test, it was held that Inland Water Transport Corporation was State.

When its correctness was doubted and its reference to the Constitution Bench was made in Delhi Transport Corpn. case (supra), while holding that Delhi Road Transport Authority was an instrumentality of the State, it was held that employment is not a bounty from the State nor can its survival be at their mercy. Income is the Foundation of any Fundamental Rights. Work is the sole source of income. The right to work become as much fundamental as right to life. Law as a social machinery requires to remove the existing imbalances and to further the progress serving the needs of the Socialist Democratic Republic under the rule of law. Prevailing social conditions and actualities of the life are to be taken into account to adjudge the dispute and to see whether the interpretation would submerge the purpose of the Society.

In Lucknow Development Authority v. M.K. Gupta [(1984) 1 SCC 243], the question was whether a Government Authority is amenable to the regulation of Consumer Protection Act. It was held in paragraph 5 and 6 that a Government or a semi- Government body or local authority are amenable to the Act as much as any other private body rendering similar service. This is a service to the society and they are amenable to public accountability for health and growth of society, housing construction or building activities, by private or statutory body rendering service within the meaning of Section 2(o) of the said Act. In Star Enterprises & Ors. v. C.I.D.C. of Maharashtra Ltd. [(1990) 3 SCR 280], it was held that the State or its instrumentality entering into commercial field must act in consonance with the rule of law. In paragraph 10, it was held the judicial review of administrative action has become expansive and its scope is becoming wider day by day. The traditional limitations have been vanishing and the sphere of judicial scrutiny is being expanded, State activity too is becoming fast pervasive as the State has descended into the commercial field and joint public sector undertaking has grown up. The State action must be justified by judicial review, by opening up of the public law interpretation. Accordingly, it was held that the action of company registered under the Companies Act was amenable to judicial review.

In LIC of India & Anr. v. Consumer Education & Research Centre & Ors. [(1995) 5 SCC 482], it was held that in the contractual field of State action, the State must act justly, fairly and reasonably in public interest commensurate with the constitutional conscience and socio- economic justice; insurance policies of LIC, terms and conditions prescribed therein involve public element. It was, therefore, held in para 23 at page 498 that every action of the public authority or the person acting in public interest or any act that gives rise to public element, should be guided by public power or action hedged with public element that becomes open to challenge. If it is shown that the exercise of the power is arbitrary, unjust and unfair, it should be no answer for the State, its instrumentality, public authority or person whose acts have the insignia of public element, to say that their actions are in the field of private law and they are free to prescribe any conditions or limitations in their actions. They must be based on some rational and relevant principles. It must not be guided by irrational or irrelevant considerations. Every administrative decision must be hedged by reasons. At page 501 in para 28 it was held that though the dispute may fall within the domain of contractual obligation, it would not relieve the State etc, of its obligation to comply with the basic requirements of Article

14. To this extent, the obligation is of public character, invariably in every case, irrespective of there being any other right or obligation. An additional contractual obligation cannot divest the claimant

of the guarantee under Article 14 of non-arbitrariness at the hands of the State etc, in any of its actions.

In *G.B. Mahajan & Ors. v. Jalgaon Municipal Council & Ors.* [(1991) 3 SCC 91 at 109, para 38], it was held that in interpretation of the test of reasonableness in Administrative law, the words "void" and "voidable" found in private law area are amenable to public law situations and "carry over with them meanings that may be inapposite in the changed context. Some such thing has happened to the words 'reasonable' or reasonableness etc." In *Shrisht Dhawan (Smt.) v. M/s. Shaw Brothers* [(1992) 1 SCC 534 at 553, para 20] the private law principle of fraud and collusion in section 17 of the Contract Act was applied to public law remedy and it was held "that fraud in public law is not the same as fraud in private law. Nor can the ingredient, which has established fraud and commercial transaction be of assistance in determining fraud in administrative law. It has been aptly observed in *Khwaja vs. Secretary of State for the Home Department & Ors.* [(1983) 1 All. E.R. 765] that it is dangerous to introduce maxims of common law as to the effect of fraud while determining fraud in relation to the statutory law". In *Khwaja's case (supra)*, it was held "despite the wealth of authority on the subject, there is nowhere to be found in the relevant judgments (perhaps because none was thought necessary) a definitive exposition of the reasons why a person who has obtained leave to enter by fraud is an illegal entrant. To say that the fraud 'vitiates' the leave or that the leave is not 'in accordance with the Act' is, with respect, to state a conclusion without explaining the steps by which it is reached. Since we are here concerned with purely statutory law, I think there are dangers in introducing maxims of the common law as to the effect of fraud on common law transaction and still greater dangers in seeking to apply the concepts of 'void and voidable'. In a number of recent cases in your Lordships' House, it has been pointed out that these transplants from the field of contract do not readily take root in the field of public law. This is well illustrated in the judgement of the Court of Appeal in the instant case of *Khawaja* [1982] 1 WLR 625 at 630; of [1982] 2 All ER 523, at 527, where Donaldson LJ spoke of the appellant's leave to enter as being 'voidable ab initio', which I find, with respect, an impossibly difficult legal category to comprehend". Thus, the limitations in private law were lifted and public law interpretation of fraud was enlarged.

It must be remembered that the Constitution adopted mixed economy and control over the industry in its establishment, working and production of goods and services. After recent liberalised free economy private and multi- national entrepreneurship has gained ascendancy and entrenched into wider commercial production and services, domestic consumption goods and large scale industrial productions. Even some of the public Corporation are thrown open to the private national and multi-national investments. It is axiomatic, whether or not industry is controlled by Government or public Corporations by statutory form or administrative clutch or private agents, juristic persons, Corporation whole or corporation sole, their constitution, control and working would also be subject to the same constitutional limitation in the trinity, viz., Preamble, the Fundamental Rights and the Directive Principles. They throw open an element of public interest in its working. They share the burden and shoulder constitutional obligations to provide facilities and opportunities enjoined in the Directive Principles, the Preamble and the fundamental rights enshrined in the Constitution. The word 'control', therefore, requires to be interpreted in the changing commercial scenario broadly in keeping with the aforesaid constitutional goals and perspectives.

From the above discussion, the following principles would emerge:

[1] The constitution of the Corporation or instrumentality or agency or corporation aggregate or Corporation sole is not of sole material relevance to decide whether it is by or under the control of the appropriate Government under the Act.

[2] If it is a statutory Corporation, it is an instrumentality or agency of the State. If it is a company owned wholly or partially by a share capital, floated from public exchequer, it gives indicia that it is controlled by or under the authority of the appropriate Government.

[3] In commercial activities carried on by a Corporation established by or under the control of the appropriate Government having protection under Articles 14 and 19 [2], it is an instrumentality or agency of the State. [4] The State is a service Corporation. It acts through its instrumentalities, agencies or persons natural or juridical.

[5] The governing power, wherever located, must be subject to the fundamental constitutional limitations and abide by the principles laid in the Directive Principles. [6] The framework of service regulations made in the appropriate rules or regulations should be consistent with and subject to the same public law principles and limitations.

[7] Though the instrumentality, agency or person conducts commercial activities according to business principles and are separately accountable under their appropriate bye-laws or Memorandum of Association, they become the arm of the Government.

[8] The existence of deep and pervasive State control depends upon the facts and circumstances in a given situation and in the altered situation it is not the sole criterion to decide whether the agency or instrumentality or persons is by or under the control of the appropriate Government.

[9] Functions of an instrumentality, agency or person are of public importance following public interest element. [10] The instrumentality, agency or person must have an element of authority or ability to effect the relations with its employees or public by virtue of power vested in it by law, memorandum of association or bye-laws or articles of association.

[11] The instrumentality, agency or person renders an element of public service and is accountable to health and strength of the workers men and women, adequate means of livelihood, the security for payment of living wages, reasonable conditions of work, decent standard of life and opportunity to enjoy full leisure and social and cultural activities to the workmen. [12] Every action of the public authority, agency or instrumentality or the person acting in public interest or any act that gives rise to public element should be guided by public interest in exercise of public power or action hedged with public element and is open to challenge. It must meet the test of reasonableness, fairness and justness.

[13] If the exercise of the power is arbitrary, unjust and unfair, and public authority, instrumentality, agency or the person acting in public interest, though in the field of private law, is



not free to prescribe any unconstitutional conditions or limitations in their actions.

It must be based on some rational and relevant principles. It must not be guided by irrational or irrelevant considerations and all their actions \*\*\*\*\* satisfy the basic law requirements of Article 14. The public law interpretation is the basic tools of interpretation in that behalf relegating common law principles to purely private law field.

From this perspective and on deeper consideration, we are of the considered view that the two-judge Bench in Heavy Engineering case narrowly interpreted the words "appropriate Government" on the common law principles which no longer bear any relevance when it is tested on the anvil of Article

14. It is true that in Hindustan Machine Tool's R.D. Shetty's and Food Corporation of India cases the ratio of Heavy Engineering case formed the foundation. In Hindustan Machine Tool's case, there was no independent consideration except repetition and approval of the ratio in Heavy Engineering case. It is to reiterate that Heavy Engineering case is based on concession. In R.B. Shetty's case, the need to dwell in depth into this aspect did not arise but reference was made to the premise of private law interpretation which was relegated to and had given place to constitutional perspectives of Article 14 which is consistent with the view we have stated above. In Food Corporation of India's case, the Bench proceeded primarily on the within the jurisdiction of different State Governments which led it to conclude that the appropriate Government would be the State Government.

In the light of the above principles and discussions, we have no hesitation to hold that the appropriate Government is the Central Government from the inception of the Act. The notification published under Section 10 on December 9, 1976, therefore, was in exercise of its power as appropriate Government. So it is valid in law. The learned Solicitor General is not right in contending that the relevant factors for abolition of the contract labour system in the establishment of the appellant was not before the Central Advisory Board before its recommendation to abolish the contract labour system in the establishment of the appellant. The learned Attorney General has placed before us the minutes of the Board which do show the unmistakable material furnished do indicated that the work in all the establishments including those of the appellants, is of perennial nature satisfying all the tests engrafted in Section 10(2) of the Act. Accordingly, on finding the work to be of perennial nature, it had recommended and the Central Government had considered and accepted the recommendation to abolish the contract labour system in the aforesaid services. Having abolished it, the Central Government was denuded of its power under Section 10(1) to again appoint insofar as the above services of the Mobile Committee to go once over into the self-same question and the recommendations of the latter not to abolish the contract labour system in the above services and the acceptance thereof by the Central Government are without any legal base and, therefore, non est. The next crucial question for consideration is: whether the High Court was right in directing enforcement of the notification dated December 9, 1976 issued by the Central Government? Before advert to that aspect, it is necessary to consider the relevant provisions of the Act.

The Constitutionality of the Act was challenged in M/s. Gammon India Ltd. & Ors. v. Union of India & Ors. [(1974) 1 SCC 596] on the touchstone of the Fundamental Rights given by Articles 14, 15, 19(1)

(g) and of Article 265. The Constitution Bench elaborately considered the provisions of the Act and had held that the Act in Section 10 empower the Government to prohibit employment of contract labour. The Government, under that Section, has to apply its mind to various factors, before publishing the notification in the official Gazette prohibiting employment of contract labour in any process, operation or other work in any establishment. The words "other work in any establishment" were held to be important. The work in the establishment will be apparent from Section 10 (2) of the Act as incidental or necessary to the industry, trade, business, manufacture or occupation that is carried on in the establishment. The Government before notifying prohibition of contract labour work which is carried on in the establishment, will consider whether the work is of a perennial nature in that establishment or work is done ordinarily through regular workmen in that establishment. The words "work of an establishment" which are used in defining workmen as contract labour being employed in connected with the work of an establishment indicate that the work of the establishment there is the same as work in the establishment contemplated by Section 10 of the Act. The contractor undertakes to produce a given result for the establishment through contract labour. He supplies contract labour for any work of the establishment. The entire site is the establishment and belongs to the principal employer who has a right of supervision and control; he is the owner of the premises and the end product and from whom the contract labour receives its payment either directly or through a contractor. It is the place where the establishment intends to carry on its business, trade, industry, manufacture, occupation after the construction is complete. Accordingly, the constitutionality of the Act was upheld.

The appalling conditions of contract labour who are victims of exploitation have been engaging the attention of various committees for a long time and in furtherance of the recommendations, the Act was enacted to benefit, as a welfare measure, viz., provisions for canteens, rest room, facilities for supply of drinking water, latrines, urinals, first aid facilities and amenities for the dignity of human labour, are in larger interests of the community. Legislature is the best judge to determine what is needed as the appropriate condition for employment of contract labour. The legislature is guided by the needs of the general public in determining the reasonableness of such requirements under the Act and the rules made thereunder. Suffice it would, for the purpose of this case, to concentrate on the definition of "contract labour" under Section 2(b), "contractor" under Section 2(c), "establishment" under Section 2(e), "principal employer" under Section 2(g), "wages" under Section 2(h) and of "workman" under Section 2(i). Under Section 2(c), "contractor" in relation to an establishment, means a person who undertakes to produce a given result for the establishment, other than a mere supply of goods or articles of manufacture to such establishment, through contract labour of who supplies contract labour for any work of the establishment and includes a sub-contractor. "Establishment", under Section 2(e), means any office or department of government or of a local authority, or any place where any industry, trade, business, manufacture or occupation is carried on. "Principal employer", under Section 2(g), means, in relation to any office or department of the Government or a local authority, as the case may be may specify in this behalf; and in a factory, it means the owner or occupier of the factory and where a person has been named as the manager of the factory under the Factories Act, 1948, the person so named; in a mine, it means the owner or agent of the mine and where a person has been named as the manager of the mine, the person so named; and in any other establishment, any person responsible for the supervision and control of the establishment, is the principal employer. "Workman", under Section 2(i), means any

person employed in or in connection with the work of any establishment to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be express or implied, but does not include any such person categorised in clauses (a) to (e) which are not relevant for the purpose of this case.

Every principal employer of an establishment under the Act is enjoined under Section 7 to apply for registration and have it registered thereunder. The registration is subject to the revocation under Section 8 on fulfilment of certain conditions enumerated therein. The effect of non- registration is enumerated in Section 9 in the mandatory language that no principal employer shall employ contract labour in the establishment after the specified period. Section 12 enjoins similar obligations on the contractor for registration, with mandatory language, that from the appropriate date, no contractor to whom the Act applies, shall undertake or execute any work through contract labour except under and in accordance with the licence issued in that behalf by the licensing officer.

Licence is granted under Section 13 and revocation, suspension and amendment thereof have been provided, in Section 14 with which we are not concerned in this case. The welfare measures mandated in Chapter V be complied with by every establishment. Under Section 21, every principal employer shall nominate his representative to be present at the time of disbursement of wages by the contractor and the contractor should be responsible for payment of wages to every such workman. Representative of the principal employer should ensure and certify that wages were paid in the prescribed manner. In case of default committed by the contractor in paying wages within the prescribed period or for short payment, the principal employer period or for short payment of wages in full or the unpaid balance due, as the case may be, to the contract labour employed by the recover the amount so paid from the contractor either by deduction from any amount payable to the contractor under any contract or as a debt payable by the contractor.

Section 10 prohibits employment of contract labour with a non obstante clause. The appropriate Government, after consultation with the Central Advisory Board or, as the case may be, State Board Prohibit, by notification published in the official Gazette, employment of contract labour in any establishment. Before issue of any such notification, the appropriate Government is enjoined to have regard to the conditions of work and benefits provided for the contract labour in the establishment and other relevant factors, such as -(a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment; (b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment;

(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto; and

(d) whether it is sufficient to employ considerable number of whole-time workmen. Section 20 makes it mandatory to provide the amenities of welfare and health facilities enjoined in Sections 16 and 19. The expenses incurred in that behalf may be recovered, by the principal employer, from the contractor. The penalty for non-compliance is provided in Sections 23 and 24 of the Act. Offences by

companies are dealt with under Section 25. For the prosecution of non-cognisable offences, complaint is to be laid with previous sanction of the Inspector in writing. Section 27 prescribes limitation for laying prosecution.

Rules have been prescribed in that behalf for effective enforcement of the Act. Forms and terms and conditions of licence have been prescribed in Rules 21 to 25. Chapter V of the Central Rules deals with welfare and health of the contract labour. Chapter VI deals with payment of wages to the workmen and the manner of payment has also been provided therein. Form III referred to in Rule 18 (3) envisages, among others, name and address of the contractor, nature of work in which contract labour is to be employed on any day, maximum number of contract labour to be employed on any date, probable duration of employment of contract labour etc. The licence issued in Form IV under Rule 21(1) indicates the particulars envisaged in Forms III. Form XIII under Rule 75 requires information as to the list of workmen employed by the contractor and also to be specified, the name and surname of the workmen, Sl. No., age and sex, father's/husband's name, nature of employment, designation, permanent home address of the workmen, date of commencement of employment, signature/thumb impression of workmen, date of termination. Certificate of completion of the work has been provided in form XV as per Rule 77, Forms XVII as per Rule 78 (1) (a) (i) is Register of wages and provides the particulars, apart from other details, number of days worked, units of work done, daily-rate of wages/piece rate etc. Register of wages-cum-Muster Roll is prescribed in Form XVIII referred to in Rule 78 (i) (a) (i) and requires details in particular as to daily attendance, units worked, designation/nature of work, total attendance, units of work done, overtime wages etc. It would thus be seen that before the Central or State Advisory Board advises the appropriate Government under Section 10(1) on the issue whether or not to abolish the contractor labour system, it has before it all the relevant factual material and the appropriate Government after the receipt and consideration of the recommendations and the material and then takes decision.

The pivotal question for consideration is : on abolition of the contract labour by publication of a notification in the Gazette under sub-section (1) of Section 10, what would be the consequences ? It is seen that so long as the contract labour system continues, the principal employer is enjoined to ensure payment of wages to the contract labour and to provide all other amenities envisaged under the Act and the Rules including provisions for food, potable water, health and safety and failure thereof visits with penal consequences.

The 42nd Constitution (Amendment) Act, 1976, brought explicitly in the Preamble socialist and secular concepts in sovereign democratic republic of Bharat with effect from January 3, 1977. The Preamble was held as part of Constitution in *His Holiness Kesavananda Bharati Sripadagalavaru vs. State of Kerala* [1973 Supp. SCR 1]. The provisions of the Constitution including Fundamental Rights are alterable but the result thereof should be consistent with the basic foundation and the basic structure of the Constitution. Republican and democratic form of Government, secular character of the Constitution, separation of powers, dignity and freedom to the individual are basic features and foundations easily discernible, not only from the Preamble but the whole scheme of the Constitution. In *S.R. Bommai vs. Union of India* [(1994) 3 SCC 1], it was held that Preamble of the Constitution is the basic feature. Either prior to 42nd Constitution (Amendment) Act, or thereafter, though the word "socialist" was not expressly brought out separately in the main parts of the

Constitution, i.e., in the Chapters on Fundamental Rights or the Directive Principles, its seed-beds are right to participation in public offices, right to seek consideration for appointment to an office or post; right to life and right to equality which would amplify the roots of socialism in democratic form of Government; right to equality of status and of opportunity, right to equal access to public places and right to freedoms, protective discrimination, abolition of untouchability, its practice in any form an constitutional offence, as guaranteed in Part III & IV i.e., Fundamental Rights and Directive Principles which to every citizen are Fundamental Rights. In *Minerva Mills Ltd. & Ors. vs. Union of India & Ors.* [(1981 (1) SCR 206 = AIR 1980 SC 1789)], the Constitution Bench had held that the Fundamental Rights and the Directive Principles are two wheels of the chariot in establishing the egalitarian social order. Right to life enshrined in Article 21 means something more than survival of animal existence. It would include the right to live with human dignity [vide *Francis Coralie Mullin vs. The Administrator, Union Territory of Delhi & Ors.* (AIR 1981 SC 746 para 3); *Olga Tellis vs. Bombay Municipal Corporation vs. D.T.C. Mazdoor Congress* [AIR 1991 SC 101 para 223, 234 and 259 = (1991) supp. 1 SCC 600]. Right to means of livelihood and the right to dignity, right to health, right to potable water, right to pollution free environment and right to life. Social justice has been held to be Fundamental right in *Consumer Education and Research Centre vs. Union of India* [(1995) 3 SCC 42 = 1995 (1) SCALE 354 at 375]. The Directive Principles in our Constitution are fore-runners of the U.N.O. Convention on Right to Development as inalienable human right and every persons and all people are entitled to participate in, contribute to and enjoy economic, social cultural and political development in which all human right, fundamental freedoms would be fully realised. It is the responsibility of the State as well as the individuals, singly and collectively, for the development taking into account the need for fuller responsibility for the human rights, fundamental freedoms as well as the duties to the community which alone can ensure free and complete fulfilment of the human being. They promote and protect an appropriate social and economic order in democracy for development. The State should provide facilities and opportunities to ensure development and to eliminate all obstacles to development by appropriate economic and social reforms so as to eradicate all social injustice. These principles are imbedded, as stated earlier, as integral part of our Constitution in the Directive Principles. Therefore, the Directive Principles now stand elevated to inalienable fundamental human rights. Even they are justiciable by themselves. Social and economic democracy is the foundation for stable political democracy. To make them a way of life in the Indian polity, law as a social engineer, is to create just social order, remove the inequalities in social and economic life and socio-economic disabilities with which people are languishing; and to require positive opportunities and facilities as individuals and groups of persons for development of human personality in our civilised democratic set up so that every individual would strive constantly to rise to higher levels. Dr. Ambedkar, in his closing speech in the Constituent Assembly on November 25, 1949, had lucidly elucidated the meaning of social and political democracy. He stated that it means a way of life which recognised liberty, equality and fraternity as the principles of life. They form an integral union. One cannot divorce from the other; otherwise it would defeat the very purpose of democracy. Without equality, liberty would produce supremacy of the few over the many equality without liberty would kill the initiative to improve the individual's excellence, political equality without socio-economic equality would run the risk of democratic institutions to suffer a set back. Therefore, for establishment of just social order in which social and economic democracy would be a way of life inequalities in income should be removed and every endeavour be made to eliminate inequalities in status through the rule of law. "Socialism"

brought into the preamble and its sweep elaborately was considered by this Court in several judgments. It was held that the meaning of the word "socialism" in the Preamble of the Constitution was expressly brought in the Constitution to establish an egalitarian social order through rule of law as its basis structure. In *Minerva Mills Ltd. case*, the Constitution Bench had considered the meaning of the word "socialism" to crystalise a socialistic state securing to its people socio-economic justice by interplay of the Fundamental rights and the Directive Principles. In *D.S. Nakara & Ors. v. Union of India* [(1983) 2 SCR 165], another Constitution Bench had held that the democratic socialism achieves socio- economic revolution to end poverty, ignorance, disease and inequality of opportunity. The basic framework of socialism was held to provide security from cradle to grave. The less equipped person shall be assured to decent minimum standard of life to prevent exploitation in any form, equitable distribution of national cake and to push the disadvantaged to the upper ladder of life. It was further held that the Preamble directs the centers of power, the Legislative, Executive and Judiciary, to strive to shift up from a wholly feudal exploited slave society to a vibrant, throbbing socialist welfare society which is a long march; but during the journey to the fulfilment of goal, every State action, whenever taken, must be directed and must be so interpreted as to take the society towards that goal. Dr. V.K.R.V Rao, one of the eminent economists of India in his "Indian Socialism - retrospect and prospect" has stated that equitable distribution of the income and maximisation of the production is the object of socialism under the Constitution to solve the problems of unemployment, low income and mass poverty and to bring about a significant improvement in the national standard of living. he also stated that to bring about socialism, deliberate and purposive action on the part of the State, in regard to production as well as distribution and the necessary savings, investment, use of human skills and use of science and technology should be brought about. Changes in property relations, taxation, public expenditure, education and the social services are necessary to make a socialist State under the Constitution, a reality. It must also bring about, apart from distribution of income, full employment as also increase in the production. In *State of Karnataka v. Shri Ranganatha Reddy & Anr.* [(1978) 1 SCR 641], a Bench of nine judges of this Court, considering the nationalisation of the contract carriages, had held that the aim of socialism is the distribution of the material resources of the community in such a way as to subserve the commonhood. The principle embodied in Article 39(b) of the Constitution is one of the essential directives to bring about the distribution of the material resources. It would give full play to the distributive justice. It fulfills the basic purpose of re- structuring the economic order. Article 39(b), therefore, has a social mission. it embraces the entire material resources of the community. Its task is to distribute such resources. Its goal is to undertake distribution as best to subserve the common good. In *Sanjeev Coke Manufacturing Co. v. Bharat Cooking Coal Ltd. & Anr.* [(1983) 1 SCR 1000], another Constitution Bench interpreted the word "socialism" and Article 39(b) of the Constitution and had held that the broad egalitarian principle of economic justice was implicit in every Directive Principle. The law was designed to promote broader egalitarian social goals to do economic justice for all. The object of nationalisation of mining was to distribute nation's resources. In *State of Tamil Nadu etc. v. L. Abu Kavur Bai & Ors. etc.* [(1984) 1 SCR 725], the same interpretation was given by another Constitution Bench upholding nationalisation of State Carriages and Contract Carriages (Acquisition) Act. Therefore, all State actions should be such to make socio-economic democracy with liberty, equality and fraternity, a reality to all the people through democratic socialism under the rule of law.

In *Consumer Education & Research Centre & Ors. v. Union of India & Ors.* [(1995) 3 SCC 42], a Bench of three Judges (to which one of us, K. Ramaswamy, J., was a member) had to consider whether right to health of workers in the Asbestos industries is a fundamental right and whether the management was bound to provide the same? In that context, considering right to life under Article 21, its meaning, scope and content, this Court had held that the jurisprudence of personhood or philosophy of the right to life envisaged under Article 21 enlarges its sweep to encompass human personality in its full blossom with invigorated health which is a wealth to the workman to earn his livelihood, to sustain the dignity of person and to live a life with dignity and equality. The expression "life" assured in Article 21, does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard of living, hygienic conditions in the workplace and leisure.

Right to health and medical care to protect health and vigour, while in service or after retirement, was held a fundamental right of a worker under Article 21, read with Articles 39(e), 41, 43, 48 - A and all related constitutional provisions and fundamental human rights to make the life of the workman meaningful and purposeful with dignity of person. The right to health of a worker is an integral facet of meaningful right to life, to have not only a meaningful existence but also robust health and vigour without which the worker would lead a life of misery. Lack of health denudes him of his livelihood. Compelling economic necessity to work in an industry exposed to health hazards, due to indigence for bread-winning for himself and his dependents, should not be at the cost of the health and vigour of the workman.

The Preamble and Article 38 of the Constitution envision social justice as the arch to ensure life to be meaningful and livable with human dignity. Jurisprudence is the eye of law giving an insight into the environment of which it is the expression. It relates the law to the spirit of the time and makes it richer. Law is the ultimate aim of every civilised society, as a key system in a given era, to meet the needs and demands of its time. Justice, according to law, comprehends social urge and commitment. The Constitution commands justice, liberty, equality and fraternity as supreme values to usher the egalitarian social, economic and political democracy. Social justice, equality and dignity of persons are cornerstones of social democracy. The concept of "social justice" which the Constitution of India engrafted, consists of diverse principles essential for the orderly growth and development of personality of every citizen. "Social justice" is thus an integral part of justice in the generic sense. Justice is the genus, of which social justice is one of its species. Social justice is a dynamic device to mitigate the sufferings of the poor, weak, dalits, tribals and deprived sections of the society and to elevate them to the level of equality to live a life with dignity of person. Social justice is not a simple or single idea of a society but is an essential part of complex social change to relieve the poor etc. From handicaps, penury to ward off distress and to make their life livable, for greater good of the society at large. In other words, the aim of social justice is to attain substantial degree of social, economic and political equality, which is the legitimate expectation and constitutional goal. Social security, just and humane conditions of work and leisure to workman are part of his meaningful right to life and to achieve self-expression of his personality and to enjoy the life with dignity. The State should provide facility and opportunities to enable them to reach at least minimum standard of health, economic security and civilised living while sharing according to their capacity, social and cultural heritage.

In a developing society like ours, steeped with unbridgeable and ever-widening gaps of inequality in status and of opportunity, law is a catalyst, rubicon to the poor etc, to reach the ladder of social justice. What is due cannot be ascertained by an absolute standard which keeps changing, depending upon the time, place and circumstance. The constitutional concern of social justice as an elastic continuous process is to accord justice to all sections of the society by providing facilities and opportunities to remove handicaps and disabilities with which the poor, the workmen etc, are languishing and to secure dignity of their person. The Constitution, therefore, mandates the State to accord justice to all members of the society in all facets of human activity. The concept of social justice embads equality to flavour and enliven the practical content of life. Social justice and equality are complementary to each other so that both should maintain their vitality. Rule of law, therefore, is a potent instrument of social justice to bring about equality in results. it was accordingly held that right to social justice and right to health were held to be Fundamental Rights. The management was directed to provide health insurance during service and at least 15 years after retirement and periodical tests protecting the health of the workmen.

In *LIC of India & Anr. v. Consumer Education & Research Centre & Ors.* [(1995) 5 SCC 482], considering the Life Insurance Corporation's right to fix the rates of premium, this court had held that the authorities or private persons or industry are bound by the directives contained in Part IV and the Fundamental Rights in Part III and the Preamble of the Constitution. The right to carry on trade is subject to the directives contained in the Constitution, the Universal Declaration of Human Rights, European Convention of Social, Economic and Cultural Rights and the Convention on Right to Development for Social Economic Justice. Social security is a facet of socio-economic justice to the people and a means to livelihood. In *Murlidhar Dayandeo Kesekar V. Vishwanath Pandu Barde & Anr.*[1995 supp (2) SCC 549] (to which two of us, K. Ramasway, and B.L. Hansaria JJ., were members), the question arose; whether the alienation of the lands assigned to Scheduled Tribes was valid in law ? In that context considering the Preamble, the Directive Principles and the Fundamental Rights including the right to life, this court had held that economic empowerment and social justice are Fundamental Rights to the tribes. The basic aim to the welfare State is the attainment of substantial degree of social, economic and political equalities and to achieve self-expression in his work as a citizen, leisure and social justice. The distinguishing characteristic of the welfare State is the assumption by community acting through the State and as its responsibilities to provide the means, whereby all its members can reach minimum standard of economic security, civilised living, capacity to secure social status and culture to keep good health. The welfare State, therefore, should take positive measure to assist the community at large to act in collective responsibility towards its member and should take positive measure to assist them to achieve the above. It was, therefore, held thus:

"Article 21 of the Constitution assures right to life. To make right to life meaningful and effective, this court put up expansive interpretation and brought within its ambit right to education, health, speedy trial, equal wages for equal work as fundamental rights. Articles 14, 15 and 16 prohibit discrimination and accord equality. The Preamble to the Constitution as a socialist republic visualises to remove economic inequalities and to provide facilities and opportunities for decent standard of living and to protect the economic interest of the weaker segments of the society, in



particular, Scheduled Castes i.e. Dalits and the Scheduled Tribes i.e. Tribes and to protect them from "all forms of exploitations". Many a day have come and gone after 26.1.1950 but no leaf is turned in the lives of the poor and the gap between the rich and the poor is gradually widening on the brink of being unbridgeable.

Providing adequate means of livelihood for all the citizens and distribution of the material resources of the community for common welfare, enable the poor, the Dalits and Tribes to fulfill the basic needs to bring about a fundamental change in the structure of the Indian society which was divided by erecting impregnable walls of separation between the people on grounds of caste, sub-caste, creed, religion, race, language and sex. Equality of opportunity and State thereby would become the bedrocks for social integration. Economic empowerment thereby is the foundation of make equality of status, dignity to person and equal opportunity a truism. The core of the commitment of the Constitution of the social revolution through rule of law lies in effectuation of the fundamental right directive principles as supplementary and complementary to each other. The Preamble, fundamental rights and directive principles - the trinity - are the conscience of the Constitution. Political democracy has to be stable. Socio-economic democracy must take strong roots and should become a way of life. The State, therefore, is enjoined to provide adequate means of livelihood to the poor, weaker sections of the society, the Dalits and Tribes and to distribute material resources of the community to them for common welfare etc".

It was accordingly held that right to economic empowerment is a fundamental right. The alienation of assigned land without permission of competent authority was held void.

In *R. Chandavarappa and Ors. v. State of Karnataka and Ors.* [(1995) 6 SCC 309] (to which two of us, K. Ramaswamy and B.L. Hansaria, JJ., were members) this Court was to consider whether the alienation of Government lands allotted to the Scheduled Castes was in violation of the Constitutional objectives under Article 39(b) and 46. It was held that economic empowerment to the Dalits, Tribes and the poor as a part of distributive justice is a Fundamental Right; assignment of the land to them under Article 39(b) was to provide socio-economic justice to the Scheduled Castes. The alienation of the land, therefore, was held to be in violation of the Constitutional objectives. It was held thus:

"In fact, the cumulative effect of social and economic legislation is to specify the basic structure.

Moreover, the social system shapes the wants and aspirations and its citizens come to have. It determines in part the sort of persons they want to be as well as the sort of persons they are. Thus an economic system is not only an institutional device for satisfying existing wants and needs but a way of creating and fashioning wants in the future. The economic empowerment, therefore, to the poor, dalits and tribes as an integral constitutional scheme of socio-economic democracy is a way of life of political democracy. Economic empowerment is, therefore, a basic human right and a

fundamental right as part of right to live, equality and of status and dignity to the poor, weaker sections, dalits and tribes. The prohibition from alienation is to effectuate the constitutional policy of economic empowerment under Article 14, 21, 38, 39 and 46 read with the Preamble of the Constitution. Accordingly refusal to permit alienation is to effectuate the constitutional policy. the alienation was declared to be void under sections 23 of the Contract Act being violative of the constitutional scheme of economic empowerment of accord equality of status, dignity of persons and economic empowerment."

It was further held that providing adequate means of livelihood for all the citizens and the distribution of the material resources of the community for common welfare, enable the poor, the dalits and the tribes, to fulfill the basic needs to bring about the fundamental change in the structure of the Indian society. Equality of opportunity and status would thereby become the bedrocks for social integration. Economic empowerment is, therefore, a basic human right and fundamental right as apart of right to life to make political democracy stable. Socio-economic democracy must take strong route and become a way of life. The state, therefore, is enjoined to provide adequate means of livelihood to the poor, weaker sections of the society, the dalits and the tribes and distribute material resources of the community to them for common welfare. Justice is an attribute of human conduct and rule of law is indispensable foundation to establish socio-economic justice. The doctrine of political economy must include interpretation for the public good which is based on justice that would guide the people when questions of economic and social policy are under consideration. In *Peerless General Finance and Investment Co. Ltd. & Anr. v. Reserve Bank of India* [(1992) 2 SCC 343 at 389 para 55], this court had held that stability of the political democracy hinges upon socio- economic democracy. Right to development is one of the important facets of basic human rights. Right to self- interest is inherent in right to life. Mahatma Gandhiji, the Father of Nation said that "every human being has a right to live and, therefore, to find the wherewithal to feed himself and where necessary to clothe and house himself". In *D.K. Yadav v. J.M.A. Industries Ltd.* [(1993) 3 SCC 259], the question was whether the workman for absence in service for 7 days can be removed without an enquiry. In that context a bench of three judges had held thus:

"Article 21 clubs life with liberty, dignity of person with means of livelihood without which the glorious contents of dignity of person would be reduced to animal existence. When right to life is interpreted in the light of the colour and content of procedure established by law must be in conformity with the minimum fairness and processual justice, it would relieve legislative callousness despising opportunity of being heard and fair opportunities of defence. Article 14 has pervasive processual potency and versatile quality, equalitarian in its soul and allergic to discriminatory dictates. Equality is the antithesis of arbitrariness".

In *Dalmia Cement (Bharat) Ltd. & Anr. vs. Union of India & Ors. etc.* [JT 1996 (4) SC 555], a Bench of three judges (to which one of us, K. Ramaswamy, J., was a member) was to consider the constitutionality of Jute Packing Material Act, 1987. The law was made to protect the agriculturists cultivating jute and jute products. In that context it was held thus:

"thus agriculturists have fundamental rights to social justice and economic empowerment.

The Preamble of the Constitution is the epitome of the basic structure built in the Constitution guaranteeing justice - social, economic and political - equality of status and of opportunity with dignity of person and fraternity.

To establish an egalitarian social order, the trinity, the Preamble, the Fundamental Rights in Part III and Directive Principles of State Policy (for short, 'Directives') in Chapter IV of the Constitution delineated the socio-economic justice. The word justice envision in the Preamble is used in broad spectrum to harmonise individual right with the general welfare of the society. The Constitution is the supreme law. The purpose of law is realisation of justice whose content and scope vary depending upon the prevailing social environment. Every social and economic change causes change in the law. In a democracy governed by rule of law, it is not possible to change the legal basis of socio-

economic life of the community without bringing about corresponding change in the law. In interpretation of the Constitution and the law, endeavour needs to be made to harmonise the individual interest with the paramount interest of the community keeping pace with the realities of every changing social and economic life of the community envisaged in the Constitution. Justice in the Preamble implies equality consistent with the competing demands between distributive justice with those of cumulative justice. Justice aims to promote the general well-being of the community as well as individual's excellence. The principal end of society is to protect the enjoyment of the rights of the individuals subject to social order, well-

being and morality. Establishment of priorities of liberties is a political judgment.

Law is the foundation on which the potential of the society stands.

Law is an instrument for society stands. Law is an instrument for social change as also defender for social change.

Social justice is the comprehensive form to remove social imbalances by law harmonising the rival claims or the interests of different groups and/or sections in the social structure or individuals by means of which alone it would be possible to build up a welfare State. The idea of economic justice is to make equality of status meaningful and the life worth living at its best removing inequality of opportunity and of status - social, economic and political.

Law is the ultimate aim of every civilised society, as a key system in a given era, to meet the needs and demands of its time. Justice, according to law, comprehends social urge and commitment.

Justice, liberty, equality and fraternity are supreme constitutional values to establish the egalitarian social, economic and political democracy, Social justice, equality and dignity of person are cornerstones of social democracy. Social justice consist of diverse principles essential for the orderly growth and development of personality of every citizen.

Justice is its facet, a dynamic device to mitigate the sufferings of the disadvantaged and to eliminate handicaps so as to elevate them to the level of equality to live life with dignity of person. Social justice is not a simple or single idea of a society but it an essential part of complex social change to relieve the poor etc. From handicaps, penury, to ward the off from distress and to make their lives livable for greater good of the society at large. Social justice, therefore, gives substantial degree of social, economic and political equality, which is the constitutional right of every citizen. In para 19, it was further elaborated that social justice is one of the disciplines of justice which relates to the society. What is due cannot be ascertained by absolute standard which keeps changing depending upon the time, place and circumstances.

The constitutional concern of social justice, as an elastic continuous process, is to transform and accord justice to all sections of the society by providing facilities and opportunities to remove handicaps and disabilities with which the poor etc, are languishing. It aims to secure dignity of their person. It is the duty of the State of accord justice to all members of the society in all facts of human activity. The concept of social justice embeds equality to flavour and enlivens practical content of life. Social justice and equality are complementary to each other so that both should maintain their vitality. Rule of law, therefore, is a potent instrument of social justice to bring about equality in result.

Social and economic justice in the context of our Indian Constitution must, therefore, be understood in a comprehensive sense go remove every inequality to all citizens in social as well as economic activities and in every part of life. Economic justice means the abolition of those economic conditions which ultimately result in the inequality of economic values between men. It means to establish a democratic way of life built upon socio-economic structure of the society to make the rule of law dynamic.

The Fundamental Rights and the Directive are, therefore, harmoniously be interpreted to make the law a social engineer to provide flesh and blood to the dry bones of law. The Directives would serve the Court as a beacon light to interpretation. Fundamental Rights are rightful means to the end, viz., Social and economic justices provided in the Directives and the Preamble. The Fundamental Rights and the Directives establish the trinity of equality, liberty and fraternity in an egalitarian social order and prevent exploitation.

Social justice, therefore, forms the basis of progressive stability in the society and human progress.

Economic justice means abolishing such economic conditions which remove the inequality of economic value between man and man, concentration of wealth and means of production in the hands of a few and are detrimental to the vast.

Law, therefore, must seek to serve as a flexible instrument of socio-

economic adjustment to bring about peaceful socio-economic revolution under rule of law. The Constitution, the fundamental supreme lex distributes the sovereign power between the Executive, the Legislature and the Judiciary. The Court, therefore, must strive to give harmonious

interpretation to propel forward march and progress towards establishing an egalitarian social order."

The validity of the Act was accordingly upheld. It is already seen that in D.T.C's case (supra), this Court had held that right to life to a workman would include right to continue in permanent employment which is not a bounty of the employer nor can its survival be at the volition and mercy of the employer. Income is the foundation to enjoy many Fundamental right and when work is the source of income, the right to work would become as such a fundamental right. Fundamental Right can ill-afford to be consigned to the limbo of undefined premises and uncertain application. In *Bandhu Mukti Morcha vs. Union of India* [(1984) 3 SCC 161], this Court had held that the right to life with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and that opportunities and facilities should be provided to the people. In *Olga Tellis's case*, this court had held that the right to livelihood is an important facet of the right to life . Deprivation of the means of livelihood would denude the life itself. In *C.E.S.C Ltd. & Ors. vs. S.C. Bose & Ors.* [(1992) 1 SCC 441], it was held that the right to social and economic justice is a fundamental right. Right to health of a worker is a fundamental right. The right to live with human dignity at least with minimum sustenance and shelter and all those rights and aspects of life which would o to make a man's life complete and worth living, would form part of the right to life. Enjoyment of life and its attainment - social, cultural and intellectual - without which life cannot be meaningful, would embrace the protection and preservation of life guaranteed by Article 21. In *life Insurances Corporation case*, a Bench of two Judge had held that right to economic equality is a fundamental right. In *Dalmia Cement Bharat Ltd. case*, right to economic justice was held to be a fundamental right. Right to shelter was held to be a fundamental right in *Olga Tellis's case*; *P.G. Gupta vs. State of Gujarat & ors*, [(1995) Supp.(2) SCC 182]; *M/s. Shantisar Builders vs. Narayan Khimlal Totame & Ors.* [(1990) 1 SCC 520]; *Chameli Singh & ors. vs. State of U.P. & Anr.* [(1996) 2 SCC 549] etc.

It would, thus, be seen that all essential facilities and opportunities to the poor people are fundamental means to development, to live with minimum comforts, food, shelter, clothing and health. Due to economic constraints, though right to work was not declared as a fundamental right, right to work of workman, lower class, middle class and poor people is means to development and source to earn livelihood. thought, right to employment cannot, as a right, be claimed but after the appointment to a post or an office, be it under the State, its agency instrumentality, jurisdic person or private interpreneur it is required to be dealt with as per public element and to act in public interest assuring equality, which is a genus of Article 14 and all other concomitant rights emanating therefrom are species to make their right to life and dignity of person real and meaningful. The democracy offers to everyone as doer, an exerter and developer and enjoyer of his human capacities, as stated by Justice K.K. Mathew, in his "The Right to Equality and Property under the Indian Constitution" at page 47-48. These exercises of human capacity require access to the material resources and also continuous and sufficient intake of material means to maintain human energy. Lack of access to the material resources is an impediment to the development of human personality. This impediment, as a lack of access to means of labour, if we take labour i its broadest sense of human resources, requires removal only under the rule of law. To the workmen, right to employment is the property, source of livelihood and dignity of person an means of enjoy life, health

and leisure. Equality, as a principle of justice, governs leisure, the distribution of material resources including right to employment. Private property ownership has always required special justifications and qualifications to reconcile the institution with the public interest. It requires to thrive and, at the same time, be responsive to social weal and welfare. St. Thomas Aquinas, in his "Selected Political Writings" (1948 Edn.) at page 169, has stated that the private rights and public needs are to be balanced to meet the public interest "the common possession of things is to be attributed to natural law, not in the sense that natural law decrees that all things are to be held in common and that there is to be no private possession, but in the sense that there is no distinction of property on the grounds of natural law, but only by human agreement, and this pertains to positive law, as we have already shown. Thus, private property is not opposed to natural law, but is an addition to it, devised by human reasons. If, however, there is such urgent and evident necessity that there is clearly an immediate need to necessary sustenance, if, for example, a person is in immediate danger of physical privation, and there is no other way of satisfying his need, then he may take what is necessary from another person's goods, either openly or by stealth. Nor is this strictly speaking fraud or robbery." Property is a social institution based upon an economic need in a society organised through division of labour, as propounded by Dean Rosco Pound in his "An Introduction to Philosophy of law" (1954 Edn.) page 125, at

129. M.R. Cohen in his "Property and Sovereignty" [13 Cornell Law Quarterly page 8 at 12 had stated that " the principle of freedom of personality certainly cannot justify a legal order wherein a few can, by virtue of their legal monopoly over necessities, compel others to work under degrading and brutalizing condition." If there is no property or of one does not derive fruits and means of one's labour, no one would have any incentive to labour in the broader sense, Social progress receives set back without equality of status, fraternity would not be maximised. Edward Kent in his "Property, Power and Authority", Prof. Herald Laski in his "Congress Socialist" dated April 11, 1936, had stated that "those who know the normal life of the poor will realise enough that without economic security, liberty is not worth living". Brooklyn Law Review page 541 at 547 has stated that "In modern translation, public officers and others who promulgate policies designed to increase unemployment or to deny or diminish benefits to the poor are accountable for the consequences to free human personality." It would, thus, be clear that in a socialist democracy governed by the rule of law, private property, right of the citizen for development and his right to employment and his entitlement for employment to the labour, would all harmoniously be blended to serve larger social interest and public purpose.

Mahatma Gandhiji, the Father of the Nation, in his book "Socialism of my concept", has said thus:

"To a people famishing and idle, the only acceptable form in which God can dare appear is work and promise of food as wages. God created man to work for his food, and said that those who ate without work were thieves. Eighty per cent of India are compulsory thieves half the year. Is it any wonder if India has become one vast prison?" Again, he stressed:

No one has ever suggested that grinding pauperism can lead to anything else than moral degradation. Every human being has a right to live and, therefore, to find the

wherewithal to feed himself and, where necessary, to clothe and society the securing of one's livelihood should be, and is found to be the easiest thing in the world. Indeed, the test of orderliness in a country is not the number of millionaires it owns, but the absence of starvation among its masses.

Working for economic equality means abolishing the eternal conflict between capital and labour. it means the levelling down of the few rich in whose hands is concentrated the bulk of the nations's wealth on the one hand, and the levelling up of the semi-starved, naked millions of the other. A non-violent system of Government is clearly an impossibility so long as the wide gulf between the rich and the hungry millions persists. The contrast between the palaces of new Delhi and the miserable hovels of the poor labouring class nearby, cannot last one day in free India in which the poor will enjoy the same power as the richest in the land. A violent and bloody revolution is a certainty one day, unless there is voluntary abdication of riches and the power that riches give a sharing them for the common good".

Pandit Jawahar Lal Nehru, the architect of social and economic planned democracy, in this "Independence and After That" (Collection of Speeches 1946-49) Publication Division, Government of India 1949 Edn, at page 28, had stated that social equality in the widest sense and equality of opportunity for every one, every man and woman must have the opportunity to develop to the best of his or her ability. However, Merit must come from ability and hard work and not because of cast of birth or riches. Social equality would develop the sense of fraternity among the members of a social groups where each would consider the other as his equal, no higher or lower. A society, which does not treat each of its members as equals, forfeits its right to being called a democracy. All are equal partners in the freedom. Every one of our ninety four hundred million people must have equal right to opportunities and blessings that freedom of India has to offer. To bring freedom in a comprehensive sense to the common man, material resources and opportunity for appointment be made available to secure socio-economic empowerment which would ensure justice and fullness of life to workmen, i.e., every man and woman. In "Beyond Justice" by Agnes Heller at page 80, the distribution of material goods, he had stated on distributive justice thus:

"The distribution of material goods had always been of concern in images and theories of justice, but, even when the issue was given the highest importances, it was subjected to and understood within a general theory of justice, and addressed within the framework of a complete socio-political concept of justice. As we have seen, in the prophetic concept of justice the misery of the poor called for divine retribution, since alleviating misery was believed to be a matter not of optional charity but of moral duty, To neglect this duty was to sin, to breach the divine laws. Plato proposed the abolition of private property for the caste of guardians in order to make the Republic as a whole just. Aristotle, who coined the term 'distributive justice', recommended a relative equality of wealth - neither too much nor too little, but 'medium wealth' - as a condition of the good life of the good citizen and the good city.

Even Rousseau., the most egalitarian philosopher in respect of distribution, subjected the solution of this problems to the general patterns of an socio- political concept of justice. Locke did not completely break with this longstanding tradition either. As we have seen, he contributed to the emergence of the concept 'retributive justice' rather than 'distributive justice. However, he had already presented a sophisticated theory legitimizing inequality in property ownership, a theory deriving property from work. I have mentioned that Locke did not support the idea 'to each according to his entitlement', for he but 'entitlement' into the 'to each category, whereas the 'according to category was defined by 'work' (mixing work and nature). But Locke never claimed that entitlement was the main issue, let alone the only issue of justice. Humane is undoubtedly the founding father of that branch of socio - political justice now called 'distributive'. He even claimed that property and property alone is the subject matter of justice. He asserted too that retribution (negative sanctions) in the suspension of justice for the sake of social utility: 'When any man, vein in political society, renders himself by his crimes, obnoxious of the public, he is punished by the law in his goods and person; that is, the ordinary rules of justice are, with regard to him suspended for a moment.

Humane also deduced justice from 'public utility'. Inequality in property ownership is just because it is useful. We can imagine two cases - and extreme cases- where property (inequality in property ownership) qua justice loses its social usefulness: the situation of absolute abundance and the situation of absolute scarcity. In the former, property is useless, redundant because, if all needs can be satisfied, we are beyond justice. In the latter situation property rules are violable, thus justice must be suspended. Yet we live in a situation of limited abundance (or limited scarcity). This is Humane the concept 'justice' reduces to the idea 'to reach according to his property entitlement'; all other uses of the notion 'justice' are seen as relating to the 'suspension of justice' ) although the term 'equity' can remain relevant in these other contexts). Humane, an extremely sincere man, did not shirk from facing proposal alien to his own. He stated, nature is so liberal to mankind, that. were all her presents equally divided among the species, and improved by art and industry, every individual would enjoy all the necessities, and even most of the comforts of life. It must also be confessed, that, wherever we depart from this equality, we rob the poor of more satisfaction than we add to the rich."

Justice K.K. Mathew in his "Democracy Equality and Freedom" at page 55 has, therefore, stated that the singlemost important problem in constitutional law for years to come in this court will be how to implement the Directive Principles and at the same time give full play to the Fundamental Right. It is only by implementing the Directive Principle that distributive justice will be achieved in the society. Justice, as Aristotle said, "is the bond of men in society" and "States without justice" are, as St. Augustine said, "robber-bands".

In Keshvanand Bharti's case, Jaganmohan Reddy, J. had held that "what is explicit in the Constitution is that there is a duty on the courts to interpret the Constitution and the laws to



further the Directive Principles which under Article 37 are fundamental in the governance of the country". The majority had held in favour of the way for the implementation of the Directive Principles under rule of law. Justice Palekar, in particular had laid emphasis on social and economic justice to make fundamental Rights a reality.

Coming to the meaning of "regulation" under the Act, in Blacks law Dictionary (sixth edition) at page 1286 the word "regulation" is defined as "the act of regulating; a rule or order prescribed for management or government; a regulating principle; a precept. Rule or order prescribed by superior or competent authority relating to action of those under its control". In Corpus Juris Secunderon (Vol.76) at page 612, the power to regulate carries with it full power over the thing subject to regulation and in the absence of restrictive words, the power must be regarded as plenary or the interest of public. It has been held to contemplate or employ the continued existence of the subject matter. In "Craze on Statute Law" (7th Edition) at page 258, it is stated that if the legislation enables something to be done, it gives power at the same time "by necessary implication, to do everything which is indispensable for the purpose of carrying out the purposes in view". In D.K.V. Prasada Rao & Ors. vs. The Government of Andhra Pradesh represented by its secretary, Home Department Secretariat Buildings, Andhra Pradesh Hyderabad & Anr. [(1983) 2 AWR 344 - AIR 1984 AP], a Division Bench of the Andhra Pradesh High Court, (to which one of us, K. Ramaswamy, J., was a member) had to consider the question elaborately whether the power to regulate cinematograph Act and Andhra Pradesh Cinematograph Regulation would include power to fix rates of admission under the cinema/theaters. Though there was no specific power under the Act or the Regulation to fix rates of admission, it was held at page 360 that "power to regulate would include power to fix the rate of admission into the cinema/theaters". Lord Justice Hale of England about three centuries ago in his treatise "De Portibus Moris" reported in Harg law tracts 78 had stated that "when the private property is affected with a public interest, it ceases to be "juris privati" only and it becomes clothed with a public interest when used in a manner to make it of public consequence and affect the community at large; and so using it, the owner grants to the public an interest in that use, and must submit to be controlled by the public for common good". This Statement was quoted with approval by the Supreme court of United States of America in 1876 in leading judgment, *Munn vs the people of Illinois* [94 US 115]. Justice Waite dealing with question whether the legislature can fix the rates for storage of grains in private warehouses by a statute of 1871 when its interpretation had come up for consideration of right to property and its enjoyment and of the public interest, it was held that "under such circumstances it is difficult to see why, if the common carrier or the miller, or the ferrymen or the innkeeper or the wharfinger or the baker, or the cartmen, or the chakney-coachman, pursues a public employment and exercise "a sort of public office," these plaintiffs in error do not. They stand, to use again the language of their counsel, in the very "gateway of commerce," and take toll from all who pass. Their business "most certainly tends to be a common charge and has become a thing of public interest and use." Therein, there is a specific observation which is apposite to the facts in this case. It was held that the statute simply extends the law so as to meet this new development of commercial progress. There is no attempt to compel the owners to grant the public an interest in their property, but the Act declares their obligations, if they use it in the particular manner. It is immaterial whether the plaintiffs therein had built their warehouses and established their business before the regulation was made. It was held that after, the regulation has come into force, they are enjoined to abide by the regulation to carry on the business. This Court had

approved the ratio in Prasadrao's case; when it was followed by Karnataka High Court against which an appeal came to be filed and the power to regulate rates of admission into cinema/theaters was upheld by this court.

In *Horatio J. Olcott vs. County Board of Supervisors of Fond Du Lac County* [21 L. Ed. 382 at 388], the Supreme Court of United States of America had held that whether the railroad is a private or a public one, the ownership thereof is not material that the owners may be private company but they are compellable to permit the public to use their works in the manner in which such work can be used. In *John D. Graham, Commissioner, Department of Public Welfare, State of Arizona vs. Carmen Richardson etc.* [29 L.Ed. 2nd 534], the question was whether the respondent alien in Arizona will be denied of welfare benefits offending 14th Amendment to the American Constitution. Interpreting 14th Amendment, the Supreme court of United States of America had held that the word "person" in the context of welfare measures encompasses lawfully resident aliens as well as citizen of the United States and both citizen and alien are entitled to the equal protection of the laws of the state in which they reside. The power to deny the welfare benefit was negated by judicial pronouncement. In *Grace Marsh vs. State of Alabama* [90 L.Ed. 265], when the appellant was distributing pamphlets in privately owned colony, he was convicted of the offence of trespass on Alabama Statute. On writ of certiorary, the Supreme Court of United States of America deciding the right to pass and repass and the right of freedom of expression and equality under 14th amendment, had held by majority that the corporate's right to control the inhabitants of the colony is subject to regulation but the ownership does not always mean absolute denomination. The more an owner, for his advantage, opens up his property in use by public in general, the more do his right become circumscribed by statutory and constitutional rights of those who use it. The conviction was in violation of 1st and 14th Amendment. In *Republic Aviation Corporation vs. National Labour Relations Board* [324 US 793 = 89 L.Ed. 1372], the owner of privately held bridges, ferries, turnpikes and railroads etc. may operate them as freely as a farmer does his farm, but when it operated privately to benefit the public, their operation is essentially a public function. It was subject to State regulation. The Supreme court, therefore, had held that when the rights of the private owners and the constitutional rights requires interpretation, the balance has to be struck and the court would, mindful of the Fact that the right to exercise liberties safeguarded by the Constitution lies at the foundation of free government by free men, in all cases weigh the circumstances and appraise the reasons in support of the regulations of the rights etc. It was accordingly held that for interpretation of the rights, it is but the duty of the Court to weigh the balance and to consider the case in the dropback. In *Georgia Railroad & Banking Co. vs. James M. Smith* [128 US 377 = 32 L.Ed. 174], it was held that in the absence of any provision in the charter, legislature has power to prescribe rates when the property is put to public use and the statute was held to be constitutional. *German Alliance Insurance Co. vs. IKL Lews* [58 L.Ed. 1011 = 233 US 387], per majority it was held that a business may be as far as affected with a public interest as to permit legislative regulation of its rates and charges, although no public trust is imposed upon the property and although public way not have a legal right to demand and receive service.

It is true that in *Dena Nath's* case, a Bench of two judges was to consider the question whether or not the persons appointed as contract labour in violation of section 7 and 12 of the Act should be deemed to be direct employees of the principal employer. The Bench on literal consideration of the

provisions, had concluded that the act merely regulates conditions of service of the workmen employed by a contractor and engaged by the principal employer. On abolition of such contract labour altogether by the appropriate Government neither the Act nor the rules provide that labour should be directly absorbed by the principal employer. It was, therefore, concluded that the High Court exercising the power under Article 226 of the Constitution cannot give direction for absorption. True, Court cannot enquire into and decide the question whether employment of contract labour in any process operation or any other work in establishment should be abolished or not and it is for the appropriate Government to decide it. The Act does not provide total abolition of the contract labour system under the Act. The Act regulates contract labour system to prevent exploitation of the contract labour. The Preamble of the Act furnishes the key to its scope and operation. The Act regulates not only employment of contract labour in the establishment covered under the act and its abolition in certain circumstances covered under section 10 (2) but also "matters connection therewith". The phrase "matters connected therewith" gives clue to the intention of the Act. WE have already examined in detail the operation of the provisions of the Act obviating the need to reiterate the same once over. The enforcement of the provisions to establish canteen in every establishment under Section 16 is to supply food to the workmen at the subsidised rates as it is a right to food, a basic human right. Similarly, the provision in Section 17 to provide rest rooms to the workmen is a right to leisure enshrined in Article 43 of the Constitution. Supply of wholesome drinking water, establishment of latrine and urinals as enjoined under Section 18 are part of basic human right to health assured under Article 39 and right to just and human conditions of work assured under Article 42. All of them are fundamental human rights to the workmen and are facets of right to life guaranteed under Article 21. When the principal employer is enjoined to ensure those rights and payment of wages while the contract labour system is under regulation, the question arises whether after abolition of the contract labour system that workmen should be left in a lurch denuding them of the means of livelihood and the enjoyment of the basic fundamental rights provided while the contract labour system is regulated under the Act? The Advisory Committee constituted under section 10(1) requires to consider whether the process, operation and other work is incidental to or necessary for the industry,, trade, business, manufacture or occupation that is carried on in the establishment, whether it is of perennial nature, that is to say, whether it is substantive duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment, whether it is done ordinarily through regular workmen in the establishment or an establishment similar thereto, whether it is sufficient to employ considerable number of whole time workmen. Upon consideration of these facts and recommendation for abolition was made by the advisory Board, the appropriate Government examines the question and takes a decision in that behalf. The explanation to Section 10 (2) provides that when any process or operation or other work is of perennial nature, the decision of the appropriate Government thereon shall be final. It would thus give indication that on the abolition of the contract labour system by publication of the notification in the official Gazette, the necessary concomitant is that the whole time workmen are required for carrying on the process, operation or other work being done in the industry, trade, business, manufacture or occupation in that establishment. When the condition of the work which is of perennial nature etc., as envisaged in sub-section (2) of Section 10, thus are satisfied, the continuance of contract labour stands prohibited and abolished. The concomitant result would be that source of regular employment became open.

What would be the consequence that ensue from abolition is the question? It is true that we find no express provision in the Act declaring the contract labour working in the establishment of the principal employer in the particular service to be the direct employees of the principal employer. Does the Act intend to deny the workmen to continue to work under the Act or does it intend to denude him of the benefit or permanent employment and if so, what would be the remedy available to him. The phrase "matters connected therewith" in the Preamble would furnish the consequence of abolition of contract labour. In this behalf, the Gujarat Electricity Board case, attempted, by interpretation, to fill in the gap but it also fell short of full play and got beset with insurmountable difficulties in its working which were not brought to the attention of the Bench. With due respect, such scheme is not within the spirit of the Act. As seen, the object is to regulate the contract labour so long as the contract labour is not perennial. The labour is required to be paid the prescribed wages and are provided with other welfare benefits envisaged under the Act under direct supervision of the principal employer. The violation visits with penal consequences. Similarly, when the appropriate Government finds that the employment is of perennial nature etc, contract system stand abolished, thereby, it intended that if the workmen were performing the duties of the post which were found to be of perennial nature on par with regular service, they also require to be regularised. The Act did not intend to denude them of their sources of livelihood and means of development, throwing them out from employment. as held earlier, it is a socio-economic welfare legislation. Right to socio-economic justice and empowerment are constitutional rights. right to means of livelihood is also constitutional right. Right to facilities and opportunities are only part of and means of livelihood and resultant right to life, leaving them in the lurch since prior to abolition, they had the work and thereby earned livelihood. The Division Bench in Dena Nath's case has taken too narrow a view on technical consideration without keeping at the back of the mind the constitutional animations and the spirit of the provisions and the object which the Act seeks to achieve. The operation so the Act is structured on an unbuilt procedure leaving no escape route. Abolition of contract labour system ensures right to the workmen for regularisation of them as employees in the establishment in which they were hitherto working as contract labour through the contractor. The contractor stands removed from the regulation under the Act and direct relationship of "employer and employee" is created between the principal employer and workmen. Gujarat Electricity's case, being of the co-ordinate Bench, appears to have softened the rough edges of Dena Nath's ratio. The object of the Act is to prevent exploitation of labour. Section 7 and section 12 enjoin the principal employer and the contractor to register under the Act, to supply the number of labour required by the principal employer through the contractor; to regulate their payment of wages and conditions of service and to provide welfare amenities, during subsistence of the contract labour. The failure to get the principal employer and the contractor registered under the Act visits with penal consequences under the Act. The object, thereby, is to ensure continuity of work to the workmen in strict compliance of law. The conditions of the labour are not left at the whim and fancy of the principal employer. He is bound under the Act to regulate and ensure payment of the full wages, and also to provide all the amenities enjoined under Section 16 to 19 of the Act and the rules made thereunder. On abolition of contract labour, the intermediary, i.e., contractor, is removed from the field and direct linkage between labour and principal employer is established. Thereby, the principal employer's obligation to absorb them arises. The right of the employee for absorption gets ripened and fructified. If the interpretation in Dena Nath's case is given acceptance, it would be an open field for the principal employer to freely flout the provisions of the Act and engage workmen in

defiance of the Act and adopt the principle of hire and fire making it possible to exploit the appalling conditions in which the workmen are placed. The object of the Act, thereby gets rudely shattered and the object of the Act easily defeated. Statutory obligations of holding valid licence by the principal employer under Section 7 and by the contract under Section 12 is to ensure compliance of the law. Dena Nath's ratio falls foul of the constitutional goals of the trinity; they are free launchers to exploit the workmen. The contractor is an intermediary between the workmen and the principal employer. The moment the contract labour system stands prohibited under Section 10(1), the embargo to continue as a contract labour is put an end to and direct relationship has been provided between the workmen and the principal employer. Thereby, the principal employer directly becomes responsible for taking the services of the workmen hitherto regulated through the contractor. The object of the penal provisions was to prevent the prohibition of the employer to commit breach of the provisions of the act and to put an end to exploitation of the labour and to deter him from acting in violation of constitutional right of the workmen to his decent standard of life, living, wages, right to health etc. The founding fathers placed no limitation or fetters on the power of the High Court under Article 226 of the Constitution except self-imposed limitations. The arm of the Court is long enough to reach injustice wherever it is found. The Court as reach injustice wherever it is found. The court as sentinel in the qui vive is to mete out justice in given facts. On finding that either the workmen were engaged in violation of the provisions of the Act or were continued as contract labour, despite prohibition of the contract labour under Section 10(1), the High Court has, by judicial review as the basic structure, constitutional duty to enforce the law by appropriate directions. The right to judicial review is no a basic structure of the Constitution by catena of decisions of this Court starting from Indira Gandhi vs. Raj Narayan [AIR 1975 SC 2299] and Bommai's case. It would, therefore, be necessary that instead of leaving the workmen in the lurch, the Court would properly mould the relief and grant the same in accordance with law.

The public law remedy given by 'Article 226 of the Constitution is to issue not only the prerogative writs provided therein but also any order or direction to enforce any of the fundamental rights and "for any other purpose". The distinction between public law and private law remedy by judicial adjudication gradually marginalised and became obliterated. In L.I.C. v. Escort Ltd. & Ors. [(1986) 1 SCC 264 at 344]. this Court in paragraph 102 and pointed out that the difficulty will lie in demarcating the frontier between the public law domain and the private law field. The question must be decided in each case with reference to the particular action, the activity in which the State or the instrumentality of the State is engaged when performing the action, the public law or private law character of the question and the host of other relevant circumstances. Therein, the question was whether the management of LIC should record reasons for accepting the purchase of the shares? It was in that fact situation that his court held that there was no need to state reasons when the management of the shareholders buy resolution reached the decision. This court equally pointed out in other cases that when the State's power as economic power and economic entrepreneur and allocator of economic benefits is subject to the limitations of fundamental rights, a private Corporation under the functional control of the State engaged in an activity hazardous to the health and safety of the community, is imbued with public interest which the State ultimately proposes to regulate exclusively on its industrial policy. It would also be subject to the same limitation as held in M.C. Mehta & Ors. v. Union of India & Ors. [(1987) 1 SCC 395].

The legal right of an individual may be founded upon a contract or a statute or an instrument having the force of law. For a public law remedy enforceable under Article 226 of the Constitution, the action of the authority need to fall in the realm of public law-be it a legislative act of the State, an executive act of the State or an instrumentality or a person or authority imbued with public law element. The question requires to be determined in each case. However, it may not be possible to generalise the nature of the action which would come either under public law remedy or private law field nor is it desirable to give exhaustive list of such actions. As held by this Court in *Calcutta Gas Co. Ltd. v. State of West Bengal* [Air 1961 SC 1044, para 5] that if the legal right of a Manager of company is denuded on the basis of recommendation by the Board of Management of the company, it would give him right to enforce his right by filing a writ petition under Article 226 of the Constitution. In *Mulchand v. State of M.P.* [AIR 1968 SC 1218], this court had held that even though the contract was void due to non-compliance of Article 229, still direction could be given for payment of the amount on the doctrine of restitution under Section 70 of the Act, since the had derived benefit under the void contract. The same view was reiterated in *State of West Bengal v. V.K. Mandal & SOrs.* [AIR 1962 SC 779 of 789] and in *New Marine Coal Co. Ltd, v. Union of India* [(1964) 2 SCR 859]. In *Gujarat State Financial Corporation. v. Lotus Hotel* [(1983) 3 SCC 370], a direction was issued a to release loan to the respondent to comply with the contractual obligation by applying the doctrine of promissory estoppel. In *Mahabir Auto Store v. Indian Oil Corporation.* [(1990) 3 SCC 752], contractual obligation were enforced under public law remedy of Article 226 against the instrumentality of the State. In *Shreelekha Vidyarthi v. State of U.P.* [(1991) 1 SCC 212] contractual obligations were enforced when public law element was involved, Same Judicial approach is adopted in other jurisdictions, namely, the House of Lords in *Gillic v. West Norfolk and Wisbech Area health Authority* [(1986) AC 112] wherein the House of Lords held that though the claim of the plaintiff was negated but on the anvil of power of judicial review, it was held that the public law content of the claim was so great as to make her case an exception to the general rule. Similarly in *Dr. Roy v. Kensinstone and Chelsea Family Practioners Committee* [(1992) IAC 624], the House of Lords reiterated that though a matter of private law is enforceable by ordinary actions, a court also is free from the constraints of judicial review and that public law remedy is available when the remuneration of Dr. Roy was sought to be curtailed. In *L.I.C. v. Consumer Education and Research Centre & Ors.* [(1995) 5 SCC 482], this court held that each case may be examined on its facts and circumstances to find out the nature and scope of the controversy. The distinction between public law and private law remedy has now become thin and practically obliterated.

In write petitions filed under Article 32 of the Constitution of India, the petitioners, in *R.K. Panda vs. Steel Authority of India & Ors.* [(1994) 5 SCC 304], contended that they had been working in Rourkela plant of the Steel authority of India for period ranging between 10 and 20 years as contract labour. The employment was of perennial nature. The non-regularisation defeated their right to a job. The change of contractors under the terms of the agreement will not have any effect o their continuing as a contract labour of the predecessor contractors. The respondent contended that due to modernisation of the industry, the contract labour are likely to be retrenched. The were prepared to allow the contract labour to retire on voluntary basis or to be absorbed for local employment. A Bench of three judges of this court had held that the contract labour were continuing the employment of the respondent for last 10 years, in spite of change of contractors, and hence they were directed to b e absorbed as regular employees. On such absorption, their inter se seniority be

determined, department or job-wise, on the basis of continuous employment; regular wages will be payable only for the period subsequent to absorption and not for the period prior thereto. Such of those contract labour is respect of whom the rate of wages have not been fixed, the minimum, rate of wages would be payable to such workmen of the wages of the regular employees. The establishment was further directed to pay the wages. If the staff is found in excess of the requirement, the direction for regularisation would not stand in their way to reached the workmen in accordance with law. If there arises any dispute as regards the identification of the contract labour to be absorbed, the Chief Labour Commissioner, Central Government, on evidence, would go into that question. The retrenched employees shall also be entitled to the benefit of the decision. The 10 years period mentioned by the Court would count to calculate retrenchment benefits. This also of there being no report by the Advisory Board under section 10(2) and no prohibition under section 10(1), the Act was enforced and this Court directed to absorb them within the guidelines laid down in the judgment. This ratio also is an authority for the proposition that the jurisdiction of the court under Article 32, *pari materia* with Article 226 which is much a wider than Article 32 " for any other purpose" under which suitable directions are required to have given based on factual background. Therein the need to examine the correctness of Dena Nath's ratio did not arise nor is it a case of abolition of contract labour. So, its reference appears to be as a statement if laying the law in Dena Nath's case.

Prior to the Act came into force, in *The standard- Vacuum Refining Co. of India vs. Its Workmen & Ors.* [(1960) 3 SCR 466], a Bench of three judges of this court had held that the contract labour, on reference under section 10 of the ID Act was required to be regularised, after the industrial disputes was adjudicated, under section 2(k) of the ID Act. Since workmen had substantial interest in the dispute, it was held that the direction issued by the Tribunal that the contract labour should be abolished was held just in the circumstances of the case and should be abolished was held just in the circumstances of the case and should to be interfered with. In other words, this court upheld the jurisdiction of Tribunal after deciding the dispute as an industrial dispute and gave direction to abolish the contract labour. The Power of the Court is not fettered by the absence of any statutory prohibition.

In *Security Guards Board for Greater Bombay and Thane District vs. Security & Personnel Service Pvt. Ltd. & Ors.* [(1987) 3 SCC 413], the question as regards absorption of security guards employed in any factory or establishment etc. under Maharashtra Private Security Guards (Regulation of Employment and welfare) Act, 1981 had come up for consideration. It was held that the exemption under Section 23 is in regard to the security guards employed in the factory or establishment or in any class or classes of fabricating factory's establishment. The co-relationship of the security guards of classes of security guards who may be exempted for the operation of the Act is with the factory or establishment in which they work and not with agency or agent through and by whom they were employed. In other words., the ratio of that case is that it is not material as to through which contractor the employee came to be appointed or such labour came to be engaged in the establishment concerned. The direct relationship would emerge after the abolition of the contract labour. In *Sankar Mukherjee & Ors. vs. Union of India & Ors.* [AIR 1990 SC 532], the State Government exercising the power under Section 10 of the Act prohibited employment of contract labour in cleaning and stacking and other allied jobs in the brick department. Loading and

unloading of bricks from wagons and trucks was not abolished. Writ petition under Article 32 of the Constitution of India was filed. A Bench of three judges of this court had held that the act requires to be construed liberally so as to effectuate the object of the act. The bricks transportation to the factory, loading and unloading are continuous process; therefore, all the jobs are incidental to or allied to each other. All the workmen performing these jobs were to be treated alike. Loading and unloading job and the other jobs were of perennial nature. Therefore, there was no justification to exclude the job of loading and unloading of bricks from wagons and trucks from the purview of the notification dated February 9, 1980. Thus, this Court had given direction to abolish the contract labour system and to absorb the employees working in loading and unloading the bricks which is of perennial nature. In *National Federation of Railway Porters, Vendors & Bearers vs. Union of India & Ors.* [(1995) 3 SCC 152], a Bench of two judges to which one of us (K. Ramaswamy, J.) was a member, was to consider whether the Railway Parcel Porters working in the different railway stations were contract labour for several years, when they filed writ petition, the Central Assistant Labour commissioner was directed to enquire and find out whether the job is of a permanent and perennial nature and whether the petitioners were working for a long period. On receipt of the report, with findings in favour of workers, the Bench had directed the Railway Administration to Regularise them into the service. This case also is an authority for the proposition that in an appropriate case the Court can give suitable directions to the competent authority, namely, central labour Commissioner to enquire and submit a report. The perennial nature of the work and other related aspect are required to be complied with before directions are given under of Section 10(1) and 10(2) of the Act. On receipt of the report, the Court could mould the relief in an appropriate manner to meet the given situation. In *Praga Tools* case, this Court held that mandamus may be issued to enforce duties and positive obligation of a public nature even though the persons or the authorities are not public officials or authorities. The same view was laid in *Anadi Mukta v. V.R. Rudani* [(1989) 2 SCC 691] and *Unni Krishna v. State of A.P.* [(1993) 1 SCC 645]. In *Comptroller & Auditor General of India v. K.S. Jagannathan* [(1986) 2 SCC 679], this court held that a mandamus would be issued to implement Directive Principles when Government have adopted them. They are under public obligations to give preferential treatment implementing the rule of reservation under Articles 14 and 16 (1) and (4) of the Constitution. In *L.I.C.* case, directions were issued to frame policies accessible to common man.

Thus, we hold that though there is no express provision in the Act for absorption of the employees whose contract labour system stood abolished by publication of the notification under section 10 (1) of the Act, in a proper case, the court as sentinel in the *qui vive* is required to direct the appropriate authority to act in accordance with law and submit a report to the court and based thereon proper relief should be granted.

It is true that learned counsel for the appellant had given alternative proposal, but after going through its contents, were of the view that the proposal would defeat, more often than not, the purpose of the Act and keep the workmen at the whim of the establishment. The request of the learned Solicitor General that the management may be left with that discretion so as to absorb the workmen cannot be accepted. In this behalf, it is necessary to recapitulate that on abolition of the contract labour system, by necessary implication, the principal employer is under statutory obligation to absorb the contract labour. The linkage between the contractor and the employee stood



snapped and direct relationship stood restored between principal employer and the contract labour as its employees. Considered from this perspective, all the workmen in the respective services working on contract labour are required to be absorbed in the establishment of the appellant. Though there exists no specific scale of pay to be paid as regular employees, it is for the establishment to take such steps as are necessary to prescribe scale of pay like class 'D' employees. There is no impediment in the way of the appellants to absorb them in the last grade, namely, grade IV employees on regular basis. It is seen that the criteria to abolish the contract labour system is the duration of the work, the number of employees working on the job etc. That would be the indicia to absorb the employees on regular basis. It is seen that the criteria to abolish the contract labour system is the duration of the work, the number of employees working on the job etc. That would be the indicia to absorb the employees on regular basis in the respective services in the establishment. Therefore, the date of engagement will be the criteria to determine their inter se seniority. In case, there would be any need for retrenchment of any excess staff, necessarily, the principle of "last come, first go" should be applied subject to his reappointment as and when the vacancy arises. Therefore, there is no impediment in the way of the appellants to adopt the above procedure. The award proceedings as suggested in Gujarat Electricity Board case are beset with several incongruities and obstacles in the way of the contract labour for immediate absorption. Since, the contract labour gets into the service of the principal employer, the Union of the existing employees may not espouse their cause for reference under section 10 of the ID Act. The workmen, who no abolition of contract labour system have no right to seek reference under section of 10 of ID Act. Moreover, the workmen immediately are kept out of job to endlessly keep waiting for award and thereafter resulting in further litigation and delay in enforcement. The management would always keep them at bay for absorption. it would be difficult for them to work out their right. Moreover, it is a trade and time-consuming process and years would roll by. Without wages, they cannot keep fighting the litigation endlessly. The right and remedy would be a teasing illusion and would be rendered otiose and practically compelling the workman at the mercy of the principal employer. Considered from this pragmatic perspective, with due respect to the learned judges, the remedy valuable assistance given by all the learned counsel in the appeals.

The appeals are accordingly dismissed, but in the circumstances, without costs.