National Campaign Committee

for Central Legislation on Construction Labour

The Building and other Construction Workers (Regulation of Employment and Conditions of Service) Bill, 1988 - A Critique by Shri T.S. SANKARAN. (Dt. JAN. 1989)

Historical

1. The above Bill (Bill LIV of 1988) was introduced on 5.12.1988 by the Union Labour Minister in the Rajya Sabha.

2. This has not been a sudden step.

3. As early as July, 1965, the Second Session of the Industrial Committee on Building and Construction Industry, meeting under the Chairmanship of Shri D. Sanjivyya, the then Union Labour Minister, discussed amongst others, the following four items together:

(i) Working and Service Conditions in Building and Construction Industry

(ii) Living Conditions and Housing Scheme for Construction Industry.

(iii) Scheme of legislation on safety in Construction Industry, and

(iv) Scheme of legislation for regulating employment on Building and Construction Industry.

The meeting agreed, inter alia, that there should be one comprehensive legislation covering safety, welfare and other aspects of employment in the building and construction industry.

4. The National Commission on Labour which was set up in December, 1966 by the Government of India and which submitted its Report in August, 1969 set up a Study group on Construction Industry in February, 1988. The Study Group submitted its Report in July, 1988 (A copy of the Report of the Study Group alongwith a summary of Conclusions and Recommendations is available in the set of papers submitted to the Committee on Petitions by the National Campaign Committee).

In its Report, the National Commission on Labour stated "Most of the construction works are executed by big and small

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contractors, the latter usually working as sub-contractors under a principal contractor. Our study group on Construction Industry has pointed out that unregulated entry of persons in this industry regardless of qualifications or resources has been a major cause of chaotic labour conditions and sub-standard or slipshod work. A classification and registration of building contractors may be a remedy against this malaise (Para 29.17 of the Report).

"Most of the recruitment of labour, particularly of the unskilled type, is made through middlemen near about the place of work. The bulk of labour is employed through labour contractors. Government, whether it is Central or State is the largest principal employer in the construction industry. It should be possible, by a suitable phasing of the programmes undertaken, to ensure a reasonably steady volume of work and employment. Simultaneously, to ensure greater security of employment, possibilities of introducing decasualization schemes of the type described earlier should be explored." (Para 29.18).

5. The Industrial Committee on Building and Construction Industry which met in its Third Session in December, 1972 - seven and half years after its second session and three years and a quarter after the National Commission, submitted its Report - seems to have taken a backward step as regards "one comprehensive legislation covering safety, welfare and other aspects of employment in the building and construction industry". Apart from discussing improving welfare facilities and the need for better implementation of the existing provisions, the meeting "agreed that the proposed legislation on safety for construction workers should be expedited and effective measures should be taken to ensure safe working conditions in the construction industry". The 'comprehensive' law got reduced to a law on safety!

6. Para 3 of the Statement of Objects and Reasons appended to the Bill (Bill No.LIV of 1988) is as follows: "The State Governments and Union Territory Administrations were consulted about enacting an appropriate Central legislation for regulating the safety, health, welfare measures and other conditions of service of building and other construction workers. A majority of them has favoured such a legislation.

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The State Labour Minister's Conference held in July, 1980 also recommended a Central Legislation to regulate the working conditions, hours of employment, payment of wages, welfare and safety measures in respect of workers in the building and other construction work". There is no mention of either a comprehensive law or the need for regulating employment. We are not aware whether any proposals for regulation of employment were placed at all before the State Labour Minister's Conference in July, 1980.

7. It is learnt that the last session of the Industrial Committee on Building and Construction Industry was held in 1987. We are not aware of the nature of subjects included in the agenda, nor of the conclusions reached. It is not known whether any proposals for regulation of employment were placed on the agenda, and if so, in what form. It must be noted that the demand for a comprehensive law including provisions of regulation of employment had already been raised by then by the National Campaign Committee which had also prepared a draft legislation for the purpose. The conclusion of the Seminar held in November, 1985 at which these proposals were discussed and finalised, and which also set up the NCC-CL, along with the draft Bill had been circulated to all State Governments and the Central Government well before 1987. A Private Member's Bill on the same lines had also been introduced in the Lok Sabha by Shri Inderjit Gupta, M.P.

8. Earlier in 1985, another Private Member's Bill introduced by Shri M. Kalyanasundram M.P. four years earlier in 1981, namely, the Construction Workers (Protection and Welfare) Bill, 1981, was taken up for consideration in the Rajya Sabha on 13th December, 1985. This Bill was ultimately withdrawn on the assurance of the Minister that "once again I wish to tell him (Shri Kalyanasundaram) that we are already contemplating to bring a comprehensive legislation. We will certainly encourage that such Bills are brought forward immediately by the Government. Therefore, I hope that the whole House will agree that this Bill be withdrawn by Shri Kalyanasundaram in view of my assurance. (Copy of the debate on the Bill in Rajya Sabha on 13.12.1985 has been included in the set of papers submitted to the Committee on Petitions by the NCC-CL.

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9. The Bill prepared by the NCC-CL: With all these developments, it was expected that the Bill that the Government will introduce, will be really a comprehensive one dealing particularly with the most important problem facing the construction workers, namely insecurity of service and total absence of social security, through provisions for Regulation of Employment. The Bill prepared by the NCC-CL and submitted to the Committee on Petitions, which is on the same lines as the Private Members' Bill introduced in the Lok Sabha by Shri Inderjit Gupta M.P. will alone, we are convinced, solve the multidimensional problems faced by the large mass of construction workers, numbering well over a crore, labouring under miserable conditions in every nook and corner of our country. The circumstances leading to the preparation of this Bill and its submissions to the Committee on Petition are explained in the following paragraphs.

10. The Building and Construction Industry is the second largest economic activity in India, next only to agriculture. In terms of capital and man-power employed, this industry is much larger than any other industry. The capital out-lay on construction in each of the successive five year plans has steadily been increasing and of the total capital out-lay in the Seventh Five Year Plan, 50% is on construction. It is estimated that about 12 million workers are engaged in construction activities in our country of whom over 1.2 million are regularly employed in the corporate sector and big construction companies; about 2.4 million work for small contractors and agencies like Border Road Organisation. The rest are not in regular employment under any employer but do construction work wherever such work is available. These numbers do not include workers in allied industries like brick-making, etc.

11. The activities of these industries are not confined only to construction of roads, bridges and buildings as is commonly understood; these activities include work undertaken both above and below ground, on hill tops and sea beds and includes construction of dams, bridges, canals, pipe lines, rope ways and the like. The activity also include demolition of structures and maintenance services.

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12. Inspite of the vast amount of money spent on construction, both in the public and in the private sectors, the industry is far from being regulated or organised and no benefits accrue to the work force. The largest principal employers in the construction industry are the Central and State Government Departments and Public Sector Undertakings.

13. The construction activities are mostly carried on in an ad hoc manner. Though a large number of parties are involved, such as the client (the principal employer) the architect, the contractor and the workers, in the actual work the first three have no active role; the work is mostly controlled by the sub-contracting system. This invisibility of the employer results in a total absence of formal working relationship between the employer and the workers. Apart from this, a very significant aspect of the industry is its mobile nature. It is about the only industry where the product of the industry is static and the industry itself mobile; as construction in one work-site is completed, the workers have to leave for another place in search of work. They may get employment in a different place under a different person. In cases of specialised work like laying of concrete, etc. the frequency of such changes is even greater.

14. Thus the feature that comes out most clearly when we analyse the situation obtaining in the construction industry vis-a-vis the workers is the absence of established and enduring employer-employee relationship between an employer and a set of workmen. This is the position in respect of the vast bulk of the industry and this is the result of a system of contracting and sub-contracting ad nauseum, which conveniently enables the principal employer or even his main contractor to escape from the obligations that any employer will have to discharge. In such a situation, even wages are not correctly and promptly paid and the shifting nature of the employment results in the workmen and the work women (women account for over 10% of the work force in this industry; children who work in this industry in large numbers do not altogether figure in official statistics or employers registers) not being in a position to demand even their due wages. The position is so unjust that to think in

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terms of other benefits like leave, bonus, maternity benefit, accident compensation, child care and social security sounds like day-dreaming.

15. But there is no need for the situation to be so helpless or for the worker to be despondent. The Tamil Nadu Construction Workers Union which has an enviable record of work among this disadvantaged section of our work force and who have to their credit the successful organisation of these workmen and work-women in viable unions not merely in the metropolitan city of Madras but in the districts both at head quarters and in small towns, had taken the lead in organising a National Seminar on the Construction Industry in November, 1985. This Seminar which was organised in Delhi for 3-days by the Tamil Nadu Construction Workers Union with the assistance of Legal Aid and Advice, New Delhi and others, was attended by grass root construction workers including a large number of women workers from different parts of the country. The main objective of the Seminar was to examine in detail the problems faced by the workers in this industry and to study the feasibility of a comprehensive legislation that can meaningfully protect the interests of the construction workers. The Seminar particularly examined the implementation of the existing laws that are said to be applicable to them, namely, the Minimum Wages Act, 1948, Equal Remuneration Act, 1976, the Contract Labour (Regulation and Abolition) Act, 1970, the Inter State Migrant Workers (Regulation of Employment and Conditions of Service) Act, 1979, The Workmen's Compensation Act, 1923, etc. The Seminar rightly came to the conclusion that no benefit had accrued to the construction workers through these laws mainly because of ineffective implementation of these laws. The existing machinery for the implementation of these laws are both ineffective and hostile to the interests of the construction workers and to seek remedies to their problems at the hands of the existing machinery is an exercise in total futility as far as the construction workers are concerned.

16. The other set of Labour Laws relating to social security like the Employees Provident Fund Act, 1952, the Employees State Insurance Act, 1948, the Payment of Gratuity Act, 1972, and the like are no where near possible imple-

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mentation as far as the vast bulk of the Construction Workers are concerned. In a situation where the employer-employee relationship is so very tenuous and shifting, social security becomes a pipe-dream.

17. Recognising the harsh reality of the situation, the Seminar addressed itself to the task--What then is the Remedy. An industry which employs over a cocre of people cannot be allowed toget away with what it has been doing all these years vis-a-vis their workmen. The Seminar realised that there is as much necessity to regulate the industry as it is necessary to regulate employment therein, and it is not possible to think of such a measure except through far-reaching legislative measures. The existing legislations have become irrelevant. The existing implementation agencies have failed. The employers have shown themselves, by and large, to be indifferent, if not hostile towards the needs of the work force. The Seminar, therefore, came to the conclusion that what is required is a self-regulating legislation, a legislation that will guarantee and protect the rights of the workmen, not merely to those relating to employment and payment of wages but also to social security; above all, a legislation that will avoid the pit falls of implementation by a Governmental agency, by providing for workers' participation in a substantial measures in the implementation of the legislation through tripartite bodies on which workers will have a commanding role. The Seminar therefore, unanimously recommended a legislation for this industry which will provide, inter-alia, for Tripartite Construction Labour Boards at the central and at the level of each of the States, comprising representatives of workers whose number will be equal to the combined strength of the representatives of the government and the employers. The proposals envisaged the Construction Labour Boards to have offices at various subordinate levels like districts, major construction project sites and the like, where also tripartite bodies would be set up to over-see the administration of the schemes. The schemes to be drafted under the law will provide for regulation of the industry by way of registration of the principal employer or the promoters. A levy calculated at a certain percentage of the capital cost of the project, be it a residential or commercial building, road or canal, will be collected before

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the Tripartite Board approves the project. This levy will be used for meeting the expenses that will have to be incurred in respect of welfare and social security measures for the workers. The Board will also similarly register the workmen and so regulate the employment of workers in various categories to ensure that only registered workers are provided employment. The scheme would also provide for a certain minimum guarantee of employment for all registered workers, in addition to providing social security measures like provident fund, medical and health benefits, gratuity and the like. The payment of wages in full and promptly to the workers will also be ensured by the Board by regulating all payments through the Board and its offices.

18. The Board would also take necessary steps for the training of the workers to enable them to acquire and/or to improve their skills. Over a period of time, the Board will be in a position to stablise employment in this sector so that productivity of the workers is enhanced, construction costs reduced, current abuses and short comings in the quality of construction, delays in construction etc. are minimised. The Board will also undertake various welfare benefits and will also regulate the inter state movement of construction workers so that the objectives of Inter State Migrant Workers Act do not merely remain on paper.

19. To ensure that the conclusions of the Seminar are given a concrete shape, a National Campaign Committee was set up under the Chairmanship of Justice V.R. Krishna Iyer, Retired Judge of the Supreme Court of India to pursue follow up actions on the various conclusions of the Seminar. These related to the drafting of a Bill, campaign at the state levels, seeking support for the Bill at the national level through Members of Parliament, organisation of regional Seminars and workshops to carry the message of the National Seminar to various construction workers in different parts of the country and launching of a nation wide signature campaign by construction workers to petition Parliament for accepting and enacting the model Bill that would be drafted.

While various aspects of the follow up programme as indicated above were taken on hand, the drafts of a Bill

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and a scheme were also got prepared.

20. The most exciting and significant aspects of this whole exercise is the democratic nature of law making. Here, the law is drafted not by persons who are usually far removed from the benefits of the law or far removed from the persons affected by the law, but by the affected persons themselves namely the construction workers of the country, who under the lead given by the National Seminar have emphatically stated the type of law they want and also the contents of such a law. This, they have done, as a result of intensive discussions among themselves in which their own experiences and their needs have determined the lines on which the law will have to be. Having been denied the benefits, such as they are, that the existing legislations are meant to provide, due to the apathy and indifference of the enforcement machinery, the workers, realised that any provision of law, howsoever well intentioned and well drafted, will be a nullity in its actual impact unless the workers themselves have a hand in the implementation of the law. For this purpose, the workers demanded that the implementation of the proposed law, more particularly the provisions relating to registration of the employers and of workers, regulation of employment, minimum guaranteed employment, payment of wages, measures for welfare and social security, etc. must be through the Tripartite Labour Boards and their agencies at the appropriate levels. The workers also realised that there may be disagreement and differences between the parties in the actual implementation of law and scheme and therefore they wanted that the law must provide for an inbuilt machinery for dealing with disputes and differences.

21. At a Seminar held in Delhi in April, 1987, which was attended also by Justice V.R. Krishna Iyer, retired judge of the Supreme Court of India and Chairman of the National Campaign Committee, he had occasion to refer to the above unique aspect of this legislative process. In his own inimitable and forceful style, he called this whole exercise a unique exercise where the intended beneficiaries and the actual victims do not merely protest and demand legislation, but actually take the initiative to draft the legislation.

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This people's participation in the legislative process sets out, he said, the need for all such legislation to be made likewise, where only the persons who need the law must speak. While judges know only the legal grammer and neither the bureaucracy nor the legal draftsman who is far away from reality are of any help, the current exercise is an eye opener and he wished that the legislators were present at such seminars. Referring to the Bill that has been presented to Parliament, a copy of which is given in the annexure along with a report on the November, 1987 National Seminar, Justice Iyer said that, in the light of further discussions at Seminars like this which have taken place after the Bill was originally drafted and presented to Parliament, further improvements could be made. A luminory premable may be added which could be in the following terms.- "Whereas Social and Economic Justice are the promise of the Constitution and Justice to the Construction Workers who are victims of very exploitative afflictions is an urgent imperative of our Socialist Republic.

Whereas the experience of implementational failure and legal and litigation hurdles have made it necessary to make creative changes in the structure, schemes and operation of any labour legislation designed to liberate the workers in this sector from the unjust practices prevelent in the field.

Whereas participation of workers in the working of the legislation and the enforcement of remedies thereunder is essential if credibility and confidence were to be commanded by the law.

Now, therefore, be it enacted....." Justice Iyer also suggested that the name of the Bill could appropriately be amended to read "The Construction Workers (Social Justice through Regulation of Employment and Conditions of Work) Bill, 1987". In the same view he suggested an addition of an Interpretation clause to state that all provisions of the law should be interpreted to suppress the mischief and advance the purpose of the law and that all authorities concerned with adjudication and enforcement shall be free to refer to all contemporary material including the proceedings

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of the National Campaign Committee. He also suggested that provisions be added to the Bill for Legal Literacy and Legal Aid, and also for the Right to Information.

THE BILL NOW BEFORE THE RAJYA SABHA

22. The Bill (Bill LIV of 88), both in its Title and Preamble, refers to 'Regulation of Employment' and 'Conditions of Service' of building and other construction workers. The statements of Objects and Reasons also refers to "necessity for a specific legislation regulating more effectively the employment, safety, health, welfare and other conditions of service of building and other Construction Workers."

23. It would be interesting to examine, with reference to provisions in other labour laws in respect of these two matters, how far the Bill really contains any worthwhile provisions on these.

REGULATION OF EMPLOYMENT

24. The most important and the earliest Labour Law dealing with Regulation of Employment and one which has been adopted as a model and the basis for the draft Bill and scheme prepared by the N.C.C. is the Dock Workers (Regulation of Employment) Act, 1948. Both in its title and the preamble, the expression 'Regulation of Employment' is used. Section 3 of this Act provides for drawing up of schemes for registration of Dock Workers and Employers with a view to ensuring greater regularity of employment and for regulating the employment of Dock Workers, whether registered or not, in a port. Sub-Section 2 of Section 3 indicates in some detail the various aspects which may be covered by a scheme, including training and welfare of Dock Workers, health and safety measures at places of work, creation of fund or funds for the purpose of the scheme and for the manner in which and the persons by whom the cost of operating the scheme is to be defrayed. Section 5A of the Act provides for constitution of Dock Labour Boards on a tripartite basis; Section 5 provides for setting up of an Advisory Committee.

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25. Based on the Dock Workers (Regulation of Employment) Act, 1948, certain State Legislatures have also passed similar laws in respect of manual workers or mathadi workers as they are called. The constitutional validity of one such law, namely the Andhra Pradesh Muttah, Jattu, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act 1976, particularly section 3 and the scheme imposing obligations on the employers to register themselves, to employ only registered workers supplied by the Board, to pay the levy, etc. has been upheld by a decision of Division Bench of the Andhra Pradesh High Court (1985 Lab IC 1523).

26. Yet another labour law which contains the expression 'Regulation of Employment' both in the title as also in the preamble is the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979. The law provides for the registration of establishments employing inter-state migrant workmen, licensing of contractors etc.

27. The Cine-workers and cinema theatre workers (Regulation of Employment) Act 1981 is yet another act where the expression 'Regulation of Employment' is used; the expression used in the preamble, however, is 'regulation of the conditions of employment'. Section 3 of the Act, prohibits employment of a cine worker (and not a cinema theatre worker) without an agreement. Section 4 and Section 7 provide respectively for the appointment of conciliation officers and tribunals.

28. The last two enactments mentioned above have only half-hearted provisions relating to regulation of employment of the concerned workmen despite the name of the enactments. But the Bill now pending does not even have these provisions regarding regulation of employment, excepting a provision for registration of establishments and prohibition against the employer of an unregistered establishment from employing building workers.

29. When even an act like the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 is admittedly poorly implemented, it is not difficult

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to imagine how much more indifferently will the proposed legislation for building and construction workers be implemented. In the absence of a self-implementing mechanism in the form of tripartite boards as the Dock Labour Boards under the Dock Workers (Regulation of Employment) Act 1948, the law will not be successfully and effectively implemented.

CONDITIONS OF SERVICE

30. A perusal of the provisions relating to conditions of service in various protective legislations like the Factories Act, 1948, Mines Act 1952, Plantations Labour Act 1951, Beedi and Cigar Workers (Conditions of Employment) Act 1966, Sales Promotion Employees (Conditions of Service) Act 1976, Motor Transport Workers Act 1961 and Working journalists and other News Paper Employees (Conditions of Service) and Miscellaneous Business Act 1953 will show how anaemic the relevant provisions are in the Bill for Building and Construction workers. Even if the provisions could not be as liberal as in the working Journalists Act, covering as they do matters, relating to retrenchment and gratuity in addition to setting up of wage Boards, leave, etc., the Bill should atleast have provisions relating to leave as all other enactments do, to justify its title and preamble. What the Bill contains are some provisions relating to 'conditions of work' and not 'conditions of service'.

31. Thus we find that the title of the Bill is erroneous and the first part of its preamble misleading. Given the contents of the Bill and despite the claim made in the statement of Objects and Reasons, the Bill could at best be called 'the Building and other Construction Workers (Conditions of work and safety) Bill 1988, and the preamble revised to read "A Bill to provide for the safety, health and welfare of building and other construction workers and for other matters connected therewith'."

Comments on the provisions of the Bill-clause by clause:

32. The comments below are in addition to the comments above on the preamble to and title of the Bill:-

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(i) Commencement clause - sub clause 3 of clause 1:

While there may be no objection to having different dates of commencement for different states, it is necessary to guard against such commencement being deferred indefinitely in respect of certain states or the Central Government. It is therefore, necessary as has been done in section 1(3) of the Equal Remuneration Act, 1976, to add the words "not being later than two years from the passing of the Act" after the words, "It shall come into force on such date".

(ii) Subclause 4 of clause 1:

To apply the act only to establishments employing 50 or more workers will leave out the vast majority of construction workers from its scope. With the enactment of the Contract Labour (Regulation and Abolition) Act 1970 which applies to establishments/ contractors employing 20 or more contract labour, the attempt has been to show employment at a figure which will keep out the mischief of the Act. The proposed lower limit of 50 in the Bill is therefore likely to keep out almost 90% of the construction workers outside its purview.

Safety and working conditions are as important to a small establishment as to a large establishment. Even administrative convenience cannot justify the high limit; at least it should be brought down to 20 as in the Contract Labour Act 1970 if not to 5 as in the Interstate Migrant Workmen Act 1979. It is well known that in all labour legislations the trend is to reduce the employment limits so as to bring in large number of workmen within the ambit of the laws concerned.

(iii) Clause 2(1)(a) defines 'appropriate government so as to make the Central Govt the 'appropriate government' in relation to a public sector establishment which is covered controlled or managed by the Central Government. This is at variance with the definition of the term under the Contract Labour Act 1970, as amended in 1986 (Act 14 of 1986) which has followed the Industrial

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Disputes Act, 1947. Considering the close nexus that will be maintained between this proposed legislation and the Contract Labour Act on the one hand and the Industrial Disputes Act on the other, it is not sure that a change in the definition is warranted. It is also presumed that the State Governments are in agreement with the proposed change.

(iv) In Clause 2(1)(b), the term "building or other construction work" does not include any building or other construction work to which the provisions of the Factories Act, 1948 or Mines Act 1952 apply. It is not clear whether such an exclusion will leave out the worker concerned from the coverage of both the proposed legislation and the Factories Act/ Mines Act. A quick look at the definition of the terms 'factory' 'manufacturing process' and 'worker' in the Factories Act and the terms 'mine' and 'a person employed in a mine' in the Mines Act leads to a doubt about this matter. In this connection, it is relevant to point out that the term 'worker' as defined in the Plantation Labour Act 1951 excludes, inter-alia, any person temporarily employed in the plantation in any work relating to the construction, development or maintenance of buildings, roads, bridges or canals." In view of this, it is suggested that the proposed exclusion in the definition is deleted or atleast, an explantation added that the concerned workmen, if not covered by the Factories Act or Mines Act, will be covered by the proposed legislation. Afterall, the emphasis will have to be on the worker.

(v) In Clause 2(1)(c), the term 'Building worker' may be changed to 'construction worker', for the reason that, 'construction' conveys rightly the larger meaning to include 'building' also. Further, the tripartite bodies envisaged in the Bill prepared by NCC also are called, 'Construction Labour Boards.' The definition should also include apprentices.

(vi) Clauses 3 and 4 of the Bill provide for the setting up of a Central Advisary Board and State Advisory

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Boards. It is suggested that these clauses may be suitably amended to provide for the following:-

(a) The composition of the Boards must be such that atleast one third of the members must represent workers and another one third must represent employers. The balance one third may include governments, architects, engineers, insurance institutions and the like. This would necessarily increase the size of the bodies but that cannot be a major objection.

(b) While, perhaps the initial composition of the bodies may be through nominations by the appropriate government, and the term of the first Board may be limited to two years, the subsequent composition should provide for employer and workers organisation to select (and preferably elect) their own nominees.

(c) While these two clauses closely follow the pattern of sections 3 and 4 of the Contract Labour Act 1970, it will be advantageous to have a coordinating body on the lines of the Central Advisory Board under Section 8 of the Minimum Wages Act; such a body could have the chairmen of a certain number of state Advisory Boards (by rotation), representatives of employers and workers, and other experts as members with a nominee of the Central Government as its chairman. Such a coordinating body atleast in the initial years, will be of great use.

(vii) Clause 19(a) of the Bill ~~deals~~ contains provisions for canteen. It is not known why the lower limit of 250 workers has been prescribed, while under the Contract Labour Act 1970, the lower limit is only 100 (Section 16(1)(b) of the Act).

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(viii) Chapter V of the Bill deals with 'Safety and Health Measures'. It is necessary to incorporate a provision which will empower an 'inspector' to order suspension of work if he considers that work is being carried on to the detriment of workers safety. Where work is so ordered to be suspended, the law must also provide for the payment of full wages to the workmen concerned for the duration of such suspension of work and for their continued employment when work is allowed to be resumed. The ultimate responsibility for this must be on the owner. Such a provision would besides safeguarding the right and interests of the workers, act as a deterrant to erring employers.

The law must also provide for the employer to arrange for adequate training to workers on safety and accident prevention. One of the functions of the Inspectors should be also to help employees and workers in this endeavour.

Whereas a lower employment limit of 500 workmen may be all right for the appointment of a Safety Officer, as provided in Sub Clause (2) of Clause 20, it is not necessary to have such a high figure for formation of safety committees. Such committees must be statutorily provided for in respect of all establishments employing not less than 150 persons.

Clause 14 provides for prohibition of employment of certain persons in certain items of work. The decision regarding this should not be left to the employer, in order to prevent abuse of this para by the employer which, by definition, includes the contractor also. This should be done only on the basis of medical advice, for which purpose the law must prescribe a provision for certifying surgeon, who, even if he is not a regular employee under the employer could be a qualified medical officer of the Government or the local authority.

Clause 26 which is a welcome provision casting responsibility on employers may be strengthened by a provision under which the employer should give information

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to the workers from time to time on the work processes, hazards involved, safety measures to be adopted etc.

(ix) While the provision in clause 32 empowering the Director General or Chief Inspector to impose penalties of fine for contravention of certain provisions of the Act is welcome, it will have to be examined whether an appeal, as provided for in clause 33 of the Bill, to the Central or State Government, which is another executive authority will be considered to be in order.

(x) The inclusion of the words 'without his knowledge' in the provision to clause 35 of the Bill appears misplaced; this will provide a loophole for the really culpable to escape the clutches of the law. The words must be deleted.

(xi) Clause 38 seeking to apply the provisions of the Workmen's Compensation Act, 1923 to building and construction workers, is worded in a manner that may cause doubts or confusion. The addition of the words" as if the employment to which this Act applies has been included in the Second schedule to that Act" may lead to legal quibbling. Schedule II to the Workmen's Compensation Act 1923 contains a list of persons who subject to the provisions of Section 2(1)(n) of that Act are included in the definition of workman. Workman as defined in Section 2(1)(n) excludes any person whose employment is of a casual nature. As is well-known, bulk of the employment is of a casual nature, though the work itself is not of a casual nature; this is so even in those establishments where more than50 workmen are employed on any day. Given the hierarchy of contractors and sub-contractors on the one hand and the unorganised illiterate vulnerable construction workers on the other, this provision, as far as the bulk of the workmen are concerned, may be a dead letter. The clause may be amended so as to make it clear the Workmen's Compensation Act will apply to all workmen under the proposed legislation.

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(xii) The Financial Memorandum appended to the Bill states that "It is not proposed to have a separate inspectorate organisation at the Centre for the purpose of the proposed legislation". Expenditures only on fees and allowances to concerned persons is all that is envisaged. Having proposed in clause 2(1)(a) that the Central Government will be the appropriate Government in relation to Central public sector undertakings, having provided in clause 41 for the Central Government to give directions to the State Government, and having provided in clause 23 for the Central Government to frame model rules under clause 22, it is surprising that the implementation of the law by the Central Government should be contemplated at such a low pitch as evidenced by the Financial Memorandum.

33. The above analysis will show how inadequate and half-hearted the provisions of the Bill are. Even the much wonted proposal for a welfare fund for construction workers which had figured in the discussions of the Tripartite Working Group on Construction Industry set up by the Ministry of Labour does not figure in the proposed Bill.
