

**PROBLEM OF UNEMPLOYMENT
&
ITS RESOLUTIONS**

INTRODUCTION

Work is part of everyone's daily life. Directive Principles of State Policy which is Part IV of the Constitution laid down that these principles are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. It is obligatory for the State to secure the operation of the legal system which promotes justice. The equal opportunities for securing justice could not be denied to any citizen by reason of economic or other disabilities. Panchayati Raj System, is also obligatory. It is obligatory for the State to provide continuous means of livelihood by providing for job opportunities under Article 41 of the Constitution. Article 42 of the Constitution provides that the State shall make provision for securing just and humane conditions of work and for maternity relief. Article 43 of the Constitution provides that the State shall endeavor to secure to all workers agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and it also provides for full enjoyment of social and cultural opportunities. It is obligatory for the State to promote cottage industries or cooperative in rural areas. Article 43-A provides that the State shall take steps to secure the participation of workers in the management of undertakings, establishments or other organisation engaged in any industry. Article 46 provides that the State shall promote with special care the educational and economic interests of the weaker sections and in particular, members of the Scheduled Castes and the Scheduled Tribes. It shall protect them from social injustice and all forms of exploitation. Article 47 make it obligatory for the State to raise the nutrition level and it is duty bound to improve the standard of living of its people and to improve public health. The successive government have failed to carry out the constitutional objectives. Article 48 make it obligatory for the State to organise agriculture and animal husbandry on modern and scientific lines. Article 14 provides that it is obligatory on the State to ensure right to equality and equal protection and the Supreme Court has held that clause (4) is an instance of classification of clause (1) of Article 16 of the Constitution. It is also obligatory on the part of the authorities and the courts to take into account the constitutional philosophy of Article 17 which abolish the untouchability and the practice of the untouchability in any form is forbidden and any such disability would be punishable. Article 18 has abolished the titles. Article 19 has assigned protection of rights regarding freedom of speech and expression; freedom of peaceful assembly; freedom of forming association or union, freedom of free movement throughout the territory of India; freedom of residence and settlement in any part of India and freedom to practice any profession or to carry out any occupation, trade or business. Article 23 prohibits *begar* and all other forms of forced labour and make violation a punishable offence. There still exists in different parts of the country a system of usuary under which the debtor or his decendants or dependants have to work for the creditor without reasonable wages or with no wages in order to extinguish the debt. At times, several generations work under bondage for the repayment of a paltry sum which had been taken by some remote ancestor. The interest rates are exorbitant and such bondage cannot be interpreted as the result of any

legitimate contract or agreement. The system implies the infringement of the basic human rights and destruction of the dignity of human labour. The party would establish a legal mechanism to effectively enforce the provisions of the Bonded Labour System (Abolition) Act, 1976, to eradicate the illegal system of Bonded Labour and would establish a mechanism to make such activist liable for the payment to the worker for discharge of his work keeping in view the provisions of the Minimum Wages Act, so that the worker may be compensated and rehabilitated in addition to the statutory liability of the government under the scheme. Article 24 prohibits employment of children in factory, mines and any other hazardous employment. Therefore, the Constitution of India, has tried to established an egalitarian social order and to protect the members of the weaker sections of the society from exploitation. The State shall strive to minimize social and economic inequalities, for the establishment of a just society.

Work is essential for the economic survival of mankind in life as a person earn his/her livelihood by working. The constitutional principles under Article 38 of the Constitution mandates that the State shall secure a social order for the promotion of welfare of the people, thus, it is obligatory/ mandatory for the government to provide opportunities of work as well as to ensure the participation of work. It directs the State to strive for minimising inequalities in income. Article 39 of the Constitution make its obligatory for the government to formulates its policies to provide that the State to secure equal opportunities to all the citizens (including men and women) and everyone has right to adequate means to livelihood. The ownership and control of the material resources are so distributed to sub serve the common good of the community. Our constitutional philosophy does not allow operation of the economic system so as to result in concentration of wealth. The successive governments have not obeyed the constitutional command and have not controlled the operation of the economic system to improve the common good of the community. Our constitutional philosophy does not allow disparity in pay as it provides equal pay for equal work for men as well as women. Our constitutional philosophy does not allow abuse and exploitation of the workers, their health and strength, irrespective of their sex, and it does not allow abuse and exploitation of children of tender age. The governments have not obeyed the constitutional command to the effect that the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength, it is also obligatory for the State to provide opportunities and facilities to the children to develop in a healthy manner and in conditions of freedom and dignity and the constitutional philosophy does not allow abuse against moral and material abandonment and exploitation of the workers in tender age and youth. and against moral and material abandonment. It provides for a social order for the promotion of welfare of the people, thus it is obligatory for the government to provide opportunities to work as well as to provide work. Article 40 of the Constitution

It is crucial to one's dignity, well-being and development as a human being. Economic development means not only creation of jobs but also working conditions in which one can work with freedom, safety and dignity. The

government is duty bound to proactively work for improving life and dignity of labour force of country, by protecting & safeguarding the interest of workers, promotion of welfare and providing social security to the labour force both in **Organized and Unorganized** Sectors by enactment and implementation of various Labour Laws, which regulate the terms and conditions of service and employment of workers. The State Governments are also competent to enact legislations, as labour is a subject in the Concurrent List under the Constitution of India. Labour in India refers to employment in the economy of India. The organised sector includes workers employed by the government, state-owned enterprises and private sector enterprises. In 2012, there were around 487 million workers in India, the second largest after China. Of these, over 94 percent work in unorganised sector ranging from pushcart vendors to home-based diamond and gem polishing operations. The organised sector includes workers employed by the government, state-owned enterprises and private sector enterprises. In 2008, the organised sector employed 27.5 million workers, of which 17.3 million worked for government or government owned entities. Over 94 percent of India's working population is part of the unorganised sector. In local terms, organised sector or formal sector in India refers to licensed organisations, that is, those who are registered and pay GST. These include the publicly traded companies, incorporated or formally registered entities, corporations, factories, shopping malls, hotels, and large businesses. Unorganised sector, also known as own account enterprises, refers to all unlicensed, self-employed or unregistered economic activity such as owner manned general stores, handicrafts and handloom workers, rural traders, farmers, etc. Annual Report 2008, of the Ministry of Labour, classified the unorganised labour in India into four groups. This classification categorized India's unorganised labour force by occupation, nature of employment, specially distressed categories and service categories. The unorganised occupational groups include small and marginal farmers, landless agricultural labourers, sharecroppers, fishermen, those engaged in animal husbandry, beedi rolling, labeling and packing, building and construction workers, leather workers, weavers, artisans, salt workers, workers in brick kilns and stone quarries, workers in saw mills, and workers in oil mills. The unorganised occupational groups also includes attached agricultural labourers, bonded labourers, migrant workers, contract and casual labourers, toddy tappers, scavengers, carriers of head loads, drivers of animal driven vehicles, loaders and unloaders. The other unorganised labour category includes service workers such as midwives, domestic workers, barbers, vegetable and fruit vendors, newspaper vendors, pavement vendors, hand cart operators, and the unorganised retail.

The unorganised sector has low productivity and offers lower wages. Even though it accounted for over 94 percent of workers, India's unorganised sector created just 57 percent of India's national domestic product in 2006, or about 9-fold less per worker than the organised sector. The productivity gap sharply further worsens when rural unorganised sector is compared to the urban unorganised sector, with gross value-added productivity gap spiking an additional 2 to 4-fold depending on occupation. Some of lowest income jobs

are in the rural unorganised sectors. Poverty rate is significantly higher in the families where all working age members have only worked in the unorganised sector throughout their lives. Agriculture, dairy, horticulture and related occupations alone employ 52 percent of labour in India. About 30 million workers are migrant workers, mostly in agriculture, as there is no availability of employment. In its 67th Report National Sample Survey Office (NSSO) found that unorganised manufacturing, unorganised trading/retail and unorganised services employed about 10 % of all workers nationwide, as of 2010. It also reported that India had about 58 million unincorporated non-Agriculture enterprises in 2010. As a matter of fact, most of the countries are suffering from the slower-than-projected economic recovery and rise in unemployment, but India has a different story, as right of consideration is effectively denied to the Mulniwasi Bahujans, as there is large scale discrimination against the members of the SCs, STs and OBCs and persons converted to other religions. With reference to the Global Employment Trends 2014 prepared by the International Labour Organization, there are about 202 million people who were unemployed in 2013 around the world. Among the unemployed, 73 million young people were unemployed. To prevent the “groundless” fear becoming the reality, we must find a viable strategy to strengthen the economy and alleviate the problem. The party is committed to the welfare of workers in the organized as well as unorganized sectors.

DEFINITION OF UNEMPLOYMENT

Generally, most people understand unemployment as simple as “people do not have a job”. However, the concept of unemployment is far more complex than the above mentioned. Generally, internationally community define unemployment according to a resolution of International Labour Organization in 1982. One can only be called as “unemployed” if he/she is “without work” that means he/she was not in paid employment or self-employment during a particular reference period; currently available for work”, that means he/she was ready for a paid employment or self-employment during the reference period; “seeking work”, that means he / she had taken specific steps in a specified recent period to seek paid employment or self-employment.¹ Unemployment is one of the key indicators of the economy. Preventing mass unemployment has been universally considered as a primary goal. Why is it the primary goal? As mentioned in the introduction, it is because employment indeed has great influences on both economic and social development. Unemployment comes from different causes. In general, can be manifested into five types: frictional, cyclical, voluntary, structural and institutional.

1. Frictional Unemployment

¹ International Labour Organization, “Resolution Concerning Statistics of the Economically Active Population, Employment, Unemployment and Underemployment” (1982)

Frictional unemployment refers to the period between job transitions. People are regarded as unemployed while they are attempting to find a new job.

2. Cyclical Unemployment

Cyclical Unemployment occurs during recessions of economic cycle. As a matter of fact, it is not surprising that during economic recessions, the demand for goods and services falls. Employers may respond by reducing the labours. When supply of labours is greater than the demand, unemployment results. However, it is believed that such unemployment will disappear the economy recovers.

3. Voluntary Unemployment

Under the economists' view, people tend to participate in workforce. Unemployment is usually regarded as involuntary. However, there are scenarios that people choose not to work. Voluntary unemployment describes such phenomenon. It is functionally another type of frictional unemployment. It happens when people are not able to find employment that matches their expectations.

4. Structural Unemployment

Structural unemployment occurs when the skills, experience, and education of workers do not match job openings (Goodwin 27). Structural unemployment is a form of frictional unemployment, but it usually lasts longer. It may encourage voluntary unemployment.

5. Institutional Unemployment

Institutional unemployment explains how interference in the labor market can create unemployment. The government is the most common instigator of institutional unemployment. Governments can set taxes, create price floors or price ceilings, and indirectly support other factors of institutional unemployment such as labor unions.

MANUAL SCAVENGING

Manual scavenging is described by the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 as “manually cleaning, carrying, disposing of, or otherwise handling in any manner, human excreta from the insanitary latrines.” There is a ban on manual scavenging and so the government considers it non-existent but there still exist more than 2.6 million dry toilets in India, according to Census 2011. Manual scavenging is illegal, it's demeaning and it's fatal. And yet, it happens. It is surprising that the government doesn't consider sanitation workers who, every day, enter sewer lines and septic tanks to clean them, as manual scavengers. How will the country start to solve a problem if they refuse to acknowledge it? In the year

2018, an inter-ministerial task force, counted manual scavengers in India and landed with a number as high as 53,236, which is four times the number written in 2017's official records. But this is still a gross underestimation as the data was only collected from 121 of more than 600 districts in the country and it didn't include data from the largest employer of manual scavengers—the Railways. In fact, the Ministry of Social Justice and Empowerment itself told the Lok Sabha in 2017 that the country saw 300 manual scavengers die that year. Of these, 12 deaths occurred in Delhi and 140 in Tamil Nadu, which was the highest. Even the first week of 2018 saw seven manual scavengers die. While four died fixing a sewer line in Mumbai, three died in Bengaluru while cleaning a choked manhole. The party would prepare an action plan to abolish such practice and to rehabilitate the persons engaged in work.

MINIMUM WAGES ACT, 1948

The party shall ensure effective implementation of the Minimum Wages Act, 1948 for fixation/ revision of minimum rates of wages for employments covered by the Schedule to the Act. There are 45 scheduled employments in the Central sphere while 1709 in the State sphere of such employments. The party would include many more employments in the Schedule to the Act to provide benefits to workers. The minimum rates of wages would be rationalized to include Special Allowances linking it to the consumer Price Index Number. Though the Central Government and 27 States/ UTs have adopted VDA as a component of minimum wage, but the provisions of the Statute, have not been effectively implemented as the stringent measures are required to be taken and the Party would work for strengthening of the legislation. In order to have a uniform wage structure and to reduce the disparity in minimum wages across the country, the concept of **National Floor Level Minimum Wage** as a non-statutory measure was mooted on the basis of the recommendations of the National Commission on Rural Labour (NCRL) in 1991. On the basis of increase in the Consumer Price Index, the Central Government has fixed the National Floor Level Minimum Wages from Rs. 137/- to Rs.160/- per day with effect from 01.07.2015. The party is committed to the welfare of workers in the Unorganized sector and it is committed to the welfare and well-being of farm labour and workers and to ensure the implementation of Minimum Wage enactments.

THE PAYMENT OF WAGES ACT, 1936

The Payment of Wages Act, 1936 was enacted to regulate payment of wages to workers employed in industries and to ensure a speedy and effective remedy to them against illegal deductions and/or unjustified delay caused in paying wages to them. In the 1950s and 60s, the organized labour sector was at a nascent stage, Government in appreciation of the problems of wage fixation in some sectors, constituted need-based Wage Boards from them to time. The wage ceiling under Payment of Wages Act, 1936, was fixed at Rs. 1600/-p.m. in 1982, which has been periodically revised upwards with a view to make the wages adjust to the inflation. In view of the Consumer Expenditure

Survey by the National Sample Survey Office (NSSO), has enhanced the wage ceiling from Rs.10,000/- to Rs. 18, 000/- per month w.e.f. 11.9.2012. The Wage Boards are tripartite in character in which representatives of workers, employers and independent members participate and finalize the recommendations. The Working Journalists & other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955, provides for regulation of conditions of service of working journalists and other persons employed in newspaper establishments. Wage Boards for these employees were set up in the years 1956, 1963, 1975, 1985, 1994 and 2007. The second National Commission on Labour in its Report, 2002, recommended that there is no need for any wage board, statutory or otherwise, for fixing wage rates for workers in any industry. Justice G.R. Majithia Chairman of the two Wage Boards submitted their final Report to the Government on 31.12. 2010. The Majithia Wage Boards recommendations, has been accepted by the Government and notified in the Official Gazette vide S. O. No. 2532 (E) dated 11.11.2011. All other Wage Boards have ceased to exist. The party would constitute wage board for the workers and would revise the wages for the benefit of the workers. The party would try to establish a mechanism to make direct payment to the workers so that the middleman may not take advantage on the helplessness of the workers.

THE PAYMENT OF BONUS ACT, 1965

The Payment of Bonus Act, 1965 provides for the payment of bonus to persons employed in certain establishments, employing 20 or more persons, on the basis of profits or on the basis of production or productivity and for matters connected therewith. The minimum bonus of 8.33% is payable by every industry and establishment under the Section 10 of the Act. The maximum bonus including productivity linked bonus that can be paid in any accounting year shall not exceed 20% of the salary/wage of an employee under the sections 31 A of the Act. The party would try to establish a mechanism to rationalize the payment of bonus to the worker employed in certain establishments so that the middleman may not take advantage on the helplessness of the workers. The calculation ceiling, are revised to keep pace with the price rise and increase in the salary structure. The revisions of the two-calculation ceilings over the years are as follows:

Sl. No.	Year of Amendment	Eligibility limit per (Rupees month)	Calculating Ceiling (Rupees per month)
1.	1965	1,600	7,50
2.	1985	2,500	1,600
3.	1995	3,500	2,500
4.	2007	10,000	3,500

5.	2016 (w.e.f. 01.04.2014)	21,000	7,000 per mensem or the minimum wage for the scheduled employment, as fixed by the appropriate Government, whichever is higher.
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The value of rupees in the year 1965 and the rate of wages in 1965 and the current position of value of rupees in the year 2016, is very much disproportionate and the wages at present is abysmally low. The party would try to establish a mechanism to provide proportionate benefit to the workers so that the price index could be faced by the workers and their human dignity could be improved.

SOCIAL SECURITY LAWS

The social security laws enacted for the organised sector in India are:

(i) *The Employees' State Insurance Act, 1948*: it may be noted that a sum of Rs. 2249.96 crore was in arrears as on 31.03.2016 on account of default by the employers of covered factories/establishments. Out of this, an amount of Rs. 1273.43 crore was not recoverable, for the present due to various reasons. The balance, amounting to Rs. 976.53 crore, represents recoverable arrears.

(ii) *The Employees' Provident Funds & Miscellaneous Provisions Act, 1952*, is a welfare legislation enacted for the purpose of instituting provident funds, pension fund and deposit linked insurance fund for employees working in factories and other establishments. The Act aims at providing social security and timely monetary assistance to industrial employees and their families when they are in distress and/or unable to meet family and social obligations and to protect them in old age, disablement, early death of the bread winner and in some other contingencies. During the year 2015-16, Rs. 32,057.08 crore were received as Pension Fund Contributions, out of which Rs.29,026.88 crore, were collected from employers 'share and Rs. 3,030.20 crore were contributed by the Central Government. At the end of 2015- 16, the EPFO had cumulative investments of Rs.2,77,077.20 crore under the EPS Scheme. The following three Schemes are in operation under the Act through the Employees' Provident Fund Organisation (EPFO):

- Employees' Provident Funds Scheme, 1952
- Employees' Deposit Linked Insurance Scheme, 1976
- Employees' Pension Scheme, 1995;

The Employee's Compensation Act, 1923 – Workers' compensation is a form of insurance providing wage replacement and medical benefits to employees injured in the course of employment in exchange for mandatory relinquishment of the employee's right to sue their employer for the tort of negligence. Common law imposes obligations on employers to provide a safe workplace,

provide safe tools, give warnings of dangers, provide adequate co-worker assistance so that the worker is not overburdened, and promulgate and enforce safe work rules. Workers' compensation statute is intended to eliminate the need for litigation and the limitations of common law remedies by having employees give up the potential for pain-and suffering-related awards, in exchange for not being required to prove tort (legal fault) on the part of their employer. The party would rationalize and effectively implement the statute.

The Maternity Benefit Act, 1961 – to regulate the employment of women in certain establishment for certain period before and after child-birth and to provide for maternity benefit and certain other benefits. Under the provisions of Section 5, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the period of her actual absence immediately preceding and including the day of her delivery and for a period of six months.

The Payment of Gratuity Act, 1972 – to provide for a scheme for the payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments and for matters connected therewith. Under Section 4, payment of gratuity is mandatory. Gratuity shall be payable to an employee on termination of employment after he has rendered continuous service for not less than 5 years in a single organisation. The termination can be due to (i) superannuation, (ii) retirement or resignation and (iii) on death or disablement due to accident or disease. The party would try to establish a mechanism to effectively implement the legislations to provide effective benefit to the workers.

UNORGANIZED WORKERS

As per the survey carried out by the National Sample Survey Organisation (NSSO) in the year 2011-12, the total employment in both organized and unorganised sectors, is 47 crores in the country. Out of 47 crores, about 8 crores, are in organized sector and the balance of 39 crore are in the unorganized sector. The workers in the unorganized sector constitute more than 90 percent of the total employment in the country.

The term “*unorganised worker*” has been defined under the *Unorganised Workers’ Social Security Act, 2008*, as a home-based worker, self-employed worker or a wage worker in the unorganised sector and includes a worker in the organised sector who is not covered by any of the Acts mentioned in Schedule-II of Act i.e. The Employee’s Compensation Act, 1923, The Industrial Disputes Act, 1947. The Employees’ State Insurance Act, 1948, The Employees Provident Funds and Miscellaneous Provision Act, 1952, The Maternity Benefit Act, 1961 and The Payment of Gratuity Act, 1972. A large number of unorganized workers are home based and are engaged in occupations such as beedi rolling, agarbatti making, papad making, tailoring, and embroidery work. The unorganised workers suffer from cycles of

excessive seasonality of employment, lack of a formal employer-employee relationship and absence of social security protection. Several legislations such as the Employee's Compensation Act, 1923; the Minimum Wages Act, 1948; the Maternity Benefit Act, 1961; the Contract Labour (Abolition and Prohibition) Act, 1970; Building and Other Construction Workers (Regulation of Employment & Conditions of Service) Act, 1996; and the Building and Other Construction Workers Welfare (Cess) Act, 1996 etc. are directly or indirectly applicable to the workers in the unorganised sector also. There are Welfare Funds for some specific categories of workers in the unorganised sector like beedi workers, cine workers and certain non-coalmine workers. The funds are used to provide various kinds of welfare activities to the workers in the field of health care, housing, education assistance for children's education, water supply etc. The party would try to establish a legal mechanism to effectively deal with the problems and difficulties being faced by the unorganised workers.

THE BUILDING AND OTHER CONSTRUCTION WORKERS

The construction workers constitute one of the largest categories of workers in the unorganized sector. According to the Sample Survey conducted by NSSO in 2011-12, about 5.02 crore workers are employed in the construction activities. The Government has enacted The Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996; The Building and Other Construction Workers' Welfare Cess, Act, 1996. The Act is applicable to every establishment which employs 10 or more workers in any building or other construction work. There is also provision of constitution of Central and the State Advisory Committees to advise the appropriate Governments on matters arising out of administration of the law besides constitution of Welfare Boards by the State Governments and registration of beneficiaries under the Fund and provision for their identity cards etc. Thereafter, the central government has enacted the Building and Other Construction Workers (Central) Rules, 1998 which have been notified on 19.11.1998. The party would try to establish an effective mechanism to effectively implement the legislations and rules framed thereunder, to provide benefit to the workers.

MIGRANT WORKERS

According to the 2011 Census (Provisional Report), 453,64,19,55 million persons have changed their place of residence within the country and out of this, 463,83,76,6 million or 10.22% have left their place for work. The migrant worker migrates from one place to another for the search of livelihood and in order to survive in the adverse social and economic conditions and to ensure better future for the children and to educate their children and to protect them from the discrimination by the adversary of the society. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 was enacted to protect the rights and safeguard the interests, of migrant workers. The Act regulates the employment of inter-state migrant workmen

and provides for their conditions of service. It applies to every establishment, and the contractor, who employ five or more inter-state migrant workmen. The Act has provision for issue of Pass-Book to every inter-state migrant workman with full details, payment of displacement allowance equivalent to 50% of monthly wages or Rs.75/- whichever is higher, payment of journey allowance including payment of wage during of the period of journey, suitable residential accommodation, medical facilities and protective clothing, payment of wages, equal pay for equal work etc. The problem of migration is sought to be checked through a multi-dimensional course of action through rural development, provision of improved infrastructural facilities, equitable dispersal of resources to remove regional disparities, employment generation, land reforms, increased literacy, financial assistance etc. The party would try to establish an effective legal mechanism and would enact a legislation to protect the fundamental rights of such workmen and also to provide benefit of reservation at the migrated place, as Indian society is caste based and the discrimination is also being faced by the migrating workers with the migration as well, and would take into the various problems faced by the Migrant Workers and the Inter-State Migrant Workmen and the Party would provide benefits of reservation policy to such migrant workmen so that such workmen and their children do not face discrimination in the matters of education, employment and other legitimate rights as citizens of the country and such workers may not face social segregation and untouchability and other social evils. In order to generate employment, the Government has launched a number of schemes like Swarn jayanti Gram Swarozgar Yojna, Pradhan Mantri Gram Sadak Yojana, Sampoorna Gramin Rozgar Yojana, National Food for Work Programme, Indira Awas Yojna, Integrated Wastelands Development Programme, Drought Prone Areas Programme, Desert Development Programme etc. Further, the Government has also enacted the National Rural Employment Guarantee Act, 2005 to provide 100 days guaranteed employment to rural Households. The party would try to establish an effective legal mechanism and would apply the Minimum Wages Act to the National Rural Employment Guarantee Act, 2005, on priority basis and would rationalize the provisions of the National Rural Employment Guarantee Act, 2005, to provide effective benefits to the workers. Thus, the Party is committed to provide benefit to the workers.

BONDED LABOUR

The Bonded Labour System stands abolished throughout the country with effect from 25.10.1975 with the enactment of Bonded Labour System (Abolition) Act, 1976. It freed unilaterally all the bonded labourers from bondage with simultaneous liquidation of their debts. It made the practice of bondage a cognizable offence punishable by law. The Act is being implemented by the State Governments. Salient features of the Act are: the bonded labour system stood abolished and every bonded labourer stood freed and discharged free from any obligation to render bonded labour. Any custom, agreement or other instrument by virtue of which a person was required to render any service as bonded labour was rendered void. Liability to repay

bonded debt was deemed to have been extinguished. Property of the bonded labourer was freed from mortgage etc. Freed bonded labourer was not to be evicted from homesteads or other residential premises which he was occupying as part of consideration for the bonded labour. District Magistrates have been entrusted with certain duties and responsibilities for implementing the provisions of this Act and the Vigilance committees are required to be constituted at district and sub-divisional levels. Offences for contravention of provisions of the Act are punishable with imprisonment for a term, which may extend to three years and also with fines, which may extend to two thousand rupees. The bonded labour would be ensured dignified life after the release and the Party envision to establish cooperative societies which would be constituted to generate work for such persons and to make them as financially stable and to work for the social and educational as well as economic development of the country.

CONTRACT LABOUR

Contract Labour generally refers to workers engaged by a contractor for user enterprises. The Contract Labour (Regulation and Abolition) Act, 1970 was enacted to protect and safeguard the interests of these workers. It applies to every establishment/contractor in which 20 or more workmen are employed. It also applies to establishment of the Government and local authorities. It is a significant and growing form of employment. These workers are millions in number and are engaged primarily in agricultural operations, plantation, construction industry, ports & docks, oil fields, factories, railways, shipping, airlines, road transport etc. The Party envision to establish cooperative societies which would be constituted to generate work for such persons and to make them as financially stable and to work for the social and educational as well as economic development of the country.

WOMEN AND WORK

The Constitution of India has envisioned an egalitarian society which has no discrimination on the basis of caste, creed, place of birth and sex of the person. The Constitution prohibit discrimination against female workers. Women form an integral part of the Indian workforce. According to the information provided by the office of Registrar General & Census Commissioner of India, as per Census 2011, the total number of female workers in India is 149.8 million and female workers in rural and urban areas are 121.8 and 28.0 million respectively. Out of total 149.8 million female workers, 35.9 million females, are working as cultivators and another 61.5 million are agricultural labourers. Of the remaining females' workers, 8.5 million are in household Industry and 43.7 million are classified as other workers. As per Census 2011, the work participation rate for women is 25.51 percent as compared to 25.63 per cent in 2001. The work participation rate for women in rural areas is 30.02 per cent as compared to 15.44 per cent in the urban areas. As per third and Fourth Annual Employment-Unemployment Survey launched by Labour Bureau in October, 2012 and December, 2013,

Female Labour Force participation rate has been increased from 22.6% to 25.8 %. As per annual Employment Review conducted during 2012, by the Directorate General, Employment, total employment in the organized sector is 295.79 lakh. Out of the total 295.79 lakh workers, employment of women in organized sector (Public and Private) is 60.54 lakh which constitute 20.5% of total employment in organized sector. Of this, 0.94 lakh women were employed in whole sale and retail trade and restaurants & hotels during 2011-12. The party would monitor the implementation of the Equal Remuneration Act, 1976 which provides for payment of equal remuneration to men and women workers for same work or work of similar nature without any discrimination and also prevent discrimination against women employees while making recruitment for the same work or work of similar nature, or in any condition of service subsequent to recruitment such as promotions, training or transfer. The provisions of the Act have been extended to all categories of employment and would set-up of an Advisory Committee under the Equal Remuneration Act, 1976. The ILO Convention No.100 of 1951 relating to equal remuneration for men and women was ratified by the Government of India in the year 1958. To give effect to the Constitutional provisions and also to ensure the enforcement of ILO Convention, the Equal Remuneration Act was enacted on 1976. The party would monitor the implementation of the Equal Remuneration Act, 1976. The social welfare organizations have been recognized under the Equal Remuneration Act, 1976 for the purpose of filing complaints in Courts against employers for violation of the provisions of the Act. The Centre for Women's Development Studies, New Delhi; the Self-Employed Women's Association, Ahmedabad; the Working Women's Forum (India), Chennai and the Institute of Social Studies Trust, New Delhi.

CHILDREN AND WORK

Article-24 of the Constitution of India, provides for protection of children from involvement in economic activities and avocations unsuited to their age and this is one of the Fundamental Rights enshrined in the Constitution of India. Directive Principles of State Policy in the Constitution also strongly reiterate the commitment for protection of children. The Government of India stands committed to the elimination of child labour in the country. Article-21-A of the Constitution of India, provides for free and compulsory education to all children of the age of 6 to 14 years. Article-21-A of the Constitution of India, provides for securing the health and strength of workers, men, women and the children of tender age. Child Labour (Prohibition & Regulation) Act, 1986, was enacted to prohibit employment of children below the age of 14 years in notified 18 hazardous occupations and 65 processes like carpet weaving; building and construction work; brick kilns; production of hosiery goods etc. and to regulate the working conditions of children in other occupations/processes. A corollary to this would be that if a child is in the work place, he would miss school. In order to align with the objective of mandatorily providing education up to the age of 14 years under RTE Act.

PUBLIC EMPLOYMENT

Employment has always been regarded as one of the important social issue. The fundamental reason that makes it so important is that it does not only affect the economic development of society, but also the stability of the society and in India, there is graded inequality in the society, as it is divided into castes and due to the castes system, the members of the society are denied opportunities, though the Constitution of India, has provided the mechanism to ensure representation of the socially neglected society, but the persons who are manning the political institutions, are tirelessly working to devise the mechanism to deny the effective implementation of the provisions of the Constitution which provide for the adequate representation of the Scheduled Castes (SCs) and Scheduled Tribes (STs) and the Other Backward Classes (OBCs), which comprise of the 85 to 88 % of the population of the country. The Constitution has the vision of an egalitarian society in which the citizens have right to equality and equal protections to protect the weaker sections of the society. The Constitution has made special provisions for affording equal opportunities to the socially neglected and marginalized sections of the society. The operation of the equality doctrine which provide for the participative governance, essentially postulates a representative system having representation in governance of all sections of the society, is sometime, faulty as the conditions imposed for the socially neglected and marginalized sections of the society are not realistic, but that is the bad effect of the implementation, otherwise, the Constitution has provided for the participative governance by taking into account the positive and negative aspects, which are required to be considered for deciding the issues for the participation of the socially neglected sections of the society. Article 341 of the Constitution defined Scheduled Castes and Article 342 of the Constitution defined Scheduled Tribes and Article 340 of the Constitution provides for constitution of a Commission to investigate the conditions of Backward Classes. First Backward Classes Commission was set up on 29th January, 1953 under the chairmanship of Kaka Kalelkar by a Presidential order. *Kaka Kalelkar Commission* submitted its report on 30th March, 1955, whereby it had prepared a list of 2,399 backward castes for the entire country and of which 837 had been classified as the 'most backward'. The Commission recommended in its report that the minimum reservation of vacancies to the tune of 25% in Class-I, 33½ in Class-II and 40% in Class-III and Class IV posts, be reserved in the services under government and local bodies for other backward classes. The recommendations, were not implemented by the successive governments. Thereafter, on 1st January, 1979, the Janata Party government established B.P. Mandal Commission to "*identify the socially or educationally backward classes*" and to redress caste discrimination and used 11 social, economic, and educational indicators to determine backwardness. In December, 1980, based on its rationale the Mandal Commission identified on the basis of caste, economic and social indicators, 52% of India's population belonging to 3,743 Castes and identified them as "*Other backward classes*". The Commission's in its Report recommended that the members of Other Backward Classes be granted to 27% reservations in jobs under the Central government and public sector undertakings, thus making the total reservations for SCs, STs and OBCs (15% +7.5 %+ 27%) to 49.5%. The

Mandal Commission Report was accepted by the National Front government led by V.P. Singh on 7th August, 1990, by declaring that it would provide 27 per cent reservations to "socially and educationally backward classes" for jobs in central services and public undertaking and by issuing Office Memorandum No.36012 / 31/90-Estt. (SCT) dated 13.08. 1990. The number of backward castes in Central List of OBCs has now increased to 5,013 (without the figures for most of the Union Territories) in 2006 as per National Commission for Backward Classes. Under the scheme of the Constitution of India, Articles 14 to 18 constitute the right to equality and every citizen has right to equality. The Father of the Indian Constitution, Dr. B.R. Ambedkar, was well aware about the prevailing social inequalities in the society. Thus, he has not only incorporated a provision in Article 14 of the Constitution, providing for right to equality and equal protection of laws; but has also further provided for the method of realization of the fruits of right to equality thereby providing for representative system, for such system. The provisions of Articles 15 and 16 have been incorporated and in those Articles, specific provisions were incorporated in clauses like Article 15(4) and Article 16(4), with a non-obstante clause, "*Nothing in this Article*" for making provision for representation of the members of the socially and educationally backward classes (e.g. Schedules Castes, Schedules Tribes and Other Backward Classes). Article 17 is specially incorporated for abolition of *untouchability*. Similarly, Article 18 is also enacted for abolition of titles and for creating an egalitarian society. On the other hand, our Supreme Court has interpreted, the word 'post' in Article 16 (4) of the Constitution of India and has given restrictive meaning, thereby holding that, "reservation of appointment or posts under Article 16(4) is confined to initial appointment only and cannot extend to provide for reservation in the matters of promotion"². The Constitution is the supreme legislative document. It is the leading principle of constitutional liberty that the sovereignty is reposed in the people. These Constitutions create departments for the exercise of sovereign powers; prescribed the extent of the exercise, and the methods, and in some particulars forbid that certain powers which would be within the compass of sovereignty shall be exercised. In fact, the government has time and again, tried to deprive the members of the SCs and STs and the OBCs, their basic human rights of equality and equal protection of laws which is Constitutionally guaranteed right of these citizens, as they are deprived right of consideration against the open vacancies and as such, the microscopic minority is enjoying the 50% of the total cadre strength. The candidates who are figuring in the general merit are not being appointed against the unreserved vacancies, merely on the ground that such candidates happen to belong to the Scheduled Castes and the Scheduled Tribes and the Other Backward Classes and if the above figure is considered then the population of the so-called general communities is only about 12%, as other communities are now part of OBCs. Therefore, the candidates having lower merit are being appointed to the unreserved vacancies. The unreserved seats are to be filled up on merit irrespective of castes and creeds, or birth marks, more particularly these are not the general category seats, but unreserved

² *Indira Sawhney v. Union of India*, 1992 Supp (3) SCC 217.

seats, and are to be filled up irrespective of castes or birth mark. Thus, there is large scale exploitation of the SCs, STs and OBCs, who are popularly known as *Mulniwasi Bahujans*, the exploitation is due to their social origin. The Brahmanical Forces, are trying to create hurdles in the path of the *Mulniwasi Bahujans*, so that they may not be in a position to realise the fruits of the provisions and principles underlined in the Constitution of India. Time and again, the governments, controlled by the Brahmanical Forces, have tried to deprive the members of the SCs and STs and the OBCs, their basic human rights of equality and equal protection of laws, as well as liberty and fraternity amongst the members of the socially neglected sections of the society which is constitutionally guaranteed fundamental rights of citizens (including these citizens). The members of the SCs and STs and the OBCs, are generally, deprived the right of consideration against the open vacancies. This sometimes, results that the microscopic minority of 12% enjoy the 50% of the total cadre strength in public services. **S R Pandian J** *Indira Sawhney v. Union of India*³ has noted, which is reproduced as under: -

“32. The entire Report comprises of fourteen Chapters of which Chapter IV deals with 'Social Backwardness and Caste', Chapter XI deals with 'Socio-Educational Field Survey and Criteria of Backwardness', Chapter XII deals with 'Identification of OBCs' and Chapter XIII gives the 'Recommendations'. After a thorough survey of the population, the Commission has arrived at the percentage of OBCs as follows:

“12.22 From the foregoing it will be seen that excluding Scheduled Castes and Scheduled Tribes, other Backward Classes constitute nearly 52% of the Indian population.

Percentage of Distribution of India Population by Caste and Religious Groups		
S. No.	Group Name	Percentage of the total population
1.	Scheduled Castes and Scheduled Tribes	
A-1	Scheduled Castes	15.05
A-2	Scheduled Tribes	7.51
Total of 'A'		22.56
II	Non-Hindu Communities, Religious Groups, etc.	
B-1	Muslims (other than STs)	11.19 (0.2) *
B-2	Christians (other than STs)	2.16 (0.44) *
B-3	Sikhs (other than SCs & STs)	1.67 (0.22) *
B-4	Budhists (Other than STs)	0.67 (0.03) *
B-5	Jains	0.47
Total of 'B'		16.16
III.	Forward Hindu Castes & Communities	
C-1	Brahmins (including Bhumihars)	5.52

³ 1992 Supp (3) SCC 217.

C-2	Rajputs	3.90
C-3	Marathas	2.21
C-4	Jats	1.00
C-5	Vaishyas-Bania etc.	1.88
C-6	Kayasthas	1.07
C-7	Other forward Hindu castes/groups	2.00
	Total of 'C'	17.58
Total of 'A', 'B' & 'C'		56.30
IV.	Backward Hindu Castes & Communities	
D.	Remaining Hindu castes/groups which come in the category of 'Other Backward Classes'	43.70 @
V.	Backward Non-Hindu Communities	
E.	52% of religious groups under Section B may also be treated as OBCs	8.40
F.	The approximate derived population of Other Backward Classes including non-Hindu Communities	52% (Aggregate of D & E, rounded) @

* Figures in brackets give the population of S.C. & S.T. among these non-Hindu Communities. This is a derived figure

33. On the basis of the Commission's Report-popularly known as Mandal Commission's Report-(for short 'the Report'), two office Memoranda - one dated 13.8.1990 and the other amended one dated 25.9.1991 were issued by the Government of India..."

The candidates who are figuring in the general merit, are not being considered or appointed against the unreserved vacancies, merely on the ground that such candidates happen to belong to the Scheduled Castes or the Scheduled Tribes or the Other Backward Classes and if the above figure is considered then the population of the so-called general communities is only about 12%, as other communities are now part of OBCs. Therefore, the candidates having lower merit are being appointed to the unreserved vacancies by ignoring meritorious candidates. The unreserved slots are to be filled up on merit irrespective of Castes or creeds, or birth marks, more particularly these are not the general category seats, but these are unreserved seats, and are to be filled up irrespective of castes or birth mark of a candidate. The Party would strengthen the reservation policy by providing adequate representation proportionate to the population of the Scheduled Castes, Scheduled Tribes and Other Backward Classes, as provided in Articles 16(4) and Articles 16(4-A) of the Constitution. The party feels that the discrimination in our Country is based on Caste. Therefore, the Party would strengthen the measures to abolish the caste system in the criteria and till such caste system is not abolished the constitutional policies of neutralizing the caste discrimination factors would be strengthened.

The Party would initiate the process of caste enumeration in the Census and would enumerate every caste and its representation in the public services,

education, economic conditions and the reason of the backwardness of the citizens and we would declare the data and details of caste and the reasons due to which they are facing discrimination and would also prepare a detailed program to ensure representation in the governance of the country. According to the Mandal Commission (1980), the OBCs population, is 52 percent and According to 2001 Indian Census, out of India's total population of 1,02,87,37,436 the Scheduled Castes comprise 16,66,35,700 and Scheduled Tribes 8,43,26,240, that is 16.2% and 8.2% respectively. The OBCs data has not been notified in the census. However, according to National Sample Survey's 1999-2000 figures 36% of the country's population has been defined as belonging to the Other Backward Classes. The proportion falls to 32% on OBCs excluding Muslims. A survey conducted in 1998 by National Family Health Statistics (NFHS) puts the proportion of non-Muslim OBCs as 29.8 per cent. The NSSO data also shows that already 23.5 per cent of college seats are occupied by OBCs. That's just 8.6 per cent short of their share of population according to the same survey. The arguments by the persons who are interested in the status quo, that only a small fraction of SCs, STs and OBCs only benefit from the reservations policy and that such measures do nothing to lift the mass of people out of backwardness and poverty, is factually and legally incorrect and it would defeat the constitutional purpose. The Party feel that there should be proper verification of details of representation of the Scheduled Castes, Scheduled Tribes and Other Backward Classes to achieve the constitutional objectives.

EQUALITY OF STATUS AND OF OPPORTUNITY

As recognized by *Babasaheb Dr. B. R. Ambedkar*, at the moment that of sailing of our Constitution that the first rule of the ship, in the form of formal equality, was guaranteed, but inequality in terms of access to social and economic resources, was rampant and on a massive scale, and so long as, they individually, and as the social groups, they were a part of, continue to have no access to social and economic resources that affords them dignity, they would always be on the margins of the ship, with the ever present danger of falling off that ship and thereby never partaking of the promised goals of that ship. *Babasaheb Ambedkar* with great foresight remarked that unless such more fundamental inequalities that foster conditions of injustice, and limit liberty of thought and of conscience, are eradicated at the earliest, the ship itself would be torn apart.⁴ The Constitution has adopted equality as a constitutional principle, but the equality is also assured to the socially disadvantageous sections like Scheduled Castes, Scheduled Tribes and Other Backward Classes by making specific provision for ensuring their representation in the public services in Article 16 and for ensuring their representation in educational institutions in Article 15 of the Constitution of India. The Constitution has made specific provisions for ensuring equality of opportunity by providing equal protection to the socially marginalized sections of the society and has made provision so that their status would not be

⁴ *Indian Medical Association v. Union of India*, (2011) 7 SCC 179.

marginalized in the working of the principle of equality in the scheme of the Constitution of India. The provision ensuring equality and equal opportunities to the members of the weaker sections of the society, has been made by protecting the social dignity of a citizen, as only after such protection of social dignity, the members of the Scheduled Castes, Scheduled Tribes and Other Backward Classes could effectively enjoy the fruits of equality, otherwise, the social status of such persons would deprive them of their fundamental rights. It is well settled principle of our constitutional jurisprudence that Article 14 does not merely aspire to provide for our citizens a mere formal equality, but also equality of status and of opportunity. The goals of the nation-state are the securing for all of its citizens a fraternity assuring the dignity of the individual and the unity of the nation. While Justice-social, economic and political is mentioned in only Article 38, it was also recognized that there can be no justice without equality of status and of opportunity.⁵ In my considered opinion, the discrimination has its roots in the caste system which is the basis of social origin of a person. Any discrimination faced by a person, is due to the social perception of castes (falling in the social classifications of SCs, STs and OBCs) by the dominant factions of society, hence, the basis for the protection against the discrimination, cannot be economic position or the economic conditions of the deprived person, as the reason for the same is his social origin, hence such person required protection of his social dignity and resultantly, the criteria of economic consideration or creamy layer is not justified.

THE CONSTITUTIONAL CLASSIFICATIONS

The representation in public services has been ensured as a facet of right to equality in clause (4) of Article 16 of the Constitution. Similarly, the representation in education has been ensured by clause (4) of Article 15 of the Constitution.⁶ The Supreme Court in *Indira Sawhney v. Union of India*⁷ has approved the *State of Kerala v. N.M. Thomas*⁸ that Article 16(1) does permit reasonable classification for ensuring attainment of the equality of opportunity assured by it. For assuring equality of opportunity, it may well be necessary in certain situations to treat unequally situated persons unequally. Not doing so, would perpetuate and accentuate inequality. Article 16 (4) is an instance of

⁵ *M. Nagaraj v. Union of India*, (2006) 8 SCC 212.

⁶ The provisions of clause (4) of article 15 of the Constitution of India were added by section 2 of the Constitution (First Amendment) Act, 1951(w.e.f. 18.06.1951), after a communal G.O. issued by the State of Madras was struck down by the Supreme Court in *State of Madras v. Champakam Dorairajan*, 1951 SCR 525.

⁷ 1992 Supp. (3) SCC 217(9 Judges) The majority comprising of Kania CJ, Venkatachaliah, Ahmadi and Jeevan Reddy JJ and Concurring view by Pandian, J and Sawant J. However, the dissenting opinion of Thommen, J. held that *It is an enabling provision conferring a discretionary power on the State.*" It relied upon 5 Judges view in C.A. *Rajendran vs. Union of India*, 1968(1) SCR 721, which was one of the opinions, prior to the approval of the classification principle by 7 Judges Bench in *State of Kerala v. N.M. Thomas*, (1976) 1 SCR 906.

⁸ (1976) 1 SCR 906 (7 Judges).

such classification.⁹ *Indira Sawhney v. Union of India*¹⁰, which says classification is permissible in Clause (1) of Article 16 and Clause (4) of Article 16 is one of such classification, like the United States Supreme Court has held in *United States v. Philip Paradise*¹¹ and the majority decision by Jeevan Reddy J., in *Indira Sawhney* has held that [T]he majority (Ray CJ., Mathew, Krishna Iyer and Fazal Ali JJ) held that Article 16 (4) is not an exception to Article 16 (1) but, that it is merely an emphatic way of stating a principle implicit in Article 16 (1)..... held that Article 16(1) being a facet of the doctrine of equality enshrined in Article 14 permits reasonable classification just as article 14 does. In our respectful opinion, the view taken by the majority in *State of Kerala v. N.M. Thomas*¹² is the correct one. We too believe that Article 16 (1) does permit reasonable classification for ensuring attainment of the equality of opportunity assured by it. For ensuring equality of opportunity”¹³ Further, Sawant J in *Indira Sawhney* case¹⁴, concurring view, held that the majority decision of this Court in *State of Kerala v. N.M. Thomas*¹⁵ having confirmed the minority opinion of *Subbarao J.* in *T. Devadasan v. Union of India*¹⁶ the settled judicial view is that Clause (4) of Article 16 is not an exception to clause (1) thereof, but is merely an emphatic way of stating what is implicit in Clause (1). Further, Pandian J in *Indira Sawhney* case¹⁷, concurring view, held that the Article 16(4) of the Constitution is neither an exception nor a proviso to Article 16(1). It is exhaustive of all the reservations that can be made in favour of backward class of citizens. It has an overriding effect on Article 16(1) and (2). The power conferred on the State under Article 16(4) is one coupled with duty and, therefore, the State has to exercise that the state has to exercise that power for the benefit of all those, namely, backward class for whom it is intended.”¹⁸ Thus, it is constitutionally settled interpretation that the provision of Article 16(4) is not an exception, but as held by the majority in *N.M. Thomas* case by approving the dissenting opinion of *K. Subbarao J.* in *T. Devadasan* case, is a valid permissible classification, which has been further approved by the 9 Judges Bench in *Indira Sawhney* case. but the dissenting judges in *Indira Sawhney* case, has taken a view that it is an exception and an enabling provision and a discretionary remedy. The concurring opinion of Pandian J. cast a duty to exercise the power conferred on the State under Article 16(4) which is a power coupled with duty. Thus, after a legal principle of classification, has been settled by the larger bench, such principle could be modified or altered only by a bench of larger composition, i.e. 11 Judges, as per the constitutional principle of precedent under Article 141 read with Article 145 of the Constitution. The principle settled by 9 judges cannot be disturbed

⁹ *Indira Sawhney v. Union of India*, 1992 Supp. (3) SCC 217.

¹⁰ 1992 Supp. (3) SCC 217.

¹¹ 480 US 149, 107 S. Ct. 1053, 94 L. Ed 2d 203.

¹² (1976) 2 SCC 310.

¹³ *Indira Sawhney v. Union of India*, 1992 Supp (3) SCC 217 (para 741-7at 691).

¹⁴ *Id.* at p. 515.

¹⁵ (1976) 2 SCC 310.

¹⁶ (1964) 4 SCR 680.

¹⁷ *Indira Sawhney v. Union of India*, 1992 Supp. (3) SCC 217, 427.

¹⁸ *Id.* at p. 428.

or modified by a bench of Five Judges in *Ajit Singh-II v. State of Punjab*,¹⁹ or in *M. Nagaraj v. Union of India*.²⁰ Therefore, the constitutional principle has to be adhered to by the Supreme Court.

RESERVATION IN PROMOTION FOR OBCs

The Supreme Court in *Indira Sawhney v. Union of India*²¹ has approved the theory of classification in *State of Kerala v. N.M. Thomas*²² holding that Article 16(1) does permit reasonable classification for ensuring attainment of the equality of opportunity assured by it. For assuring equality of opportunity, it may well be necessary in certain situations to treat unequally situated persons unequally. Therefore, the view taken by the Court in respect of non-admissibility of the reservation in promotion is contrary to the scheme of the Constitution. The Supreme Court should review its decision by reviewing question No.7 in *Indira Sawhney v. Union of India*²³. Moreover, the Supreme Court in *M. Nagaraj v. Union of India*²⁴, has upheld the constitutionality of the Constitution (77th Amendment) Act, 1995; the Constitution (81st Amendment) Act, 2000; the Constitution (82nd Amendment) Act, 2000 and the Constitution (85th Amendment) Act, 2001. Therefore, the Party feel that the Supreme Court should review its decision *Indira Sawhney v. Union of India*²⁵, and facilitate to allow reservation in promotion to the Other Backward Classes as was permitted prior to the decision in Mandal case. The Party is also committed to make a provision for representation in the form of *reservation in promotion* for the members of the Other Backward Classes to achieve the constitutional objectives of equality of result.

RESERVATION IN PROMOTION IN USA

The phrase '*equal protection*' is used in XIVth Amendment of the Constitution of *United States of America* and the similar phrase 'equal protection' is used in Article 14 of the Constitution of India. The provisions of US Constitution, has been interpreted and such interpretation of 'equal protection' has been made to provide for affirmative action in education, in services, in contracts (even in private contracts) etc. and the same is inclusive of the affirmative action in promotion.²⁶ United States Supreme Court in *United States v. Philip Paradise*²⁷ has permitted one black for one white ratio (means 50%) reservation in promotion for Blacks in United States. Question before the US Supreme Court: Whether the one-black-for-one-white (50% affirmative

¹⁹ *Ajit Singh-II v. State of Punjab*, 1999 (7) SCC 209.

²⁰ *M. Nagaraj v. Union of India*, 2006 (8) SCC 212.

²¹ 1992 Supp. (3) SCC 217(9 Judges)

²² (1976) 1 SCR 906 (7 Judges).

²³ 1992 Supp. (3) SCC 217(9 Judges) The majority comprising of Kania CJ, Venkatachaliah, Ahmadi and Jeevan Reddy JJ and Concurring view by Pandian, J and Sawant J.

²⁴ *M. Nagaraj v. Union of India*, 2006 (8) SCC 212.

²⁵ *Indira Sawhney v. Union of India*, 1992 Supp. (3) SCC 217.

²⁶ *United States v. Philip Paradise*, 480 US 149, 107 S. Ct. 1053, 94 L. Ed 2d 203.

²⁷ *Ibid.*

action in promotion) promotion scheme violates the Equal Protection Clause of the Fourteenth Amendment?”

It has been held that Paradise came to the court involving constitutional issues stemming from a court order in response to intentional racial discrimination. *BRENNAN, J.*²⁸ announced the judgment of the Court and held that the question, ‘whether relief awarded in this case, in the form of a one-black-for-one-white promotion requirement to be applied as an interim measure to state trooper promotions in the Alabama Department of Public Safety (Department), is permissible under the equal protection guarantee of the Fourteenth Amendment.”

The United States Supreme Court in *United States v. Philip Paradise*²⁹ has held that there is discrimination against the Blacks in the matters of promotions, and as such, the Court has allowed reservation quota by permitting one black for one white ratio (means 50% reservation in promotion) by moulding the relief in favour of the reservation in promotion for the blacks in United States. The US Supreme Court in *Johnson v. Transportation Agency*³⁰ has held that sex of a female county employee can be considered as one factor in promoting her over equally qualified male employee under voluntary affirmative action plan, and it did not violate Title VII of the Civil Rights Act. Thus, it is permissible to promote a female employee on the basis of reservation in promotion in the United States.³¹

It is also pertinent to mention here that there is no provision akin to Article 16(4) or Article 16(4-A) in the Constitution of the United States of America, but there is a provision parallel to Article 14 of our Constitution in the form of their XIV Amendment to the Constitution. Therefore, the interpretation by the United States Supreme Court and the like principle has to be adopted by the Supreme Court of India, which are being ignored despite a special provision for the members of the SCs and the STs. We would work for a similar provision like Article 16(4-A) by way of Amendment for the members of the Other Backward Classes, and we would also work for the review of the decision in *Indira Sawhney v. Union of India* (1992) so that the interpretation which deny reservation(including reservation in promotion to the OBCs) could be changed and the members of the Other Backward Classes could represent themselves in the higher echelons /positions so that the decisions could be rational and reasonable for the weaker sections of the society.

The party is committed to improve the working conditions of the persons engaged in organized as well as unorganized sectors. The party would

²⁸ *Brennan, J.* delivered an opinion in which Marshall, Blackmun, and Powell, Stevens, JJ. (5) has Concurred. White, J., delivered a minority opinion in which O’connor, J, Rehnquist, CJ; & Scalia, J.(4) has agreed with dissenting view.

²⁹ 480 US 149, 107 S. Ct. 1053, 94 L. Ed 2d 203.

³⁰ 480 US 616 (1987)

³¹ *Johnson v. Transportation Agency*, 480 US 616 (1987); the reservation is known as affirmative action’s in the United States.

encourage the cooperative movement by establishing cooperative societies as per the scheme of the Constitution (97th Amendment) Act,2011 by which Part-IX-B (comprising Article 243 ZH to Article 243 ZT of the Constitution) has been inserted to the Constitution. The party would establish the cooperative societies so that the workers could manage and earn profit and the national wealth could be strengthened and the common masses could improve their economic conditions.