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Points made to render L.A.Bill No.44 of 1983 more promotive of its purposes.

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1. Let me, in limine, take you to a patent casus omissus. While regulatory legislations often provide for registration and licensing, the first step is to obligate registration on all construction contractors. The teeth in the statute bite only if registration of establishments and licensing of contractors are made compulsory on pain of punishment if registration or licensing be not done. This condition has been overlooked by the draftsman, I presume, by oversight. Unless corrected the law will be stultified.

2. The second but substantial submission I wish to make needs serious consideration. In a welfare measure to protect the weakest sector of workers the policy must be rope in all categories of 'work' by all kinds of operators so that all workers engaged in bulding and other constructions may be eligible for statutory benefits. Law is what law does, and all law which talks big but acts small becomes paper tiger. So it is mandatory that a 'catch - all ' provision to cover every

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building construction or engineering construction, with no exception, escape or exemption from the benign coils of the Act, is explicitly written into the law. The exceptions and exemptions should not reduce the whole edifice of protection an unreal construction. Statutory illusions are the consequence if exemptions exceed and nullify or emasculate the thrust of the beneficial measure. The broad policy of inclusion within the statutory net as the rule and exclusion as the exception is, it seems to me, breached in the current scheme of the bill. Exemptions devour the main provision, and make the Act something like an exercise in futility. I will explain presently.

Moreover, the classification for exemption must be constitutional. I am afraid this test of Art. 14 has been slurred over or there are more facts than within my ken justifying the clauses of exclusion and exemption. The only basis of classification that is permissible in this statutory scheme, except in extraordinary situations, has to be the nature of the work and the protection needed, not the kind of employer or number of employees (except rearely). Of course, if there are other enactments offering safeguards, safety measures and compensation for calamities during employment, there may be ground for classification. Perhaps, the

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exemptions now found in the bill are so sweeping as to be destructive of scheme of protection. The bulk of workers will be left out, based on unconstitutional classification.

Clauses 1 (4) proviso, 2 (h) ii (II), 2 (p) (i to iii), 2 q (i to iii) Cl.4 (blanket and overbroad). cl 39, come within the mischief of arbitrary classification.

If a tycoon, - there are many now - for the palatial occupation of his family, builds a crore-worth building under personal supervision why should those workers be discriminated against? A smaller building done on contract basis attracts the Act. Again why draw an arbitrary line at 50 workers, leading to statistical and otherabuse? Is not all construction hazardous ? Why a thin classification based on hazard ? Why exclude establishments as done in the detinition of 'establishment' unless there be already protective legislation ? Why should workers under establishments or railway, aerodromes, major ports and the like be handicapped ? The intelligible differentia, so it seems, has no rational or intelligent relation to the object of the statute, as spell out at the outset. Any any classification, without substantial foundation rooted in the end to be promoted by the statute, is untenable.

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I do not go into details to demolish the exemptions but in principle and policy the bill is vulnerable. Kindly examine the clauses from the angle I have projected and restructure them so as to maximise the beneficial ambit. I criticise to correct, not to carp. Workers are too dear for us to deny relief on the acore of prestige. For a Labour Minister, if I may venture, welfare of the worker is a value while elitist prestige or boast of perfection is a non-value.

There is cl. 27 which shows female concern and forbids women working before 6 AM or beyond 7 P.M. Employment of children is taboo-Good. But compassion that kills makes a backlash. So total ban or regulated safety - that is the policy dilemma. Luckily, women in Tamil Nadu are not molested as randily or as riskily as in some Northern States. So, all workers are given the option to work or not to work before 6 A.M. or beyond 7 P.M. the object will be achieved. The option must be of the majority of women workers expressed in writing. Likewise, regarding children, not wholesale embargo but cautious prohibition, is wise. The tender age of children shall notbe abused. (Art 39 (e). By way of aside, what the tragedy of Sivakasi ?). Special provision for women and children is valid. (Art. 15 (3)). But gender justice and juvenile justice should not

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lead to human injustice by rigid dos and don'ts. For children, I suggest a modification. When the construction is hazzardous or the hours of work hamper development and education or if the circumstances of work are injurious to personal growth, then ban is good. So it is better that the contractor is allowed to use children with the written permission of the Inspector and of the parents on condition that the work does not dehumanise the child.

Welfare legislation must be not only negative but also positive, not only punish violation but promote safety and well-being. I, therefore, suggest that the provision for a Welfare Fund with contribution from Government and the contractor in moeties be seriously considered. Let us remember that articles 41 42 and 43 + 43A are the constitutional root of welfare legislation of the working class. Therefore, the state must also contribute; having regard to these provisions there must be a welfare fund to promote the health and protect the safety of men, women and adoloscents engaged in construction. The modus operandi of using the fund may be left to rules. The point is that every worker engaged in construction must have insurance against ill-health, accidents and maternity distress. Likewise mother-hood, child-hood, education and nutrition of little ones must be covered by the welfare fund.

And the law must outwit clever retrenchment and female discrimination by apt penalties.

One more suggestion. The whole Ace must be worked with the active participation of the construction worker. To leave to the beurocracy is to surrender to callousness and corruption. The continued involvement of the workers' representatives in the implementation of the enactment, with special care to include working women and social welfare organisation, is vital. Clause 8 must be not merely advisory. The board must give more representation to workers and must have district and less level units. Moreover, the board must have powers to issue directions, by majority vote, where effective implementation calls for it.

One more idea. The bill under discussion deals with rights of a backward section of the working class most exploited all these days. To clothe them with rights does not stop with three readings of a bill. The rights must be readily endorceable, since remedy is the cutting edge of right. Having regard to the ignorance of the class we deal with remember, bonded labour abounds in contract labour as the Asiad Case showed - we must have a seperate chapter on Judicial Remedies, Free Legal Aid and Public Interest Litigation. Access to Justice is the foremost human right.

I suggest mobile courts composed of one lawyer from the panel given for each district by the State

-----Legal Aid Board, one construction worker nominated by the State Social Welfare Board Cases to be tried at the spot, promptly, if possible; the Indian Evidence Act and the Procedure Codes not to apply; procedure to be devised by the tribunal subject to natural justice. No speaking order and no appeal; a revision to the Labour Court, since perversities will be corrected by Art. 226.

Free Legal Aid for construction workers should be a statutory right with counsel of their choice, subject to rules to be framed. Public interest litigation at the instance of any Labour Union or Social Action Group (both to be defined) must be statutorily provided for and the State Legal Aid Board must meet the legal expenses of such cases, if they are certified, by any panel lawyer of the Board, to be prima facie just. Remedial Jurisprodence needs legislative recognition if law must heal life where it hurts.

These suggestions are supplementary to what the workers' committee has already proposed. Unfortunately, I am under medical treatment and so have not the meed for the facilities to study or discuss the bill in greater depth or detail. However, I hope to return to Madras and will then be available for any discussion of the provisions with you or with the secretary for Law and Labour.

Thank you,