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Action Plan: Post Basic Ashram Schools Education for DNT communities in Maharashtra

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ABSTRACT

The existing laws do not cover or adequately cover the workforce in the unorganised sector, we have no escape from concluding that more than 90% of our workforce does not enjoy the minimum protection and security that they need. This, then, will be a situation which should shame all those who talk of care and commitment to the rights and welfare of labour, as well as all those who bear responsibility for ensuring the rights and welfare of our people, in particular, the overwhelming majority of our people who are in the labour force. We have many labour laws in our Statute book. All of them do not cover workers in the unorganised/ informal sector. All of them are not applicable, and were not meant to be applicable to the employments in the unorganised sector. Some are applicable. But none of the laws that form the base of the social security system covers the whole unorganised sector. We will look at the laws that apply wholly, or partly to this sector. But before we do so, we have to draw attention to the questions or alternatives that arise. One is whether protection and security can be extended by amending existing Acts, mutatis mutandis, to employments and labour in the unorganised sector. The other is whether to achieve the goals of assuring protection and welfare to workers in this sector, we have to enact separate laws for each employment and occupation, including a separate law for the self-employed. A third question is whether one single law can cover the needs of all the workers in the informal/unorganised sector because it does appear that one single law cannot cope with the variety of conditions in a sector, in which even the employer-employee relationship cannot be identified in many cases; where there are vast differences in the state of awareness, literacy, education, skills, degree and level of organisation means of monitoring, etc. The fourth is whether the problem of variety can be solved or addressed by enacting an Umbrella Law that provides for a minimum of protection, access to welfare or social security, and redressed of grievances, while retaining existing sub-sectoral laws and sub-sectoral welfare systems and providing for the addition of further sub-sectoral systems when and were found necessary.

KEYWORDS: Unorganised, Wages, Compensation, Gratuity

The Factories Act, the Minimum Wages Act, the Equal Remuneration Act, the Payment of Wages Act, the Industrial Disputes Act, the Workmen's Compensation Act, the Payment of Gratuity Act, etc. are applicable to the workers in the unorganised sector where there is an identifiable employer-employee relationship. In some of the employments or avocations, contractors are engaged, and this results in a situation in which the principal employer does not come into the picture, as in building/construction activity, beedi rolling, mining, (particularly stone mining) or quarrying, and various other occupations. These workers are sometimes covered under more than one law e.g. *the Contract Labour (Regulation and Abolition) Act as well as under one specific law like Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act* etc. In spite of the existence of these beneficial laws, the benefits and facilities prescribed under these laws are denied to them in most cases. We will examine some of these Acts and schemes in succeeding paragraphs.

- INDUSTRIAL DISPUTES ACT, 1947: The Industrial Disputes Act (I.D. Act) has been enacted mainly to provide for the investigation and settlement of industrial disputes.

- MINIMUM WAGES ACT, 1948: The Minimum Wages Act, 1948 is the most important legislation that has been enacted for the benefit of unorganised labour. It was enacted for fixing, reviewing and revising the minimum rates of wages in the scheduled employments where workers are engaged in the unorganised sector. The Minimum Wages Act is meant to ensure that the market forces, and the laws of demand and supply are not allowed to determine the wages of workmen in industries where workers are poor, vulnerable, unorganised, and without bargaining power. The minimum rates of wages are fixed, keeping in view the minimum requirements of a family, and wages at these rates are to be paid by all employers irrespective of their capacity to pay. (Questions relating to Minimum Wages have been discussed in detail elsewhere.)

The Act helps unorganised workers who are working in the scheduled employments. But nearly 60% of the workforce in the unorganised sector is self-employed or home-based. Thus, they remain outside the purview of the *Minimum Wages Act, 1948*, although they constitute the majority in the sector.

- WORKMEN'S COMPEN-SATION ACT, 1923: The Workmen's Compensation Act, 1923 provides for the payment of compensation to workmen for injuries sustained in accidents. After the amendments effected in 1995, the Act has 4 schedules. Schedule I provides a list of injuries with percentage of disablement (loss of earning capacity). If the injury is not a scheduled injury, the loss of earning capacity has to be proved by evidence. The majority of workers who are not insured under the ESI Scheme are covered under the Workmen's Compensation Act. The Act does not apply to those who are employed in occupations enlisted in the Shedule II. Nor is relief available if the injury has taken place when the injured worker was not actually engaged in discharging duties related to the employer's trade or business. The employer is liable to provide monetary compensation to the worker or dependant in case of death or disablement provided it occurs 'out of and in the course of employment.' An occupational disease listed in Schedule III of the Act is also accepted as an accident that occurred while on duty. The burden of proving that the accident arose out of employment is upon the worker.

The method of claiming compensation for disability is so long and torturous that one rarely gets the compensation to which one is entitled by law. The workmen's compensation commissioner decides the case, and the revenue department recovers the amount of compensation. But workers, who are in the unorganised sector, often find it very difficult to prove who is their employer, and as a result cases are prolonged, and often workers die without receiving any compensation.

The Workmen's Compensation (Amendment) Act, 2000 that came into effect in December 2000 provides for compensation even to casual workers. The minimum amount of compensation for death has been enhanced from Rs. 50,000 to Rs. 80,000 and for total disablement from Rs. 60,000 to Rs. 90,000. The ceiling on monthly wage / salary reckoned for determining the compensation amount has also been increased from Rs. 2000 to Rs. 4000. *INTER-STATE MIGRANT WORKMEN (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) (ISMW) ACT, 1979*: The vast majority of migrant workers fall in the unorganised sector. Workers are recruited from various parts of a State through contractors or agents commonly known as 'sardars,' generally for work outside the State wherever construction projects are available. This system lends itself to various abuses. The promises that contractors make at the time of recruitment about higher wages and regular and timely payments are not usually kept. No working hours are fixed for these workers and they have to work all days in the week under extremely bad, often intolerable working conditions in inhospitable environments. The provisions of various labour laws are not observed, and migrant workers are often subjected to various forms of malpractices. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 was enacted to regulate the employment and conditions of service of inter-State migrant workers.

The benefits include non-discrimination in wage rates, holidays, hours of work and other conditions of work for inter-State migrant workers in relation to local workers. They are eligible for a non-refundable Displacement Allowance equal to 50% of their monthly wages in addition to the wages. A journey allowance, equal to rail fares both ways, is to be paid by the contractor with wages during the period of journeys. Other provisions include regular payment of wages, equal pay for equal work to both men and women workers, and provisions for suitable conditions of work, suitable residential accommodation, adequate medical facilities, and adequate protective clothing and equipment. In case of accidents, there is a provision to ensure intimation to the authorities of both the States (Home State and Host State) and to the next of kin.

To understand the applicability and utility of the Act, we must look at the definition of the inter-State migrant workman in the Act. It says, 'any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State, whether with or without the knowledge of the principal employer in relation to such establishment.'

According to this definition, we find that all migrant workers (who are generally unorganised workers) are not inter-State migrant workers as defined by the law, and cannot, therefore, enjoy the benefits of the ISMW Act. To prove in court that the Act is applicable is very difficult, as employers deny that workmen were recruited from another State (Home State) by any of their contractors. They often contend that the workers were recruited from nearby places within the State where the industry is located. Thus, the Act is only of very limited benefit to workers in the unorganised sector.

The Commission has, therefore, been urged by many witnesses to recommend amendments that will make the ISMW Act more effective, and cover all migrant workers. The suggestion is that the definition of 'inter-State migrant worker' be amended to mean any worker who is employed in an establishment situated in a State other than the Home State of the worker.

It was argued that this change can make the ISMW Act cover a large number of unorganised workers, and at the same time plug some of the loopholes in the present Act.

- BUILDING AND OTHER CONSTRUCTION WORKERS' (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 1996: The Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 is an Act to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare and other incidental matters. The Act applies to every building or other construction work establishment, which employs or had employed ten or more workers. It covers all central and State government establishments. The special feature of the Act is that it covers all private residential buildings if the cost of construction is more than Rupees ten lakhs.

Registration of the Establishment is compulsory, and no Establishment without Registration can employ any building or construction worker. A worker between 18 and 60 years has to be registered to become eligible for the benefits of the Act. He/she must have put in at least 90 days of work in the previous year to acquire eligibility for registration. Every registered worker gets an identity card, and work entries are made in the card. The worker remains a beneficiary up to the age of 60, and for the year when he/she puts in at least 90 days of work.

A fund has to be created with the revenue from a cess collected from the employers, and contributions by the workers. Benefits include assistance in cases of accident, payment of pension, house building loans, assistance for group insurance schemes, education of children, maternity benefits for female beneficiaries and so on. There are provisions for regulating working hours, welfare measures and other conditions of service. The law also prescribes safety and health measures, and all other precautions that are required for safe working, e.g. safety devices for installation work, demolition work, excavation, underground construction, handling measures, proper ladders, ropes and fencing, etc. Inspections and penalties are provided for. In actual practice, the provisions of this Act are beneficial only to the skilled workers and those who work continuously in the industry. Unskilled workers, who do not work with a construction establishment continuously, may not get the benefits available under the Act. It will not be possible for those unskilled, uneducated and purely casual workers to make regular, timely contributions to the fund as per the provisions of the law. The responsibility for collecting of contributions from workers and remitting the same to concerned welfare boards, requires to be entrusted to the employer. In the seminars organised at different places (e.g. Chennai, Mumbai, New Delhi) by some of the voluntary organisations (e.g. National Campaign Committee, Nirman Mazdoor Panchayat, T.N. Forces etc jointly), to which this Commission was also invited, allegations were levelled against State Governments accusing them of conniving with the builders by not notifying the rules and not setting up Boards as prescribed.

It was alleged that the builders had saved several thousand crores of the cess which was to be paid under the Act. These organisations demanded that Rules be framed by all State Governments immediately to implement the law. They further demanded inter-alia that (a) the Act should be made applicable to the construction of residential houses without limit of cost (b) the cess should be increased from 1% to 2% of the construction cost (c) there should be provision in the Act for the regulation of employment of building workers, and the welfare boards prescribed under the Act should be set up on the lines of boards constituted under the Maharashtra Mathadi and other Manual Workers Act by amending the Central Act (d) The Board should have powers to regulate natural resources and promote the rights of workers to have open access to the resources.

- CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970: Contract Labour (Regulation and Abolition) Act, 1970 regulates the employment of contract labour in certain establishments and provides for its abolition in certain circum-stances. The Act is applicable if the principal employer engages twenty or more contract workers in an establishment. The contractor who employs twenty or more workers in his contract work will be covered under the Contract Labour Act 1970. The Act provides for the registration of all establishments of Principal Employers and licensing of all contractors. There is a special provision (Section 10) for the abolition of the contract system if certain conditions are met, like the nature of jobs being of a perennial nature and connected with the core business of the principal employer. There are a number of provisions in the Act for the welfare and safety of contract labour. For regulating its implementation, certain registers, records, returns etc. are to be maintained by the principal employers and contractors. Penalties have been prescribed for those who violate the law. This Act is meant for unorganised labour. But its scope is very limited. The limitations in the law are such that the contractor stands to gain if he engages less than twenty workers. This provision provides a loophole for all manner of manipulations by employers and contractors. Therefore, it can be seen that the coverage that this Act provides is far from satisfactory.

None of these labour laws can provide protection to the vast majority of unorganised workers who are self-employed or home-based, or to other workers who are employed in enterprises where the number of

employees does not reach the threshold prescribed by the Acts.

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