



THE CONCEPT OF SOCIAL SECURITY AND PLIGHT OF UNORGANISED LABOUR IN INDIA: A CRITICAL ANALYSIS

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ABSTRACT

Labour is backbone of economy as production without labour is inconceivable. Human conditions of working and labour welfare are constitutional mandate. The majority of workforce in India is employed in informal sector. This segment of labourer is not capable to unite themselves for the purpose of collective bargaining with their employer and due to various socio-economic factors they are deprived of protection of labour legislation. Present paper is an attempt to find out problems and difficulties of unorganised labour in India. It further seeks to critically analyse relevant statutory measures and judicial response, before suggesting appropriate reforms.

KEYWORDS : Unorganised Labour, Informal Sector, Labour Legislation

INTRODUCTION

Unorganised labour, or labour in informal sector is categorised by features such as employment relations of short duration and non-applicability of most of the labour laws. The sector includes small and marginal farmers, artisans, petty shop keepers, vendors and hawkers, some home based workers and so on. Thus, in the case of unorganised labour work activities often take place outside the legal and regulatory framework, work occurs in small establishments and employment relations are often irregular duration.ⁱ Agricultural labour, which constitutes a major part of the rural labour in the country, is the most disadvantageous section of the population as they have not benefitted from the socio-economic development witnessed after independence. They are unorganised and thus deprived of the benefits of most of the labour enactments.ⁱⁱ Rural Labour, as distinguished from urban industrialised labour, is not concentrated in identifiable areas, and therefore, unorganised and victim of exploitation and injustice.ⁱⁱⁱ Collective bargaining and labour legislation, the twin tools of labour jurisprudence fail to provide adequate security to unorganised sector workers.

Unorganised or informal sector of labour force has significant contribution to in Indian Economy. More than 90 percent of the total employment in the country and about 50 percent of the national product is accounted for by the informal economy. This sector constitutes high proportion of socially and economically underprivileged class of society.^{iv} On account of their unorganised nature, these workers do not get adequate social security. Some welfare schemes are being implemented by the Central Government for specific group of unorganised sector workers such as *beedi* workers, non-coal mine workers, cine workers, handloom weavers, fishermen etc. State Governments are implementing welfare programmes for certain categories of unorganised workers. Despite all these efforts, there is a huge deficit in the coverage of the unorganised sector workers in the matter of labour protection and social security measures ensuring the welfare and wellbeing of workers in the unorganised sector.^v Supreme Court of India has also recognised unorganised labour, along with bonded labour, women and children, as within the description of "disadvantaged section of society" for the purpose of filing of Public Interest Litigation on their behalf by public spirited citizens.^{vi}

The Concept Of Social Security.

Social Security is the protection that a society provides to the individuals and households to ensure access to health care and to guarantee income security, particularly in the cases of old age, unemployment, sickness, invalidity, work injury, maternity, or loss of breadwinner.^{vii} The Apex Court of India, in a number of cases, has held that the concept of social security is inherent in the provisions of the constitution. In *C.E.S.C. Ltd. v. Subhash Chandra Bose*,^{viii} Supreme Court held that the right to social justice is a fundamental right. Right to livelihood

springs from the right to life guaranteed under Article 21. The health and strength of a worker is an integral facet of right to life. Right to human dignity, development of personality, social protection, right to rest and leisure are fundamental human rights to a common man. Right to life and dignity of person and status without means are cosmetic rights. Socio-economic rights are, therefore, basic aspirators for meaningful right to life. Right to social security and protection of the family are integral part of the right to life. Right to social and economic justice is a fundamental right". The Court further held that "right to medical care and health for protection against sickness are fundamental rights to the workmen". In *Consumer Education & Research Centre v. Union of India*,^{ix} it was unanimously held by a bench of three Judges of the Apex Court, that right to health to a worker is an integral facet of meaningful right to life and have not only a meaningful existence but also robust health and vigour without which worker would lead life of misery. Lack of health denudes his livelihood. Compelling economic necessity to work in an industry exposed to health hazards due to indigence to bread-winning to him and his dependents should not be at the cost of the health and vigour of the workman. Facilities and opportunities, as enjoined in Article 38 of the Constitution of India, should be provided to protect the health of the workman. Right to human dignity, development of personality, social protection are fundamental rights to the workmen.

Medical facilities to protect the health of the workers are fundamental rights to workmen. It was, therefore, held that "the right to health, medical aid and to protect the health and the vigour of a worker while in service or post retirement is a fundamental right under Article 21 read with Articles 39(e), 41, 43, 48-A of the Constitution of India and fundamental human right to make the life of workmen meaningful and purposeful with dignity of persons". Thus, it is well settled law that the Constitution of India in Preamble, Chapter of Fundamental Rights and Directive Principles accords right to livelihood and meaningful life, social security and disablement benefits are integral schemes of socio-economic justice to the people, and in particular, to the middle class and lower middle class people.^x

Characteristics Of Unorganised Labour:

The report of Second National Commission on Labour,^{xi} in order to identify the informal labour sector, observed following characteristic features of Unorganised Labour in India. These characteristics also point out the problems and condition of this class of labourers in India.

- (i) Low Scale of organisation.
- (ii) Operation of Labour relation on casual basis, on the basis of kinship and personal relations.
- (iii) Small own account enterprises or family enterprises.
- (iv) Ownership of fixed and other assets by self.
- (v) Risking of finance capital by self.

- (vi) Involvement of family labourers.
- (vii) Production expenditure indistinguishable from household expenditure.
- (viii) Easy entry and exit.
- (ix) Free mobility within the sector.
- (x) Use of indigenous resources and technology.
- (xi) Unregulated and unprotected nature.
- (xii) Absence of fixed working hours
- (xiii) Lack of security of employment and other social security benefits.
- (xiv) Use of labour-intensive technology.
- (xv) Lack of Support from Government.
- (xvi) Workers living in slums and squatter areas.
- (xvii) Lack of housing and access to urban services
- (xviii) High present of migrant labour

Legislation Pertaining To Unorganised Labour In India:

Although unorganised sector is largely deprived of the benefits of social welfare and labour legislation, there exist some laws which intend to provide security and benefits to unorganised labour.

(i) The Bonded Labour System (Abolition) Act, 1976
Article 23(1) of the Constitution prohibits "begar" and other similar forms of forced labour and it provides that any contravention of the said prohibition shall be an offence. But in spite of this provision a system of usury under which the debtor or his descendants or dependants have to work for the creditor without reasonable wages or with no wages in order to extinguish the debt, existed in many parts of the country. It has been found that several generations work under bondage for the repayment of a small sum which had been taken by some remote ancestor. This system of bondage implies the infringement of basic human rights and destruction of the dignity of human labour. The bonded labour system has been abolished and every bonded labourer has been set free and has been discharged from any obligation to render any bonded labour. On the commencement of this Act, any custom or tradition or any contract, agreement or other instrument (whether entered into or executed before or after the commencement of this Act) by virtue of which any person, or any member of the family or dependent of such person, is required to do any work or render any service as a bonded labourer, shall be void and inoperative.^{xiv}

Despite the existence of the above stated enactment, the constitutional mandate of abolition of beggar has not been fully implemented. In *Bandhua Mukti Morcha v. Union of India*^{xv} Supreme Court of India observed that "one major handicap which impedes the identification of bonded labour is the reluctance of the administration to admit the existence of bonded labour, even where it is prevalent. It is, therefore, necessary to impress upon the administration that it does not help to ostrich-like bury its head in the sand and ignore the prevalence of bonded labour, for it is not the existence of bonded labour that is a slur on the administration but its failure to eradicate it and moreover not taking the necessary steps for the purpose of wiping out this blot on the fair name of the State is a breach of its constitutional obligation."

(ii) Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996
It is estimated that about 8.5 million workers in the country are engaged in building and other construction works. Building and other construction workers are one of the most numerous and vulnerable segments of the unorganised labour in India. The building and other construction works are characterized by their inherent risk to the life and limb of the workers. The work is also characterised by its casual nature, temporary relationship between employer and employee, uncertain working hours, lack of basic amenities and inadequacy of welfare facilities. In the absence of adequate statutory

provisions, the requisite information regarding the number and nature of accidents is also not forthcoming. In the absence of such information, it is difficult to fix responsibility or to take any corrective action.^{xvi} Supreme Court has held that the Object of Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 is to take care of a particular necessity i.e. welfare of unorganised labour class involved in construction activity, that needs to be achieved and not to be discarded, therefore, doctrine of purposive interpretation gets attracted while construing the provisions of this enactment.^{xvii}

(iii) The Unorganised Workers Social Security Act, 2008
The Unorganised Workers Social Security Act, 2008 provides for the enabling framework for the welfare schemes targeting unorganised sector workers. The Central Government may formulate welfare schemes for different sections for unorganised sector workers regarding life and disability insurance, health and maternity benefits, old age benefit or any other benefit decided by the Government.^{xviii} The State Government may formulate welfare schemes related to the provident fund, employment injury benefits, housing, educational schemes for children, and skill up gradation of workers, funeral assistance and old age homes. The bill establishes boards at central and state levels to advise and help in formulating implementing and monitoring social welfare schemes for unorganised sector workers every organised sector worker shall be registered by the district administration and issued a portable smart card carrying a unique identification number.^{xix}

The Unorganised Worker's Social Security Act, 2008 is a first attempt to legislate for 94% of workforce. It enables the central and state Governments to extend social welfare schemes and enactments to the marginalised section of workforce. However, it unfairly divides unorganised workers into those below poverty line and those above, and is silent on a national minimum wage, improving working conditions and problems of women workers like unequal pay and sexual harassment at the workplace. The Act has failed to indicate clearly the extend of funds that must be earmarked for that must be earmarked for providing social security and welfare.^{xx}

CONCLUSION:

Despite plethora of Labour Legislation in India, the exploitation of labour is rampant in India. More than 90% of workforce in India is in Informal or Unorganised sector, which lacks Social Security, and is far away from the fruits of welfare legislation. The Unorganised Sector Workers Social Security Act, 2008 has completed a decade of its existence in statute book. Despite that, the situation is far from satisfactory. The above Analysis shows that the Concept of Social security flows from international conventions and Constitution of India, and therefore, Labour in unorganised sector is entitled to it. The existing legislation to some extent provides security to unorganised sector work force. However, the legislative protection is not sufficient. Even where the legislative provisions exist, they do not show any remarkable imprint on ground, and therefore, the conditions of workers in construction industry, brick kilns, domestic workers, and home-based workers continues to be a matter of concern. The Unorganised Workers Social Security Act, 2008 seems to be a half-hearted attempt to do anything worthwhile for Millions of workers, who still lack the umbrella of social security, despite their remarkable contribution to economy.

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