

SOCIAL SECURITY AND LEGAL PROTECTION FOR WORKERS IN STONE QUARRIES

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Abstract

Social security is a basic need of all people regardless of employment in which they work and live. It is an important form of social protection. It should be begun with birth and should continue till death. In a general sense social security refers to protection extended by the society and State to its members to enable them to overcome various contingencies of life. The social security needs of the unorganized sector are extensive and varied whereas the funds available for the programmes are necessarily limited. India has a long tradition of social security and social assistance directed particularly towards the more vulnerable sections of society. Stone quarrying industry, which supplies many of our patios and pavements, goes largely unregulated. The Major issue is the complete lack of any proper sanitation, health or hygiene facilities in the quarry areas. The vast majority of quarry workers are migrants. The other big issue for migrant workers is that in India, social benefits such as access to free education and healthcare are usually only available in their home state. As most of the migrant workers come from other states, they are effectively barred from accessing these facilities. They come to the region for the dry season and then head back to their villages when the rains begin. There are various other issues which affect the life of workers in Stone quarries. Though there exist a good number of legislations protecting these workers there is a lack of their implementation by the respective agencies which makes their plight pitiful.

Keywords: Contingencies, Free Education, Healthcare, Migrant Workers, Social Assistance, Vulnerable Sections.

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INTRODUCTION

Social security is a dynamic concept. Being a dynamic subject no rigid limit can be laid down for all time to come. In India, the National Commission on Labour has endorsed the ILO definition of social security and observes: *“Social security envisages that the members of a community shall be protected by collective action against social risks causing undue hardship and privation to individuals whose prime resources can seldom be adequate to meet them.”*¹ The National Commission on Labour, 2002 accepts the need of social security as fundamental human right. The National Commission on Labour, 2002 is of the view that no single approach to provide social security will be adequate. The problem has to be addressed by multipronged approach that would be relevant in the Indian context.² Workers in stone quarries are the most affected among the working population in our country. Though they are guaranteed with very social and legal protections there are many factors which prevent them from having access to these rights guaranteed by the state.

ABOLITION OF BONDED LABOUR IN STONE QUARRIES

Bonded labour is endemic in India's stone quarries, and constitutes a modern form of slavery. The precise number of bonded labourer's in India is unknown and heavily disputed, with NGOs suggesting there are as many as 20 to 65 million bonded labourer's, including adults and children, working across a range of sectors in the country. Official government estimates are widely criticized as under-inclusive (a 2002 government survey identified just 1795 bonded labourer's), and therefore forestall appropriate state action to address the problem. The use of bonded labour breaches international Labour Organisation Forced Labour Convention.³ This Convention prohibits all forms of forced or compulsory labour, which is defined as *'all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered him voluntarily'*.

The Convention also requires that the illegal extraction of forced or compulsory labour be punishable as a penal offence, and that ratifying states ensure that the relevant penalties imposed by law are adequate and strictly enforced. The prevalence of bonded labour is also in

¹ Report of the first National Commission on Labour, 1969 p.162

² Report of the second National commission on Labour, 2002 8.51

³ ILO Convention Concerning Forced or Compulsory Labour (No. 29), opened for signature 28 June 1930, 39 units 55 (entered into force 1 May 1932). International labour standards are legal instruments drawn up by the ILO's tripartite constituents. The system of international labour standards takes the form of conventions and recommendations.

breach of ILO Convention on the Abolition of Forced Labour which provides for the abolition of all forms of forced or compulsory labour as a means of political coercion or education; as sanctions against the free expressions of political and ideological opinions; as workforce mobilisation; as labour discipline; as a punishment for taking part in strikes; and as measure of racial, social, national or religious discrimination. India has ratified both these conventions.⁴ Forced labour is prohibited by Art 23 of the 1950 Constitution of India and the landmark national Bonded Labour System (Abolition) Act 1976('BLSA Act').

Under this scheme, it falls upon individual states to enforce the BLSA Act, with the central government carrying secondary responsibility for ensuring that states enforce the act and establish 'vigilance committees' to eradicate the phenomenon. Theoretically, the act allows for a company to be found liable and punishable for violations of the act, though there has been virtually no enforcement of this provision.⁵ Despite the robust provisions of the act, as well as a number of landmark public interest litigation (PIL) cases before state and central Supreme courts,⁶ little has been done to stamp out the practice of bonded labour in practice.

On June 11, 2014 the ILO adopted the Protocol to the Forced Labour Convention (1930) that updates a widely ratified, but outdated, treaty. The protocol was developed in order to better address contemporary abuses, including abuses against migrants and in the private sector.⁷ The prevention measures in the new Forced Labour Protocol include creating national plans of action, expanding labour laws to sectors at risk of forced labour, improving labour inspections, and protecting migrant workers from exploitative recruitment practices. The new Protocol also requires governments to support due diligence by businesses to prevent and respond to forced labour in their operations. The Protocol requires governments to take measures to identify, release and provide assistance to forced labour victims as well as protect them from retaliation. The treaty also obliges governments to ensure that victims have access to justice and remedies, including compensation.

⁴ ILO Convention Concerning the Abolition of Forced Labour (No. 105), opened for signature 25 June 1957, 320 units 291 (entered into force 17 January 1959) Art 1.

⁵ See Siddhartha Kara, *Bonded Labor: Tackling the System of Slavery in South Asia* (Columbia university press, 2012) pp. 185–207

⁶ *Bandhua Mukti Morcha v Union of India* (1984) 3 SCC 161; *PUCL v. Union of India* (1982) 3 SCC 235 ('Asiad Workers' Case')

⁷ Human Rights watch, *Global Treaty to Protect Forced Labor Victims Adopted*, 11 June 2014, Available at: <http://www.hrw.org/news/2014/06/11/global-treaty-protect-forced-labor-victims-adopted>, (Accessed on 24.2.2017)

Forced Labour is more than just low wages, or unpleasant working conditions. As the ILO points out; *“the mere fact of being in a vulnerable position, for example, lacking alternative livelihood options, does not necessarily lead a person into forced labour. It is when an employer takes advantage of a worker’s vulnerable position, for example, to impose excessive working hours or to withhold wages that a forced labour situation may arise. Forced labour is also more likely in cases of multiple dependencies on the employer, such as when the worker depends on the employer not only for his or her job but also for housing, food and for work for his or her relatives.”*⁸

Srivastava (2005), in an overview of bonded labour in India prepared for the ILO, concluded that *“.....in more recent years, few academics or others have investigated the issue in a systematic way, and official statistics may indeed not cover all aspects of the situation. ILO supervisory bodies have for example referred on many occasions to the urgent need to compile accurate statistics of the number of persons who continue to suffer under bonded labour, using a valid statistical methodology, with a view to identification and release of bonded labourer’s.”*⁹

The situation remains unchanged. There are two main global estimates of the number of workers in a forced labour situation. The ILO estimates are not dis-aggregated by country; the Global Slavery Index estimates 13,300,000 – 14,700,000 in India. There is very limited data on the numbers by sector or state. In 2011, Indian National Human Rights Commission (NHRC), which is mandated by the Supreme Court to monitor the implementation of the Act, established a Core Group on Bonded Labour. The Core Group is chaired by NHRC and brings together government and non-government actors working to end bonded labour to review laws and policies, identify best practice, and coordinate the country’s response. On 15 October 2012, the Supreme Court issued a judgment, requiring all states to carry out surveys to identify and release those in bonded labour. None of these initiatives appears to have resulted in credible surveys in Tamil Nadu. There is no robust evidence of forced labour in the sandstone sector, although anecdotal reports do appear in the press from time to time.¹⁰

Enforcement of the law, which is the responsibility of State Governments, varies from state to

⁸ ILO, Indicators of forced labour, Geneva 2012.

⁹ Bonded Labour in India: Its Incidence and Pattern, Ravi S. Srivastava, Jawaharlal Nehru University, ILO InFocus Programme on Promoting the Declaration on Fundamental Principles and Rights at Work, 2005.

¹⁰ Available at: <http://www.thehindu.com/news/national/other-states/debt-crushes-bonded-labourers-inkotas-quarries/article4431741.ece>. (Accessed on 26.3.2017)

state. A key part of the system for implementation of the law is the establishment by the relevant government, which in the case of the Tamil Nadu stone quarry cluster would be the Tamil Nadu State Government, of a Vigilance Committee at district level. The NHRC carried out regular visits to states to assess the bonded labour situation up till 2010. The 2007 visit to Rajasthan, carried out by a former national Ministry of Labour official, who had also worked for the ILO, provides the most recent overview of forced labour in that state. The report concluded that the Committees were not collecting data and indeed, were not active in the field at all.¹¹ Currently those workers in a bonded Labour situation could approach the government machinery to take action, although in many cases action is initiated by an NGO.

PROHIBITION OF CHILD LABOUR

Reports say that there has been a decline in the magnitude of child labour in granite quarries in Tamil Nadu compared to previous years.¹² Out of the 12 quarries surveyed in Tamil Nadu in 2 quarries direct or indirect employment of children was found. Out of the total of 510 workers in 12 quarries, 1 was a child below 14 years, 5 were in the age group of 15 to 18 years and the remaining workers were adult workers. In Karnataka the situation is different from Tamil Nadu. Though there is some decline in the incidence of child labour compared to previous years, they still constitute an important segment of the workforce, mainly in waste stone processing. Children were present in five out of six quarries covered in this research. Children accounted for almost 10 percent of the total workforce (4.6 % below 14 years and 5.1 % between 15-18 years). Not much difference in numbers of working children is found between quarries producing for domestic and export markets.

Active intervention from the State Government is one of the key factors that have contributed to the decline in child labour in granite quarries in Tamil Nadu. When illegal granite mining became a political issue in 2012, the government appointed special teams to visit all the granite quarries to check illegal mining activities. During the visits labour rights violations such as the presence of children at quarry sites, lack of safety measures and poor facilities for

¹¹ Report of review of activities pertaining to implementation of The Bonded Labour System (Abolition) Act of 1976, and the Child Labour (Prohibition & Regulation) Act 1986 for the state of Rajasthan by from 31st of January 2007 to 3 February 2007 by Dr Lakshmidhar Mishra, Special Rapporteur, NHRC

¹² For Karnataka see the report, *our mining children: A Report of the Fact Finding Team on the Child Labourers in the Iron Ore and Granite Mines in Bellary District of Karnataka*, Published in 2005. For Tamil Nadu see the report, *Between a rock and a hard place: The exploitation for quarry workers in Tamil Nadu*, by People's Watch. Commissioned by the India Committee of the Netherlands (ICN), Dutch Working Group on Sustainable Stone (WGDN) and FNV, 2009 (Unpublished)

migrant workers were observed as well. The special teams warned quarry owners to address these issues which put pressure on quarry owners not to engage children in quarry operations. Furthermore this resulted in quarry owners asking seasonal migrant workers not to bring their families to the worksite is an attempt to avoid problems related to child labour and poor accommodation for workers' families.

Both ILO Conventions on child labour namely, *Convention No.182 on the worst forms of child labour* and *Convention No.138 on the minimum age to work* have still not been ratified by India. The present *Child labour (Protection and Regulation) Act, 1986* only (partly) deals with hazardous work under 14. Study reports, like the '2013 Findings on the Worst Forms of Child Labour' and the ILO 'World Report on Child Labour 2013' show that the law is not implemented properly.¹³ For some years now a new Child Labour Act reflecting both ILO Conventions is being considered. India should enact and implement such a law as soon as possible.

ENSURING MINIMUM WAGES

The Minimum Wages Act, 1948 is the most important legislation that has been enacted for the benefit of unorganized sector labour. It was enacted for fixing, reviewing and revising the minimum rates of wages in the scheduled employments where workers are engaged in the unorganized sector. Stone quarry industry is come under the schedule employment of the Minimum wages Act. 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, unorganized, 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. In *PUCL* case the Hon'ble Supreme Court of India ruled that employing workers at wage rates below the statutory minimum wage levels was equivalent to forced labour and prohibited under Article 23 of the constitution on India even though economic compulsion

¹³ 2013 Findings on the Worst Forms of Child Labour by United States Department of Labour, September 2014, Available at: <http://www.dol.gov/ilab/reports/child-labor/findings/2013TDA/2013TDA.pdf>; World Report on Child Labour: Economic vulnerability, social protection and the fight against child labour, Published by the ILO, 2013; Available at: http://www.ilo.org/ipec/Informationresources/WCMS_178184/lang--en/index.html (Accessed on 23.3.2017)

might drive one to volunteer to work below the statutory minimum wage.¹⁴

PROTECTION THROUGH COMPENSATION

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 Schedule 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 dependent 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. Any qualified medical practitioner can certify the case, and the victim can file a claim in the court of the workmen compensation commissioner with a copy to the employer. 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.

EQUAL REMUNERATION ACT 1976

Remuneration, whether payable in cash or in kind, has to be the same for female and male workers for the same work or work of a similar nature. Regarding recruitment, the act makes it clear that no employer shall, while making recruitment for the same work or work of a similar nature, or in any condition of service subsequent to recruitment such as promotions, training or transfer, make any discrimination against women except where the employment of

¹⁴ *PUCL v. Union of India* AIR 1982 SC 1473

women in such work is prohibited or restricted by or under any law for the time being in force.

MATERNITY BENEFIT ACT, 1961

The Act is applicable to mines, factories and other establishments employing ten or more persons, except employees covered under the Employees' State Insurance Act, 1948. An establishment is defined in Section 3(e) to mean a factory mine, plantation or establishments to which the provisions of the Act have been declared to applicable.¹⁵ The maximum period for which any woman shall be entitled to maternity benefit shall be twelve weeks, that is to say, six weeks up to and including the day of her delivery and six weeks immediately following that day.

MINES ACT, 1952 AND MINES RULES, 1955

The Act provides for separate bathing facilities, sanitary, latrines and lockers for male and female coal mine workers.

MINES CRÈCHE RULES, 1966

The Act provides that in any mine where any woman is employed, a crèche should be provided.

FACTORIES ACT, 1948

This Act has special provisions for employment of women. A woman worker cannot be employed beyond the hours 6 a.m. to 7.00 pm. The state government can grant exemption to any factory or group or class of factories, but no woman can be permitted to work during 10 PM to 5 AM. If a factory employs more than 30 women it must provide a crèche.

Another research finding is the prevalence of gender based wage discrimination. Female quarry workers involved in waste stone processing earn less than the legal minimum wage rates prescribed by the Karnataka and Tamil Nadu state governments for unskilled workers in stone quarries. The daily wage rates paid to male workers may seem at par or even higher than the legal minimum wages for skilled and unskilled quarry labour prescribed by the governments; but if we take the number of working hours into consideration the actual wages

¹⁵ Prof. K. M. Pillai, *Labour and industrial Laws*, Allahabad Law Agency, pp.437-438

fall short of meeting legal requirements. Overtime work is common but paid overtime is almost non-existent.

INTER STATE MIGRANT WORKERS ACT (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 1979

The Act applies to every establishment in which five or more Inter-State migrant workmen (whether or not in addition to other workmen) are employed or who were employed on any day of the preceding twelve months; and to every contractor who employs or who employed five or more Inter-State migrant workmen (whether or not in addition to other workmen) on any day of the preceding twelve months.

It is therefore quite possible that the act will apply in many quarries in the Rajasthan sandstone sector. Inter-State migrant workman means 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. The concept of principal employer is also fundamental to this act. No principal employer can engage interstate migrant workers without having first registered. Contractors must register as well. The contractor must issue every worker with a pass book, with the following information:

- i. The name and place of the establishment wherein the workman is to be employed;
- ii. The period of employment;
- iii. The proposed rates and modes of payment of wages;
- iv. The displacement allowance payable;
- v. The return fare payable to the workman on the expiry of the period of his employment and in such contingencies as may be prescribed and in such other contingencies as may be specified in the contract of employment; and
- vi. Deductions made.

The wage rates, holiday hours of work and other conditions of service of an inter-state migrant workman shall be the same or similar kind as those applicable to other workman. The Principal employer should nominate a representative to be present at the time of disbursement of wages by the contractor.

UNORGANIZED WORKERS' SOCIAL SECURITY ACT, 2008

An *Unorganized Sector Worker* is one who works for wages or income directly or through any agency or contractor, or who works on his own or her own account, or is self-employed and works in any place of work including his or her home, field or any public place. This worker is not eligible for benefits under the Employees State Insurance Act, Workmen's Compensation Act etc. The Act provides some form of protection to those workers defined as unorganised which includes home-based and self-employed workers, but also include workers whose employers are too small to otherwise fall within the scope of the law. Both the Central and State governments can develop social security benefits such as health insurance, maternity benefit and pensions and should set up boards to administer the schemes. The District Administration is supposed to provide workers with identity cards. Without identity documents workers cannot access many welfare schemes.

CONCLUSION AND SUGGESTION

Though there are a host of legislations apart from those discussed above for protecting the workers in stone quarries there is a sheer lack in the implementation part which needs to be addressed at the earliest. The Social Security measures which are the hard won rights of the workers should be made available to all the workers under the unorganized sector including those working in stone quarries. A Central and State level mechanism for the monitoring and supervision of the plight of worker in stone quarries should be created and should take the appropriate measures for protecting them.