

STATUTORY PROVISIONS RELATING TO WOMEN
CONSTRUCTION WORKERS AND THEIR ENFORCEMENT

By: P.N. Razdan
Honorary Visiting Fellow
National Labour Institute.

Construction industry, in a broader perspective, covers a variety of works and operations like construction of houses, offices, markets, factories, hospitals, bridges, canals, dams, roads, railways, air-ports, etc. etc. There are certain other operations which, one might consider, as ancillary to construction industry such as brick-laying, quarrying and crushing building stone, limestone and road metal, tile making, etc. Construction industry thus is a major sector of employment. Workers in construction industry fall mainly in the unorganised sector. As National Labour Commission put it, these include "Those who have not been able to organise in pursuit of a common objective because of constraints such as: a) casual nature of employment; b) ignorance and illiteracy; c) small size of establishments with low capital investment per person employed; d) scattered nature of employment; and e) superior strength of the employer operating singly or in combination.....".

Most of the construction operations are seasonal and at times involve fluctuations in employment pattern largely due to climatic conditions. During rainy season, the building activity is almost at a standstill.

There has been rapid expansion in building and construction activity during the last three decades. However, there does not seem to be a clear cut assessment of the number of workers employed in this industry. The census of 1961 estimated that over 2 million workers were employed in major sectors of construction and maintenance. In the Third Five Year Plan it was estimated that construction industry was expected to have added about 2.3 million work opportunities during the plan period. In the note circulated by the sponsors of this workshop, it has been said that according to the 1981 census in the total workforce of 244.61 million, about 12.10 million (4.9%) workers were engaged in construction work. Out of these 9.19 million workers (about 76%) were male and 2.91 million (about 24%) were females. National Institute of Construction Management and Research, Bombay has estimated the number of persons employed in this sector to be around 11 to 15 million. The Chairperson of the Bonded Liberation Front (Swami Agnivesh) has placed the number of construction workers in the country at 6 million. (Times of India of 12th October, 1985) However, in part II Special Report and tables based on 5% sample data (p.6 to 9) and (p.24 to 27) of the census report of 1981 number of construction workers given is 3567408 (main workers) and 140712 (marginal workers) which works out to 3.7 million. Of these 3278124 are males and 429996 are females. In any case, doubtlessly construction industry has provided employment opportunity to a large section of people, particularly the unskilled workers whose chances of employment in the organised industry are rather slim.

Construction industry is expected to grow further in the years to come and thus play an important role in providing job opportunities to the people. The plan out-lay on housing in the Sixth Five Year Plan by public sector was to the tune of Rs.1,839 crores. According to the Central Statistical Organization, total investment during the Sixth Plan on housing was to the order of Rs.29,000 crores. The VII Five Year Plan has estimated the requirement of houses alone in the country during the plan period at 16.2 million 12.4 million in the rural areas and 3.4 million in urban areas. This data is an indicator of the expansion that the construction industry is likely to have.

Large majority of workers employed in the construction industry are unskilled and illiterate and thus more vulnerable to exploitation. Another feature of this industry is the preponderance of contract labour. Most of the construction works of the Governments both at the Centre and in the States and also of the public and private sector are executed through contractors. Although this arrangement has some advantages from the angle of the employers in the shape of lower cost of construction, less supervision, non-grant of fringe benefits such as leave wages, provident fund, bonus etc. thereby ensuring general reduction of the overhead cost the system has operated very much against the workers right from its inception.

We have to focus attention in this paper on the statutory protection given to women construction workers and their enforcement. But before we come to this aspect, it would be pertinent to refer very briefly to the commitments of the nation in this regard made in our Constitution.

The objective of our Constitution inter alia is to secure for all citizens JUSTICE - Social, Economic and Political. EQUALITY of Status and of Opportunity;

Right to Equality, Right against Exploitation and Right to Constitutional Remedies are amongst our Fundamental Rights. Any discrimination between the citizens on the basis of sex, whether in regard to right to Equality or/right against exploitation, would not be in keeping with the letter and spirit of our Constitution.

The Directive Principles of State Policy, laying down principles fundamental to the governance of the country and for observance in making laws, require the State to direct its policy towards securing:-

- i) that the citizens, men and women equally, have a right to an adequate means of livelihood;
- ii) that there is equal pay for equal work of both men and women;
- iii) that the health and strength of the workers, men and women and the tender age of children are not abused and that the citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;

- iii) the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education, and to public assistance in case of unemployment, old age, sickness and disablement and in other cases of undeserved want;
- iv) the State shall make provision for securing just and humane conditions of work and for Maternity relief.
- v) the State shall endeavour to secure by suitable legislation or economic organization or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social, and cultural opportunities.

These being the commitments made by our Nation, a responsibility devolves on the Government, people at large and voluntary organizations to promote the effective implementation of these commitments and closely watch the same and eventually establish the order in which Justice, Liberty, Equality and Fraternity, assuring the dignity of the individual and the unity of the Nation, obtains.

As regards statutory provisions relating to women Construction Workers, there is no legislation exclusively protecting and regulating the conditions of employment and service in construction industry as we have such legislation say for the factories in the Factories Act, for mining industry in the Mines Act, for motor transport Workers in the Motor Transport Workers Act etc. The need has been felt for providing statutory protection relating to various aspects of service conditions of construction workers. There is a proposal to

enact legislation for the workers in this industry and the same has to be awaited. However, presently there are several legislative measures which, in addition to other industries, safeguard the interest of construction workers also. The Statutory protection provided is both for males and females. Some of these enactments are:-

- 1) Minimum Wages Act, 1948,
- 2) Payment of Wages Act, 1936
- 3) Equal Remuneration Act, 1976
- 4) Contract Labour (Regulations and Abolition) Act, 1970
- 5) Inter-State Migrant Workmen, (Conditions of Service and Regulation of Employment) Act, 1979
- 6) Payment of Gratuity Act, 1972
- 7) Workmen's Compensation Act, 1923
- 8) Trade Unions Act, 1926
- 9) Industrial Employment (Standing Orders) Act, 1946
- 10) Industrial Disputes Act, 1947

It may not be possible, due to constraint of time and space, to discuss at length the provisions of these laws and the impact thereof on the beneficiaries. But an attempt is made to cover the more important amongst them.

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Minimum Wages Act:

This Act is an important legislation designed to protect the interest of the workers in scheduled employments where sweated labour is most prevalent or where workers have hardly any bargaining power and are exposed to exploitation, more so being illiterate and unorganised. Under this Act certain employments have been specified in the schedules to the Act as "Scheduled Employments" and the appropriate government has been empowered to fix the minimum rates of wages payable to employees employed therein. Employments relevant to our subject are :-

- i) Employment under any local authority - it means employees employed in connection with the construction works of a local authority would inter-alia be covered by this Act;
- ii) Employment on the construction or maintenance of roads or in building operators;
- iii) Employment in the maintenance of buildings and employment in the construction and maintenance of runways.

The Act empowers the appropriate government to fix minimum rates of wages payable to employees in scheduled employments and to review the wage rates at suitable intervals and revise the minimum rates if necessary. The rates can be fixed as minimum time rate, or minimum piece rate, or guaranteed time rate in case of piece-rated workers etc. The components of the minimum wage rate may be the basic rate and the cost of living allowance, cash value of the concession in respect of supplies of essential commodities at concessional rates. The App. Government has also been empowered to fix hours of work for a normal working day, weekly day of rest, rate of payment for overtime etc.

Payment of less than minimum wages or violation of the rules relating to working hours, weekly rest day etc. is punishable under Section 22 of the Act, punishment prescribed being imprisonment extending upto 6 months or with fine extending upto Rs.5,00 or with both. For other offences the Act provide punishment by way of fine only extending upto Rs.500/- . For deciding claims of workers arising out of payment of less than the minimum rates of wages or in respect of rest day wages, etc., the Act authorises the appropriate government to appoint Authorities for the purpose who can hear and and decide such claim cases.

Central Government and the State Governments have been fixing minimum wage rates for employees in the scheduled employments and have been revising these rates from time to time. The prevalent minimum rates of wages fixed by the Central Government for employees employed in the construction industry falling within the central sphere, vary from Rs.12.75 per day to Rs.8.5 per day for the unskilled category. These rates have come into force from February, 1985. The actual rate applicable depends upon the area where workers are employed. Assuming that all the workers get work for all the 26 days in a month $26 \times 12.75 = \text{Rs.}331.50$ and a worker employed in area 'D' about Rs.221/- per month. The earnings per annum on this basis would work out to Rs.3,978/- in 'A' class area and Rs.2652/- in 'B' class area. The Planning Commission describes the Poverty Line as per capita income per month of Rs.49.09 in rural areas and Rs.56.54 per month in urban areas at 1973-74 prices corresponding to calorie requirements of 2400 per capita per day in
.....9/-

rural areas and 2100 per capita per day in urban areas. This poverty line is updated by the price rise in the consumption basket. For the VII Five Year Plan the updated poverty line is annual household income of Rs.6400 in rural areas and Rs.7300 in urban areas. It is, therefore, clear that construction workers getting between Rs.2652/- to Rs.3978/- per annum are far below the poverty line whether working in rural or urban areas. This too is on the assumption that (i) the law is effectively enforced and all workers actually receive the minimum wage and (ii) they are able to secure employment for all working days in a month. In actual practice, however, this may not be the real position obtaining.

Payment of Wages Act: is another protective legislation in relation to wages and earnings of workers. This Act applies inter alia to employees employed upon any railway either directly or through a contractor, to any establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges, or canals or relating to operations connected with navigation, irrigation or supply of water or relating to the generation, transmission and distribution of electricity, etc. etc. is carried on.

The Act provides for timely payment by employer of wages payable to the persons employed in respect of a wage period which has to be fixed by the employer. It also prohibits any unauthorised deductions being made from the wages and prescribe certain deductions which can be deemed as authorised

and, therefore, made wherever necessary. The Act further lays down the extent to which deductions for damage to or loss of goods expressly entrusted to the employed person for custody or for loss of money for which he is required to account, could be made where such damage or loss is directly attributable to his neglect or default. Provision also exists for regulation of payment of advances and recovery thereof from the wages of workers. Claims Authorities can be appointed to hear and decide the claims arising out of delay in payment of wages, unauthorised deductions from wages, and all matters incidental to such claims.

Equal Remuneration Act, 1976: To give effect to the constitutional provision under Article 39 which envisages that the State shall direct its policy towards securing that there is equal pay for equal work for both men and women, the Equal Remuneration Act was enacted and received the assent of the President on February 11, 1976. The principle of equality embodied in Article 14 of the Constitution also finds expression in the provisions of this Act. The Act provides for payment of equal remuneration to men and women workers for the same work or for work of similar nature and for prevention of discrimination on grounds of sex. It also ensures that there shall be no discrimination against recruitment of women (Section 4 and 5 of the Act). The Act also provides for the setting up of Advisory Committees to promote employment opportunities for women.

Contract Labour (Regulation & Abolition) Act: Most of the construction works of the Government both Central and States as also of public sector and major works in private sector, are executed through contractors. Preponderance of Contract Labour system is thus a typical feature of construction industry. Level of responsibility of contractors towards the workers employed by them is of a low order and, therefore, the workers under them are more vulnerable to exploitation. The Labour Investigation Committee observed long back that "The consequence of this has been that a large mass of floating labour has to be kept in intermittent employment without any direct responsibility for security of employment or other rights of labour being thrown upon the Principal Employer viz. the Government, public sector etc. etc.

Workers in the Construction Industry, now, have some protection of the Contract Labour (Regulation and Abolition) Act, 1970 and Inter-state Migrant workmen (Regulation of Employment and Conditions of Service) Act, 1979.

The objective of the Contract Labour (Regulation and Abolition) Act is to regulate the employment of contract labour in certain establishments and to provide for its abolition in certain circumstances and for matter connected with it. The Act provides for registration of the establishments of principal employers where in 20 or more workmen are employed as contract labour. It also provides for licensing of contractors who employ 20 or more workmen and then they are permitted to

undertake and execute any work through such contract labour, in accordance with the conditions of license. The Act requires provision of welfare facilities like canteen within 60 days of commencement of employment (if 100 or more workers are employed and the work has to continue for more than 6 months). Rest-rooms within 15 days of commencement of employment where contract labour is required to halt at night in connection with the work of the establishment and the work is to continue for three months or more; wholesome drinking water, latrines and urinals, washing facilities, and first-aid facilities. These facilities are to be provided within 7 days of commencement of employment. Standard of these facilities is also laid down.

The contractor is made responsible for payment of wages direct to each worker employed by him and payment has to be made before the expiry of 7 days or 10 days depending upon whether 1000 or over 1000 workers are employed. The contractor is also required to pay wages in the presence of principal employer's representative who has to certify the amounts paid as wages.

Failure of the contractor to observe these obligations places the responsibility for providing these facilities or payment of wages on the principal employer who can recover the cost of the same from the contractor. Certain records and registers are also required to be maintained. Inspectors appointed under the Act are to see to the proper enforcement of the provisions of the law.

The circumstances under which the contract labour system can be abolished, have also been laid down in Section 10 and for this purpose Advisory Boards have to be constituted with representatives of workers/employees and government as its members. The Board (Central/State) shall advise the respective government on such matters arising out of administration of the Act, as may be referred to it and also carry out other functions assigned to it under the Act.

Inter-State Migrant Workmen (Regulation of Employment and Conditions of Services) Act, 1979:

The Act applies to every establishment in which five or more inter-state migrant workmen are employed or were employed on any day of the preceding twelve months. The Act also likewise, applies to every contractor who employs or employed five or more migrant workmen during the preceding twelve months. Every principal employer covered by the Act is required to apply in the prescribed manner and obtain from the Registering Officer appointed under the Act a registration certificate in respect of his establishment. Section 6 of the Act prohibits any principal employer from engaging migrant workmen in his establishment unless such certificate is in force. Similarly, every contractor is required to obtain a license from the licensing officer appointed under the Act, both for employing migrant workmen in his establishment as also for recruiting any person in a State for the purpose of employing him in any establishment situated in another State. Section 8 of the Act makes it illegal for a

contractor either to recruit any person in a State for the purpose of employing him in any establishment situated in another State, or to employ a migrant workman for execution of any work in any establishment in any State without having obtained a license under the Act and in violation of the conditions of such a license. (ii) The Act provides for payment of displacement allowance equal to 50% of the monthly wages payable to a migrant workman or Rs.75/-, whichever is higher, at the time of his recruitment. Such an amount is not refundable and has to be in addition to the wages or other amounts payable to a migrant workman. Besides, an inter-state migrant workman is entitled to journey allowance of not less than than the fare from his residence to the place of his employment and also to payment of wages during the period of the journey as if he were on duty (Sections 14 & 15).

(iii) The Act also provides for payment of regular wages, equal pay for equal work irrespective of sex, provision of suitable residential accommodation, medical facilities, clothing and payment of wages by a contractor covered by the Act at a rate not less than the wages paid to his regular workmen by the principal employer provided the work performed by the migrant workman is of the same or similar kind as is performed by the regular work men of the principal employer.

(iv) There is also an over-riding provision that under no circumstances the wages of the migrant workmen shall be less than those fixed under the Minimum Wages Act, 1948.

(v) As in the case of Contract Labour (Regular and Abolition) Act, 1970, the principal employer is responsible for payment of wages to the inter-state migrant workmen and for providing the welfare facilities as per the Act in the event of the failure of the contractor to do so. (Section 17).

(vi) The Act also contains special provisions for dealing with industrial disputes of inter-state migrant workmen. It empowers the Central Government, in case it is the appropriate government, to refer such a dispute to an Industrial Tribunal/ Labour Court in the State wherein the establishment is situated or in the state where recruitment was made, provided the workmen concerned makes an application in this behalf on the ground that he has returned to that state after completion of his work. In case the Central Government is not the appropriate government, the Act similarly empowers the Government of the state from where recruitment was made, to refer such a dispute to any of the authorities in that State if the migrant workman makes a request in this behalf on the ground that he has returned to that state after completion of his work, provided that such an application is made within six months of his return to his state and the Government of the state in which the establishment is situated, concurs.

Payment of Gratuity Act, 1972 : ^{employed} entitles workers/ on wages not exceeding Rs.1600/- P.M. in an establishment employing ten or more persons, to payment of gratuity on termination of their employment provided they have the minimum qualifying service of at least five years of 'continuous service.' The termination of

employment may be brought about by the workers superannuation retirement, resignation, or his death or disablement. In case of termination of employment caused by death or disablement, the qualifying period of continuous service of five years is not necessary.

If the services of an employee have been terminated for any act of wilful omission or negligence causing any damage or loss to or destruction of property belonging to the employer, he will even then be eligible to gratuity though the same can be forfeited to the extent of damage or loss so caused to the employer. Gratuity is payable at the rate of fifteen days wages for every year of service based on the rate of wages last drawn by the employee. The maximum amount of gratuity payable is 20 months wages. The Act also provides authorities for determination of the amount of gratuity and recovery of gratuity.

Since the principal qualifying conditions for earning gratuity is the minimum of five years continuous service, the bulk of the construction workers, whose employment is generally casual and seasonal and who are floating type of workers, may not be earning gratuity. This benefit may be accruing mainly to the regular permanent nucleus set of employees, that the employers in construction industry including firms of contractors may be maintaining.

Workmen's Compensation Act, 1923 makes an employer liable for payment of compensation to a worker if personal injury is caused to him by accident arising out of and during the course of employment. The injury sustained may cause either death, permanent total disablement, or permanent partial disablement, or temporary disablement whether total or partial. The amount of compensation payable shall be computed according to the formula laid down in the Act. If a workman contracts an occupational disease in certain specified employments it shall also be deemed to be an injury by accident and compensation shall be payable.

The Act also provides for appointment of Workmen's Compensation Commissioner to deal with and settle the issues of liability to pay, amount and duration of compensation etc.etc.

Trade Unions Act, 1926: confers a right on workers to form trade unions in accordance with the law and have them registered as provided. After registration a trade union enjoys certain rights and has certain obligations to discharge.

Industrial Employment (Standing Order) Act, 1946: makes it obligatory on an employer, in relation to an industrial establishment, in which a specified number of workmen is employed, to precisely define the conditions of service available to the workmen, and have the same certified by the certifying officer who is the authority concerned and make them known to the workmen of the establishment.

Industrial Disputes Act, 1947: apart from providing the different authorities and laying down the procedure, for handling and resolving industrial disputes, also provides for payment of compensation for retrenchment and lay-off, compensation payable on transfer or closure of undertakings, regulation of strikes and lock-outs so as to be in conformity with the law, regulation change of service conditions etc. during pendency of proceedings and otherwise.

ENFORCEMENT

Enactment of laws by itself is not enough to mitigate the hardship of workers. The laws have to be implemented and the obligations there under met. The laws have to be enforced so that the workers concerned avail of the rights and the benefits conferred but effective enforcement of these laws leave much to be desired.

National Commission on Labour, while dealing with unorganised labour in its report (Chapter-29, pp.417-18) observed as under:-

"Beyond a mention in the 1946 policy statement, Govt. have hitherto paid inadequate attention to these workers despite the fact that they constitute a fair proportion of those who produce goods and provide services. Even in the organised sector, a section of the total labour force has to be left out of the purview of legislation, because some establishments employ workers less than the minimum number prescribed in the law. In the absence of proper organization, they are not able

to establish their reasonable claims and secure proper working conditions. It is a common complaint that the benefits of labour legislation have not reached rural and unorganised labour. The Minimum Wages Act, 1948 was the first attempt at statutory regulation of wages, and to some extent, working conditions of labour employed in the sweated trades. Labour engaged in these employments, being unorganised, had weak bargaining power and had been deprived of reasonable wage and working conditions. Apart from the ineffectively implemented Minimum Wages Act, they do not have any other legislative protection. The Factories Act, 1948 and the Industrial Disputes Act, 1947 which contain specific and detailed provisions for items within their purview, were not designed to meet the conditions of and requirements in unorganised industries and employments. In taking cognisance of the plight of such labour, the Third Plan mentioned:

"While considerable improvements had occurred in the living and working conditions of employees in large and organized industries, owing both to State activity and trade union action, a great deal of lee-way remained to be made up in respect of the workers engaged in agriculture and unorganised industries and that their conditions should become a matter of special concern to government as well as to labour organizations". A reference was also made in the Plan to the building and construction industry in which programmes of expansion called for greater attention to safety standards. The informal meeting

of Labour Ministers in August, 1962 endorsed the Plan Statement and called for (i) greater attention to be paid to the conditions of labour in unorganised industries which could not be governed by legislation effectively; (ii) formulation of a separate code for laying down minimum service and working conditions for them; and (iii) appointment of labour officers to assist in the proper enforcement of the code in (ii) above. In spite of this decision, no satisfactory machinery has been reported to have been set up for taking cognizance of labour disputes in several States....."

Experience has shown that there are always certain employers who do not show adequate regard and respect for these laws and, therefore, do not discharge their obligations under these laws. Exploitation of workers under such employers is a common experience. This is more so when the workers are illiterate and ignorant, working in far flung and interior areas, and have no trade unions.

Supreme Court in its judgement in the now famous Asiad Case (People's Union for Democratic Rights and others vs. Union of India and others writ petition No.8143 of 1981) has said that non-observance of the labour laws violates the Fundamental Rights. It observed "The Constitution makers have given us one of the most remarkable documents in history for ushering in a new socio-economic order and the Constitution

which they have forged for us has a social purpose and an economic mission and, therefore, every word or phrase in the Constitution must be interpreted in a manner which would advance the socio-economic objective of the Constitution". Minimum Wages Act, 1948 as said earlier, is the main legislation for assuring a minimum wage to construction workers and providing for limitation of working hours, payment for rest-day wages every week and payment of over-time for work done beyond normal hours. But it is not enforced effectively. The statistics relating to inspections etc. during the year 1984-85 carried out by the Central Govt. enforcement officers in the establishments covered by the Act including those in construction industry falling within the central jurisdiction indicate the following position:

	No. of inspections	irregularities detected	prosecutions	claim cases
1984	8853	88275	3235	1054
1985	9271	94697	5956	1495

Number of inspections indicates the establishments inspected and these figures could, by no means, be taken as the total number of establishments within the central government's jurisdiction but only a fraction of it. It is, therefore, revealed that all establishments are not and cannot be inspected within a year; the enforcement agency is not able to reach many establishments; secondly of the establishments visited, many violations are found. In 1984 in about 36% establishment,

employers were prosecuted. This figure was much higher in 1985, being 64%. Again in 12% of the establishments visited in 1984, and 16% of the establishments visited in 1985 even wage claims were not met by the employers and, therefore, claim cases had to be filed. This is an indicator of the violation of the law relating to minimum wages even after the Act has been operating for nearly 40 years. Claims can be filed only if not time bared. One could not see for how many claims there was no remedy available because of the operation of limitation of time. What would be the position in establishments not inspected is anybody's guess.

In the *Asiad* case Supreme Court has said that employment of workers on less than the minimum wage statutorily due to them, amounts to forced labour and thus violated the Fundamental Right under Article 23 of the Constitution which prohibits 'forced labour' - force may be physical force or force exerted through a legal provision or force of economic reasons. In the judgement the Court observed as under :-

".....where a person is suffering from hunger or starvation, when he has no resource at all to fight disease or to feed his wife and children or even to hide their nakedness, where utter grinding poverty has broken his back and reduced him to a state of helplessness and despair and where no employment is available to alleviate the rigour of his poverty, he would have no choice but to accept any work that comes in his way, even if the remuneration offered to him is less than the minimum wages. He would

be in no position to bargain with the employer, he would have to accept what is offered to him. And in doing so he would be acting not as a free agent with a choice between alternatives but under the confusion of economic circumstances and the labour or services provided by him would be clearly forced labour we are, therefore, of the view that where a person provides labour or service to another for the remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words 'forced labour' under Article 23".

As regard Equal Remuneration Act, statistics of inspection etc. carried out by Central Govt. officers during the year 1984 and 1985 present the following picture :

	<u>No. of inspection</u>	<u>Irregularities detected</u>	<u>Prosecutions</u>
1984	1189	1501.	25
1985	1563	2286	284

These relate to establishment inspected in all industries which may include those in construction industry as well.

Here also the number of inspection in column 2 refers to number of establishments inspected and these figures represent only a fraction of the total number of establishment falling within the central sphere. The bulk of the establishment go uninspected over a period.

In the Asiad case the Supreme Court said "..... It is the principle of equality embodied in Article 14 of the Constitution which find expression in the provisions of the Equal Remuneration Act, 1976 and if the Union of India, Delhi Administration or Delhi Development Authority at any time finds that the provisions of the Equal Remuneration Act, 1976 are not observed, and the principle of equality before the law enshrined in Article 14 is violated by its own contractors, it cannot ignore such violation and sit quiet by adopting a non-interfering attitude would be under an obligation to ensure that the contractor observes the provisions of Equal Remuneration Act 1976 and does not breach the equality clause enacted in Article 14".

In so far as enforcement of the Contract Labour (Regulation and Abolition) Act, 1970 is concerned the following figures relating to its enforcement in the Central Government's sphere are worth noting :

Year	No. of contractors licensed	Contract Labour Employed	Inspection	Prosecution
1983	22054	1436885	2334	2586
1984	23916	N.A.	2711	2508
1985	26204	1837005	2679	2917

Information in relation to enforcement of this law in establishments operating in the state sphere is not readily available. In so far as the central sphere is concerned only about 10% of the contractors' establishments covered by the

Act and who had obtained license could be inspected in a year leaving out the bulk 90%. It would also be noticed with interest that there are almost equal number of prosecutions launched for the number of inspections carried out, which establishes that almost every contractor was found to be violating the law in one form or other. The position of the contractors establishments not inspected could thus be well imagined. There can be a number of contractors who have not even taken the license. Then there is a large number of contract labour who do not come within the purview of this Act, there being less than 20 workers employed by the contractors. This number could be quite substantial. It is well known that the smaller contractors normally split their work with a view of evading the coverage under the Act.

As regards enforcement of the Inter-State Migrant Workmen (Conditions of Service and Regulation of Employment) Act the position is much worse. Only 11 inspection in 1984 and 37 inspection in 1985 were carried out by the Central Govt. officers and 15 and 10 prosecutions were filed respectively in these two years. The number of inspections indicate the low priority given to the enforcement of this legislation. The Act has remained almost non-starter though passed seven years back. This was established by a Seminar organised by the Gandhi Labour Institute Ahmedabad in October, 1985.

I may again refer to the observations of the Supreme Court in the *Asiad Case* in relation to enforcement of Contract Labour (Regulation and Abolition) Act and Inter-State Migrant Workmen Act, 1979. It said "..... Then there is the complaint of non-observance of the provision of Contract Labour (Regulation and Abolition) Act and Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 and this is also in our opinion a complaint relating to violation of Article 21 the right to life guaranteed under this Article also includes within its scope and ambit the right to live with basic human dignity.....".

This being the State of affairs in relation to enforcement of important social legislation, breach of which impinges upon the Fundamental Rights guaranteed under the Constitution, how many of the construction workers eligible for payment of gratuity under the Payment of Gratuity Act are actually paid the amount of gratuity and how many of such workers receive compensation under the Workmen's Compensation Act, 1923 in the event of disablement suffered in accidents during the course of employment is anybody's guess.

In conclusion, it may be said that the extent of existing labour legislation for protection of the interests of female workers in construction industry is quite extensive and should normally be expected to go a long way to improve their lot if it could be effectively enforced. But there are certain handicaps and problems in relation to enforcement of these laws.

Some of these are:

- 1) Illiteracy and ignorance of workers and lack of awareness of their rights and benefits admissible under the labour laws.
- 2) Proper education of the employers in unorganised sector making them aware and conscious of their obligations and responsibility under labour laws;
- 3) Lack of Trade Union organizations in unorganised sector like construction industry;
- 4) Inadequate involvement of female workers in trade union activities in general;
- 5) Want of effective enforcement of the existing labour laws for protection of interest of workers particularly female workers.
- 6) Weak penal provisions in most of the Labour Laws.

One of the basic remedial measures to be taken is to arouse ^{public} opinion against these problems and handicaps. When public opinion asserts itself, a political will can be created to work out an effective action plan to apply the correctives needed. Awareness of the rights and benefits of the workers can be created by effective publicity. Thereafter to some extent the workers themselves can be reasonably expected to organise themselves for improving their quality of life. This would be a good beginning. A considerable responsibility also lies on the existing Trade Union Organisations to help the unorganised workers to organise themselves and come out of the present situation. They should take the initiative and more interest in dealing with the problems of unorganised workers like those in construction industry.

As regards proper and effective enforcement of labour laws, the problem is multi-dimensional. Some aspects of the same are briefly discussed below:

Administrative Dimensions: These are :

- a) Inadequate inspectorates;
- b) Inspectors entrusted with too unwieldy geographical jurisdictions and heavy work load;
- c) The inspectors are not provided with adequate transport facilities which they could avail for inspection work particularly in the far flung and interior areas and thus be mobile for easily attending to their inspection work;
- d) Inadequate office equipment and supporting staff. The standard maintained in this regard is the same as existed four decades earlier when the inspectors had to enforce only a few labour laws;
- e) Lack of or inadequate training facilities for inspectors. There has to be proper planning for imparting training to inspectors both basic and refresher;
- f) Proper career planning for inspectors so that they are induced to stick to the job and motivated to do it well;
- g) Inadequate female inspectors. So as to have better understanding and appreciation of the problems of female workers, there should be more female inspectors added to the cadre of inspectors.

The mess needs to be cleared and cleared soon.

Lack of Teeth in the Laws: Violation of the laws is punishable as penal offence. But penalties imposed are so low, that the defaulters find it less costly to violate the laws rather than implement the same being let off with a very small fine, in most cases. Perhaps prescribing of minimum punishment of imprisonment for a certain period and also of fine leaving no descretion with the court to impose lesser punishment, will go a long way in getting good results in implementation of the laws.

Secondly, the procedures required to be followed in enforcement of labour laws are dilatory, rigid and full of technicalities. At times it becomes very difficult for an enforcement officer to obtain necessary evidence against the employers, who have considerable influence and power of money and control over employment. For enforcement of labour laws, meant to give relief to the weaker sections of society, perhaps onus of innocence could be on the accused employer.

Some labour laws not easily enforceable:

Some of the laws are not self contained or are not easily enforceable. The Contract Labour (Regulation and Abolition) Act and the Inter-State Migrant Workmen Act are two such important laws. Such laws should be amended soon so as to make them comprehensive and easily enforceable. Otherwise it may become a fertile territory for "Inspector Raj" inspections being more for statistical purposes, and collection of information for the Government and not for getting relief to the workers who are deprived of their rights and benefits.

Issues to deal with

With a view to improving the lot of the workers in construction industry, particularly female workers, efforts need to be made in regard to the following:

1. Creating consciousness amongst workers, males and females, about the rights and benefits they are entitled to have under the laws and the procedures required to be followed in securing implementation thereof.
2. Giving wide and timely publicity amongst workers to the rates of minimum wages, revised from time to time, and to the benefits entitled under these laws.

3. Making employers, particularly the small employers and contractors, in unorganised sector aware of their obligations under these laws and their social obligations to the community.
4. Finding out ways and means to encourage and ensure more attention being paid by trade union organisations to the unionisation of workers in the unorganised sector generally, and in the construction industry in particular. Attention needs also to be paid to the involvement of female labour in Trade Union activities/leadership.
5. Equipping the enforcement machinery with all the inputs so as to enable it to function more effectively, and meaningfully.
6. Amending labour legislation purposefully so as to give strength to it and make it easily workable, to achieve better results.
7. Wide publicity to instances of convictions in important cases so as to create a sense of fear in the mind of habitual defaulters of labour laws. Likewise wide publicity to judgements like the one in Asiad case so as to educate the concerned interests about the social responsibilities.

This workshop may like to consider some of these

issues

The author was formerly Chief Labour Commissioner, Government of India.

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