URBAN INDIA

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Special Issue on Migration

Overview of Migration
Seasonal Migration
Gendered Migration
Migrant Child Labour
Job Search and Labour Market Outcomes
Migration and Conflict
Legal Aspects of Migration
Book Reviews
Workshops

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- Graphs and charts need to be prepared in MS Office (Word/Excel) and not in jpeg or other formats.
- Full citation for all references and sources must be provided.
- Articles should be sent by email in MS Word format to the Editor, Urban India along with the declaration that the article is unpublished.
- Authors are requested to provide full details for correspondence (postal and email address).

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Legal Primer: Brick Kiln Workers and Bonded Labour

Action Aid *(Hyderabad)*

A Tripartite Committee was constituted by the Government of India vide its resolution on 1 May, 1984 to look into the question of having a separate self-contained legislation for the brick-kiln industry considering the special features of the working of the industry and the difficulties in implementing the labour laws applicable to them. The terms of reference of the committee were:

- To consider and formulate, if so considered necessary, the details of having a separate self-contained legislation for the brick-kiln industry considering its special features; and,
- To work out what type of special social security schemes should be formulated for the workers in the industry, like the Provident Fund Scheme etc.

The tripartite committee was basically constituted to review the following Labor Laws that have been made applicable to the brick kiln industry and its workings.

Factories Act, 1948

The question as to whether brick kilns can be registered as factories under the Factories Act had been examined. It has been established that the process of manufacturing bricks comes within the definition of the manufacturing process as defined under the Factories Act and that the premises where the process is carried on, is covered by the expression "Premises" used in the definition of factory in the Act.

Payment of Gratuity Act, 1972

The provisions of this Act apply to all establishments, which are factories within the definition of the factory in the Factories Act. The brick kiln workers come within the purview of the Gratuity Act wherever the brick kilns factories are located and are entitled to all benefits under that Act subject to the

condition regarding completion of a specified period as stipulated in the Gratuity Act.

Payment of Bonus Act, 1965

The provisions of this Act apply to every factory within the definition of the Factories Act and every other establishment in which twenty or more persons are employed on any day during the accompanying year. Brick kiln workers working in such factories or establishments are entitled to the benefits under this act.

Employment Provident Fund and Miscellaneous Provisions Act, 1952

Brick kiln was added as a scheduled industry within the purview of the Employment Provident Fund and Miscellaneous Provisions Act with effect from 27.11.80. As per the provisions of this Act the brick kilns that employ 20 persons and above would therefore be covered as establishments whom the provisions of the Act and the schemes framed there under would apply. Workmen who are employed in a brick kiln establishment and render 60 days of work within a total employment period of 90 days would be enrolled as members of Provident Fund, Family Pension Fund and Employees Deposit Linked Insurance Scheme.

Employees State Insurance Act, 1948

The provisions of this Act are extended area-wise and were applicable to 471 areas when the tripartite committee met.

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

The Act applies to every establishment in which 5 or more interstate migrant workmen are employed or were employed on any day of the preceding 12 months. Since most of the brick kiln establishments employ inter-state migrant workers, i.e., workmen who are recruited through agents/sub-agents of the owners numbering 5 and above, they will come within the purview of the Act. The workmen so recruited will be entitled to all the welfare measures and statutory benefits. They are as follows:

- Journey allowance; payment of wages for the period of journey as if such period was on duty;
- Displacement allowance at the rate of 50 percent of his monthly wage payable or Rs. 75 whichever is higher, (this is a one time payment);
- Residential accommodation as may be prescribed, and
- Medical aid including hospitalization, as may be prescribed, reporting of cases of accident causing injury etc as have been provided under the Act.

Contract Labour (Regulation and Abolition) Act, 1970 with Central Rules, 1971

The brick kilns, which are getting certain jobs, processes or operations in the establishment performed by or through contractors who are employing 20 and above workmen, will come within the purview of the Act. The brick kiln owners will be required to obtain registration certificate U/S 7 of the Act.

Minimum Wages Act, 1948

Employment in brick kilns has been notified as a scheduled employment under the Minimum Wages Act by most of the State Governments and after issue of the notification, minimum rates of wages (both daily and piece rated) have also been notified.

The biggest lacunae in this framework is that the brick kilns themselves have not been considered as factories and as part of the formal sector and therefore its owners are not entitled to any benefits as industrialists.

At the tripartite meeting all the acts were discussed and the different views of the trade union, the state government and the brick kiln owners federation were debated. The committee was constituted by the Government of India, Ministry of Labour and Rehabilitation (Report of the Tripartite Committee on Brick Kiln Industry, New Delhi, 31 July, 1984). However the discussions remained unresolved, as no formal measures have been adopted as yet and there is as of yet no law or act that pertains to the brick kiln industry alone. Such a law/act is much awaited both by the trade unions as well as the brick kiln owners.

Legal and Administrative Framework for Women

While women constitute a significant part of the workforce, they lag behind men in terms of level and quality of employment. Workforce Participation Rate (WPR) of women in India increased from 14.22 percent in 1971 to 19.67 percent in 1981 and further to 22.73 percent in 1991. As of Census 2011, WPR among women stood at 25.51 percent. The majority of women workers continue to be employed in rural area where 87 percent are involved in agriculture as labourers and cultivators. Among the women workers in urban areas, about 80 percent are employed in the unorganized sectors like household industries, petty trade and service and construction.

While number of labour laws that are in the statute book is very large, it is inadequate to confine attention to only a few of them. This is for the reason that quite a large number of labour laws are sex-neutral, as for example, The Industrial Disputes Act 1947, and the Payment of Bonus Act 1965. There are a few laws like the Factories Act 1948, Mines Act 1952, and the Plantations Labour Act 1951, where there are special provisions relating to hours of work, restrictions on employment and the like in respect of women workers. Lastly there are two laws, which have been enacted specially with the women workers in view, and these are the Equal Remuneration Act 1976 and the Maternity Benefit Act 1961.

An important feature of the various labour laws, relating to social security, welfare, safety and working conditions, employment or dispute resolution, is the existence of employer employee relation and the consequent need to define an employer and an employee. This is for the reason that for the purpose of employment or provisions of benefits, the law places the responsibility on the employer, who for that reason has to be identified precisely. But in respect of the large mass of women workers in the unorganized sector, either the employer keeps on changing frequently as in construction work, where assured employment for a minimum number of days in the year is itself in doubt, or there is no direct relationship with the ultimate employer as in the case of occupations where the only point of contact for the workmen is only of a low level intermediary.

The basic criticism, validly labeled against the labour legislation in the country is that while there may be scope or need for improving the contents of law, these laws are ineffective in so far as there is no enforcement of these laws.

The enforcement machinery is inadequate and a worker is expected to find redress independently through other agencies namely the unions who if they take up the matter resort to the legal procedure. Few individual workers can even dream of affording such an elaborate procedural channel, the deterrents being the duration, expense, and harassment, lack of knowledge about the procedure, the legal jargon, and all the other disadvantages that go with being poor and illiterate. The provisions of the law are not clear and precise, making it a battleground for legal interpretation in the hierarchy of tribunals and courts. Penalties are inadequate and participation of the workers in the enforcement of the law is totally absent. The adjudicating machinery and the magistrate are quite often indifferent if not hostile to the aspirations of the working people.

The Minimum Wages Act, 1948

This is by far the most relevant and important piece of legislation for the unorganized sector, as the whole scheme of the Act is designed to give a modicum of protection to workers in the unorganized sector industries. The Act, as it stands now, merely provides, inter alia, a mechanism for fixing and revising minimum rates of wages but does not give any guidelines as to the basis on which the minimum wages are to be fixed or revised. This has been the subject matter of considerable criticism and discussion over the years. At present, minimum rates of wages are fixed in respect of jobs that are included in the schedule. Section 27 of the Minimum Wages Act, 1948, empowers the appropriate government to add employment to the schedule by notification after prior publication. Notwithstanding the fact that each government has been periodically adding employment categories to the schedule, there may still remain certain categories that are not added to the schedule.

Even when the employment category is added to the schedule, there may be time lags in the fixation of minimum wages for that category and under the scheme of the Act other benefits of the Act will also not accrue to the workers by mere scheduling but only after minimum rates of wages have been fixed. So to ensure that wages at an irreducible minimum level, payable to anyone who works, a national or at least a regional minimum rate of wages should be fixed which will have to be periodically revised and made widely known through the media. The medium that can reach out to the widest audience especially the working class is the radio and some thought may be given to developing community radio stations.

Maternity Benefit Act, 1961

One of the points often urges as the reason for the decrease in employment of women is the incidence of Maternity benefits and the consequent reluctance of the employer to hire women workers. It is not as though the average expenditure incurred as maternity benefits is very large.; Shram Shakti Report (1988) indicates that in 1977-78 the average expenditure per woman worker in factories ranged from Rs. 1.31 to Rs 4.54 per year - an absurdly low sum- but even so, one can visualize a psychological, if not financial barrier in the minds of the employer in recruiting women as employees.

Equal Remuneration Act, 1976

Despite the Act being in the Statute book for decades, it is seen that the practice of paying lower rates of wages for the same or similar work still persists. The provisions of the Act are still not widely known and the women interviewed almost accepted their lower wages for the same work as custom and have not questioned it even though they were aware of their lower wages for the same or similar work. In some cases the employers confuse this Act with the provision of Minimum Wages. The main purpose of the Equal Remuneration Act has been to ensure payment of equal remuneration to men and women workers in an establishment doing same or similar work.

There have been suggestions that equal remuneration must be payable for doing work of equal value. While this seems an attractive proposition, measuring value of work and equating them is a far more difficult task that identifying same work or work of similar nature. While this expression has been defined in Section 2(h) of the Act, even then no one notices a tendency to categorize tasks generally done by women as being of a slightly inferior nature, warranting lower rates of wages. One notices this even in fixation of minimum rates of wages, where in notifying wages under the Minimum Wages Act 1948, in some notifications work is classified as “light work usually done by women” and “heavy work usually done by men”.

To avoid this, it will be perhaps advantageous if a group of activities in any industrial occupation are broad banded into one category, on the basis of enquiries and study, so that the present situation is remedied. As pointed out by the Supreme Court, the term does not mean work which is identical in all respects, but work which can broadly be considered to be the same or similar

in nature to other work. The broad guidelines contained in Section 2(h) of the Act should be spelt out in more precise terms in respect of each category of notified establishments and the result made widely known to all employees and workers.

Another purpose of this Act (and in this respect the Act is a great advance on the ILO Convention No.100 on Equal Remuneration), relates to avoidance of discrimination on ground of sex against women in the matter of employment. This will include, not merely initial recruitment but also stages of one's employment including promotions.

In order to enable adequate number of qualified women to fill up jobs from which they are usually discouraged because of lack of formal skill development, there is a need to extend reservation of seats for women in training institutions like Industrial Training Institute and in programmes like apprenticeship training under the Apprentice Act 1961. Under the SPDD project one of the emphases has been to train women working in the non-traditional sectors especially in the construction industry.

Women want training and it is necessary to develop training modules in multimedia packages to overcome the hurdle of illiteracy among the women workers, and slowly develop methods of making them literate with training material in their own field of experience. While training the women, it should also be kept in mind that they should be able to apply it in their work. There has to be coordination at the macro policy level to ensure that technological development takes into consideration the existing skill level among the women workers and opens up channels in the direction of their experience and sharpens those.

Therefore the introduction of improved technology to eradicate the drudgery and the hazardous condition of work for women in the construction sector or in any sector for that matter should be carefully planned to ensure that such a concern should not result in the reduction of employment opportunities for women. The choice of technology cannot be made purely in terms of productive efficiency but will have to be an optimum mix of efficiency and employment.

Workmen's Compensation Act, 1923

While this particular Act is gender neutral Section 2(1)(n) of the act defines the term 'workmen' excluding from its ambit a person whose employment is of a casual nature. Given the nature of women's employment in the unorganized sector, it is not difficult for the employer to argue that their employment is of a casual nature. Schedule II to the Act lists out persons who subject to Section 2(1)(n) are included in the definition of the term workmen.

In this list there are three entries as for examples (xviii) (iii) and (xxvi), in which the applicability depends on the number of persons employed; entry (xvii) in fact is not even dependent on the number of workmen employed but in the number of persons a ferry boat is capable of carrying. These restrictions on numbers have no place in social security legislation like the Workmen Compensation Act. These should be removed.

One of the recommendations that have been made repeatedly by workers organizations is that all employees be compelled by law to enroll for accident insurance policies or that the payment of Workmen's Compensation be out of a Central Fund to which all employers pay a monthly contribution calculated at a certain percentage of the wages. It has been a longstanding demand that the Act must also be amended suitably to place the burden of proof squarely on the employer to establish that the accident did not arise out of and in the course of the employment, instead of the workmen having to prove otherwise.

Likewise, where the question relates to the nature of injury and extent of disablement, the expert's certificate must be admitted in evidence, leaving it to the employer, if he chooses, to summon the medical expert at his cost for purpose of cross- examination. One of the root problems in the unorganized sector of pinpointing the responsibility of the employer is the lacuna in legally establishing the concept of principal employer. Of the 75 women interviewed, 100 percent work under a contractor and those who are picked up from the labour chowks, work for different contractors every few days or every other day and there is no way that they can even be identified as workers leave alone identifying who their employers are.