

THE HUMAN RIGHTS COMMUNIQUÉ

YOUR MONTHLY DOSE ON HUMAN RIGHTS

(NEWSLETTER FOR CENTRE FOR ADVANCED STUDIES IN HUMAN RIGHTS, RGNUL, PUNJAB)

Vol. I, Issue IX

May 2015

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ILO & LABOUR WELFARE IN INDIA

The International Labour Organisation is a specialized, United Nations (UN) agency devoted to improve the protection of the rights of labourers' globally. It was created in 1919, as part of the Treaty of Versailles that ended World War I, to reflect the belief that social justice must be meted out to all sections of the society in order to achieve the goal of socio-economic development. The Labour Commission set up by the Peace Conference set out to develop the International Labour Standards, and within two years, they had formulated 22 labour conventions. By 2015, The ILO has adopted 190 conventions in total, of which 7 are fundamental, i.e. binding on every member state. In pursuance of its objective of lasting peace, prosperity and progress, the ILO has laid down four broad objectives:

1. To Promote and realize standards and fundamental principles and rights at work
2. To create greater opportunities for women and men to decent employment and income
3. To enhance the coverage and effectiveness of social protection for all
4. To strengthen tripartism and social dialogue

The initial motive of the ILO was on humanitarian grounds where the conditions of workers faced numerous problems and were exploited with no consideration for their health, their family lives and their advancement. The second motive was political as with no significant improvement to workers conditions and a ever increasing numbers seen in the labour market as a result of industrialization was creating social unrest and even revolutions in some cases. The third motive of the ILO was economic because of its inevitable effect on the cost of production, any industry or country would find itself a disadvantage compared to its competitors, the preamble of the ILO states that "the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries". The most important aspect of work of the ILO is its role in formulating and monitoring international labour standards in the form of conventions, recommendations and Codes of Practice which set minimum standards of basic labour rights.

ILO AND INDIA

While India was a founding member of the ILO, it has been a permanent member in the ILO governing committee since 1922. Ever since the first office was set up in 1928, the ILO and India have developed a 'productive partnership' based on mutual trust and respect. Here, it adopted a two-directional focus for socio-economic development: overall strategies and ground-level approaches. Through the years, it has helped alleviate the various causes like child labour, forced labour, Minimum Wage law and gender equality. ILO launched its Decent Work Country Programme (DWCP) in India in the year 2007. The Government of India formulated its twelfth five year plan in consonance with the DW agenda.

ILO's current portfolio in India centers around child labour, preventing family indebtedness employment, skills, integrated approaches for local socio-economic development and livelihoods promotion, green jobs, value-addition into national programmes, micro and small enterprises, social security, HIV/AIDS, migration, industrial relations, dealing with the effects of globalization, productivity and competitiveness, etc. The Decent Work Technical Support Team (DWT) for South Asia stationed in New Delhi, through its team of Specialists, provides technical support at policy and operational levels to member States in the sub-region.

A number of academic scholars have criticised the ILO for creating a false division between various international labour standards. It must be sensitive and responsive to regional diversity and the specificity of national needs within the framework of the four strategic objectives and the promotion of the Declaration on Fundamental Principles and Rights at Work. When pursuing these objectives and when implementing the InFocus programmes, it is crucial to secure that gender aspects and questions of equal opportunity are being mainstreamed in all the programmes, thus ensuring that issues of vital importance to women all over the world are not neglected or under-resourced.

For the fulfillment of the above mentioned four basic objectives of the ILO in India, there are numerous overlapping, rigid and isolated acts(about 145), which are applicable to firms at any point of time. This gives immense powers to public officials and results in harassment of employers. It leaves room for corruption and increases compliance costs in terms of money and time. This type of policy runs counter to above stated desirable objectives. This makes our firms uncompetitive to foreign firms. It is quite apparent from the perpetual dismal performance of Indian manufacturing sector.

India has about 85 -90 % of the workforce employed in informal sector on which these laws are not applicable. These are micro firms employing as low as 5-10 persons. These employers are discouraged to expand their businesses, by such huge number of regressive laws. Neither they have understanding of laws to that level and services of Lawyers to ensure compliance is much expensive. Further, huge majority of workforce get no formal training. This results in low productivity and low value addition. In addition, Entry and exit Barriers for firms and Job security for workers is also becomes an issue. This issue is of retrenchment, Law for this provides that government approval should be taken before retrenchment of the workers (in case industrial dispute act apply). As a rule for good economic environment, there should least entry and exit barriers for Firms in any business. But in addition, social security of the workers is indispensable.

The present government has realized the need to amend labour laws in India and has taken a step towards introducing various amendments. The much awaited labour reforms necessary for mass manufacturing in India were initiated by Prime Minister Modi on October 15 2014. Any efforts to rationalise labour rules, around 250 of them at the Central and State levels, is a welcome step for industry. The two key areas of reform are 'unified labour and industrial portal' and 'labour inspection scheme'. Introduction of the labour identification number (LIN) and

putting inspection on a unified portal will help bring transparency in the use of labour rules. The Prime Minister's efforts to raise the minimum wage ceiling from ₹6,500 to ₹15,000 and to ensure EPF and the pension scheme for vulnerable groups are also laudable.

Overall it's the first big step that's been taken at the Central level to reform one of the most complicated issues in the post-reforms era. However, much more needs to be done to put together a system that is not biased against either employers or employees. The proposed reforms, summarised below, form part of the Prime Minister's "Make in India" campaign, which is designed to encourage global businesses to manufacture goods in India.

SHRAM SUVIDHA PORTAL

This measure will make it easier to comply with Indian labour laws. It will allow the online registration and filing of self-certified single online returns for 16 of the 44 labour laws. Where factory owners previously had to fill out 16 different forms to comply with these laws, they will now just be required to complete a single online form.

The difficulty of complying with a multitude of labour laws has always been cited as an impediment to industrial development in India. This new system is a step forward in reducing bureaucracy for businesses operating in India.

LABOUR INSPECTION SCHEME

This scheme will use technology to randomly select units for inspection to eliminate individual discretion in the selection process. Inspection reports must then be uploaded within 72 hours of the inspection. An inspection scheme is also being developed to ensure transparency, with the following features:

- Serious matters are to be covered under the mandatory inspection list
- A computerised list of inspections will be generated randomly, based on pre-determined objective criteria
- Complaints-based inspections will be determined centrally, following examination based on data and evidence
- There will be an emergency list for the inspection of serious cases in specific circumstances

UNIVERSAL ACCOUNT NUMBER SCHEME

This scheme will allow approximately forty million employees to have portable, universal access to their provident fund accounts and to consolidate all their previous accounts (approximately INR 270 billion is currently held by the Employees' Provident Fund Organisation in inoperative accounts).

The reforms will make it easier for employers to do business in India. In particular, when the portal system is in force, it will ease the compliance burden on businesses and speed up the system.

TRIVIA

- *The first celebrated US Labour Day was on Tuesday, 5 September, 1882 in New York City, planned by the Central Labour Union.*
- *Oregon was the first state to celebrate Labour Day as a legal holiday in 18*
- *Agriculture remains by far the most important sector where child labourers can be found (98 million, or 59%), but the problems are not negligible in services (54 million) and industry (12 million) – mostly in the informal economy.*
- *Asia and the Pacific still has the largest numbers (almost 78 million or 9.3% of child population), but Sub-Saharan Africa continues to be the region with the highest incidence of child labour (59 million, over 21%).*

DAYS OF MONTH

- *World Environment Day - 5 June 2015*

DID YOU KNOW?

The true founder of Labour Day in United States has yet to be identified. Many credit Peter J. McGuire, co-founder of the American Federation of Labour, while others have suggested that Mathew Maguire a secretary of the Central Labour Union, first proposed the holiday.

**MIGRANT LABOUR RIGHTS IN THE GULF**

Often addressed as “the pot at the end of the rainbow”, the Middle East is the most favoured destination by immigrant workers. Workers from South-Asian countries constitute a major chunk of the workforce as they have a vast reservoir of both highly skilled and unskilled labour force. It is interesting to note that 90 percent of the private workforce of countries like UAE, comes from immigrants, particularly those from India, Bangladesh and Pakistan, and the number has not decreased despite a drop in oil prices and the international banking crises in 2008.

Despite the overwhelming presence of migrant workers in the Gulf region, their human rights are not preserved and they are perceived as a national security issue. Many Gulf countries have instituted tougher recruitment policies, deported surplus expatriate workers, and made the renewal of residence permits more difficult to curb their growth. Moreover, the labour ministers of these countries have proposed a quota system to limit the number of foreign workers. In this regard, in the recent past organisations like the International Labour Organisation (ILO) have come forth stating that the migrant workers are not potential security risks but vital economic assets whose contributions are often under-appreciated and under-compensated.

The ILO adopted the Domestic Workers Convention, 2011 to ensure that domestic workers enjoy effective protection against all forms of abuse, harassment and violence. All member countries are required to take measures to ensure the effective promotion and protection of the human rights of all domestic workers, as set out in this Convention. Members are also required to take measures to ensure that domestic workers, like workers generally, enjoy fair terms of employment as well as decent working conditions and, if they reside in the household, decent living conditions that respect their privacy.

The ILO guidelines, however, remain insufficient in protecting the human rights of the workers in the absence of active government action and policy. Government officials in Qatar, despite Qatar being a member to the ILO, remain oblivious to and conveniently disregard the rampant exploitation that migrant domestic workers living in Qatar face. A report entitled ‘My Sleep is my Break’ by Amnesty International researchers investigating the situation of migrant women working as domestic workers in Qatar revealed that exploitation of domestic workers in Qatar is at once part of a global phenomenon - an expatriate family can choose to discipline their expatriate employee for simply seeking adequate compensation for a brutal period of work - and is also very specific to Qatar's context. Like all migrant workers, domestic workers in Qatar are subject to the highly restrictive *kafala* or sponsorship system, which gives their employer excessive control over them, including the power to deny them the right to leave the country or change jobs. Like all other foreign workers, they are barred from forming or joining trade unions.

The situation is not much different in other Gulf countries like UAE where the *kafala* system has led to widespread labour and human rights abuses. Like in Qatar and UAE, migrant workers in Saudi Arabia face severe restrictions on freedom of movement and can only leave the country after acquiring an exit permit from the employer. Domestic workers in these countries are often recruited with false promises of good salaries and decent working hours, compelled to work for employers who impose severe and communication and facing – in several cases – the threat of physical abuse or lost wages if they challenged the employer.

The system thus conspires on three levels to leave migrant domestic workers in the Gulf countries open to exploitation and abuse: their isolation in the home; the excessive powers of their employers; and a legal system that is not designed to help them. However, the Abu Dhabi Dialogue in November 2014 is a positive step towards the growing openness of the Gulf countries to international cooperation on labour standards, to create a regional framework for regulating labour migration. A consistent effort to develop a humanitarian perspective with regards to the rights of immigrant workers may drastically improve their dismal condition.

HUMAN RIGHTS NEWS...**AMENDMENT TO CHILD LABOUR ACT PROPOSED****27 April, 2015**

The Government of India is planning to bring about an amendment in the Child Labour Prohibition Act. The amendment in the pipeline would legally permit the children who are below the age of 14 to work in select setups, like in some family enterprises. This proposed amendment shall not apply to children who are helping their family in the work in fields, forests etc. but only if it doesn't hamper their education. The provision seems to be aimed at helping the poor families where children can play an important part in the family subsistence. This family enterprise may include carpet-weaving, beedi-rolling, lock and match box making. The step comes in as an aim to encourage learning at home as it leads to entrepreneurship. Though the main motive of the Prohibition act will not change and children will be prevented from working in hazardous industries. The draft change in the Act also proposes to double the punishment for employing child labour.

While at the same time many child rights activists have opposite views, pointing out that the proposal could be used to deny education to the girl child, as school dropout rates of girl students are double than that of boys. Supreme Court advocate, Ashok Aggarwal has described the proposed amendment as unconstitutional as it goes against the recommendations of the parliamentary subcommittee that barred children from helping parents in domestic chores. It is also regarded as a setback to all the work done by activists to rescue children from bonded labour and exploitation.

UTTAR PRADESH TOPS IN HUMAN RIGHTS VIOLATIONS**17 April, 2015**

Uttar Pradesh has topped the number of human rights violations reported in a year to the NHRC. States like Andhra Pradesh and Telangana have to their record close to 200 complaints registered every year. It is pertinent to understand that most states people with human rights violations complaints against the police go to that state's human rights commission, because of which states away from Delhi are likely to have lower figures. A very important point to be considered that the police in the north eastern region and the state of Jammu and Kashmir fare better with the number of complaints against them being less than 10 a year though they are regularly highlighted for alleged excesses. In the past three years complaints against the J&K police has only once crossed the 100 mark. Haryana and Delhi follow UP in the number of complaints registered with the NHRC. While as regarding the all India scenario more than 29000 cases have been registered in the years 2014-2015, with the number of cases in the year 2012-13 going well above the 35,000 mark.

NHRC FAVOURS JUDICIAL PROBE IN CHITTOOR KILLINGS**15 April, 2015**

Favouring a judicial enquiry into the April 7 killing of 20 woodcutters in Chittoor district of Andhra Pradesh, the National Human Rights Commission on Thursday decided to send its own team for an 'on the spot' investigation. NHRC members, after hearing the submissions made by representatives of civil society and the state government in Hyderabad, directed that the mobile numbers of all police and forest officials involved in the encounter, and the medico-legal reports of the police personnel injured in the action be submitted to the commission.

NHRC chairperson KG Balakrishnan asked the Andhra Pradesh government to furnish details of wireless communication relating to the incident. Balakrishnan said the version of witnesses could be recorded before a competent authority even in Tamil Nadu, from where the 20 people hailed.

People's Watch, a human rights NGO, submitted that witnesses were not feeling safe in Andhra Pradesh and demanded that they be provided security. The commission refused to accept the reasoning given by AP Police that judicial inquiry was required only in case of deaths in custody while in this incident, the woodcutters were killed in police firing done in self-defence. The legal advisor of AP Police said a magisterial enquiry was conducted immediately after the incident. The commission also directed the investigating agency to facilitate the recording of evidence of the three eyewitnesses who have already deposed before the NHRC.

AROUND THE GLOBE...**NORTH KOREAN DIPLOMATS STORM OUT UN HUMAN RIGHTS EVENT****3 May, 2015**

The United Nations conference on human rights held on May 3, 2015 turned into chaos after North Korean diplomat lashed out at UN for inviting defectors to the event and he ultimately left the event. The happening took place when North Korean diplomat interrupted one of the defectors and tried to deliver his statement in between. However, he was stopped by US Ambassador Samantha Power who called for UN staff to turn off the North Korean diplomat's microphone during his speech.

Last year UN commission on human rights in North Korea compared human rights abuse in North Korea with those of the Nazis and warned Kim Jong-un to face trial at ICC for his personal culpability as head of state and commander of the military.

2015: REVIEW OF CONFERENCE TO PARTIES TO NPT**27 April, 2015**

Four-week-long international review conference on the Nuclear Non-Proliferation Treaty (NPT) began in UN headquarter on April 27, 2015 and is scheduled to continue till May 22, 2015. A prime focus of this year's conference is a proposal for a long outstanding treaty to ban nuclear weapons and the conference is conducted after every 5 years.

"Eliminating nuclear weapons is a top priority for the United Nations and no other weapon has the potential to inflict such wanton destruction on our world," Secretary-General Ban Ki-moon told delegates in his address.

MEDIA WATCHDOG UNVEILS 10 WORST CENSORS

Committee to Protect Journalist (CPJ), New York, released a report at UN headquarter on April 27 2015 of world's 10 most censored countries and in which people enjoy minimum right to express. The worst offenders are Eritrea and North Korea, followed by Saudi Arabia, Ethiopia, Azerbaijan, Vietnam, Iran, China, Myanmar and Cuba. According to Courtney Radsch, the advocacy director of CPJ, these countries use different tactics of censorship which includes harassment and jailing of journalist, prosecuting press etc.

SOUTH SUDAN RATIFIES THE CONVENTION ON RIGHTS OF CHILD**4 May, 2015**

South Sudan on May 4, 2015 ratified Convention on the Rights of the Child, an international human rights treaty which aim at protecting children's rights to health, education and freedom from discrimination. The move was welcomed by UN and now only two countries are left who are yet to ratify the treaty i.e. United States of America and Somalia. The treaty has been ratified by 195 nations.

ARMED GROUPS IN C. AFRICAN REPUBLIC AGREE TO FREE CHILDREN**5 May, 2015**

United Nations Children Agency declared in its statement on May 5 that armed groups in Central Africa Republic have agreed to release children they have been holding and not to recruit any other child soldier.

The major groups including the Christian anti-Balaka militia and some ex-Seleka rebel groups made the commitment in the capital, Bangui. According to UNICEF, between 6,000 and 10,000 children have been recruited by armed groups in Central African Republic.

SOCIAL SECURITY FOR THE UNORGANIZED IN INDIA

The term 'social security' can be defined differently as per the understanding of different people. In simple terms, it means the continuous economic support to a human being for his/her social well-being, at least in the later years of his life. Social security measures include old-age pension, gratuity, provident fund, medical care and other health benefits. Economic status of an individual is a taboo in the Indian economy due to the prevalent poverty, illiteracy, destitution and other social evils.

Unorganized sector, as defined by National Commission for Enterprises in the Unorganized Sector, consists of all unincorporated private enterprises owned by individuals or households engaged in the sale or production of goods and services operated on a proprietary or partnership basis and with less than ten total workers. They do not have contracted employment with a formal sector employer and are engaged as home-based, self-employed or wage workers. The characteristic features of this sector are ease of entry, smaller scale of operation, local ownership, uncertain legal status, labour-intensive and operating using lower technology based methods, etc. Thus, the social security of unorganized labour is multi-dimensional with rough surfaces. What is needed is an immediate attention from the policy makers.

The Government of India passed the landmark Unorganized Workers' Social Security Act (UWSSA) in 2008. The purpose of this Act was to provide minimum level of social protection that would enable them to endure income and health related shocks, stay out of poverty, and ultimately allow them to lead dignified lives. Several state governments are also running some old age pension schemes but these are pure social assistance programs with rigid criteria of selection of beneficiary and with meager amount of benefit. Some states have occupation based social security programs run by Non-Governmental agencies, particularly in the state of Kerala and Gujarat. There are welfare funds like Beedi workers welfare Fund, Limestone & Dolomite workers welfare fund, Iron ore, Manganese ore & Chrome ore fund, Mica mine workers welfare fund and Cine workers welfare fund etc. However, all these programmes fail to provide answer to a bigger question of income maintenance or income sustenance or old-age income security of these unorganized workers.

Keeping in mind the basic human rights of every individual, these organizations should be created so as to ensure the proper implementation of Constitutional provisions also, such as Right to equality and Equality of Opportunity in public employment. Men and women should be paid equal wages for the equal amount of work done by them. Workers need stability of employment to ensure their future security. Some actions should be taken to make the unorganized sector secure and stable so as to motivate workers to take up job in this area. Some guarantee should be given to the workers that their human rights will be protected and minimum needs of the workers should be satisfied. Workers should be provided at least minimum wages and working hours should be fixed to ensure that workers are not exploited at the hands of their employers. Basic rules and regulations should be framed for the entire unorganized sector stipulating the terms of employment and termination of employment. Minimum level of social protection should be provided that would enable them to endure income and health related shocks, stay out of poverty, and ultimately allow them to lead dignified lives. This is how social security in India would take a real shape of social security by guaranteeing the facilities to the under-served section of the society.

BACHPAN BACHAO ANDOLAN V. UNION OF INDIA



Facts of the Case

The Petitioner, engaged in a social movement for the emancipation of children in exploitative labour, bondage and servitude, filed writ petition praying for direction to the Union of India, the Respondents, to frame appropriate guidelines for the persons engaged in circuses and to conduct simultaneous raids in all the circuses by CBI to liberate the children and to check the gross violation of all fundamental rights of the children, to appoint special forces in the borders to ensure action and to check cross border trafficking, make intra-state trafficking of young children, their bondage and forcible confinements, regular sexual harassments and abuses cognizable offences under the Indian Penal Code as well as u/s. 31 of the Juvenile Justice Act, 2000. The Petitioner had complained about living and working conditions of the children employed in circuses alleging that for them, there was no education, no play, no recreation and their life was confined to the circuses without any exposure to the outside world.

Issues Raised

- 1) Violation of the fundamental rights of the children engaged in circuses;
- 2) Orders as to check on cross- border child trafficking;
- 3) Award of compensation and rehabilitation of children liberated from circuses; and
- 4) Framing appropriate guidelines for the persons engaged in circuses.

Judgment

The Supreme Court examined the issues in details and laid down certain guidelines for abolition of child labour and rehabilitation of children freed from circuses:

- The central government is directed to issue notification to circuses in order to prohibit employment children in circuses;
- Conduct raids at circuses and liberate children from the circuses and shelter in protective homes;
- The respondents are also directed to talk to the parents of the children and in case they are willing to take their children back to their homes, they may be directed to do so after proper verification; and

- The respondents are directed to frame proper scheme of rehabilitation of rescued children from circuses.

Analysis

The hon'ble Supreme Court has delivered a path breaking judgment by issuing a time based order to the Respondents and simultaneously ordering a filing of time based compliance report. The judgment was a comprehensive one covering not only the concern of child labour in circuses but depicted the plight of children in India by specific addressing the issues of child exploitation and child trafficking.

Firstly, the court in its judgment has brought out that factors of vulnerability often lead to exploitation of the child. Vulnerability most commonly stems from unemployment, poverty, crime, discrimination, corruption, political conflict and cultural acceptance of the practice.

Secondly, at times children also become forced to labour to help pay off a family debt. If a parent, grandparent or even great grandparent obtained a loan from a local money lender, the parent becomes indebted and forced to work for such money lender.

Highlighting the aforesaid two pan Indian causes for child exploitation, the Supreme Court made a genuine attempt via this judgment. The focus of the Supreme Court was on identification of those affected and exploited and rehabilitation of the same through governmental schemes, for which detailed guidelines were laid down by the Court.

Nevertheless, the Court fumbled on the point accountability of the execution of the guidelines framed as no proper channel for verification was established before sending children to their native place.

The Constitution of India prohibits forced beggar under Article 24. Not only this, variety of Industrial and Labour Laws prohibits child labour. The Bonded Labour (Prohibition) Act while curbs bonded labour, the Child Labour (Prohibition and Regulation) Act, prohibits the employment of child labour. It is pertinent to note that all these legal provisions does not find mention in the judgment and has not been relied upon by the Supreme Court.

Therefore summing it up it was a very novel and bona fide effort by the court to emancipate the plight of these children but the whole system again seems to be entrenched in the cobweb of poor implementation and if definite guidelines backed by sanctions are provided for then there hardly seems solution to this problem.

Contributions are invited for the further issues of the CASIHR newsletter. The last date of submission would be 15th of every month and it can be mailed to us at casihhr@rgnul.ac.in.