

Rights of Women Workers in Unorganised Sector: Legal Issues and Challenges

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I. Introduction:

The Constitution of India guarantees equality of opportunity in employment and directs the State to secure equal rights for livelihood, equal pay for equal work² as well as just and humane conditions of work for all. Despite the concerted efforts of the State the economic status of women is lagging far behind their male counter parts. Indian economy is to a great extent characterized by large number of people working in unorganized sectors as unorganized workers; transitional nature of the Indian economy, disparity in education, skill and training are some of the major factors abetting such a large concentration of workers in an area most vulnerable to exogenous economic vicissitudes. Women working in the unorganized sector deserve a separate mention as they are much marginalized. A majority of women work in unorganized sectors for low wages due to low level of skills, illiteracy, ignorance and surplus labour and thus face high level of exploitation. This hampers their bargaining power for higher wages and any opportunities for further development.

A woman is identified as a mother, a wife, a daughter-in-law or a daughter but never as an independent person. To be born as women means to inhabit, from early infancy to the last day of life a psychological world that differs from the word of the man. Much of the exasperation and discrimination in women's life stems from this fact. The overall picture is one of the greater disadvantages for women workers in general and those belonging to unorganized sector in particular. As a matter of fact, the problem of female worker is the index of the status of Indian labour in both organized and unorganized sectors.

The women's contribution to the economy by and large remains unrecognized, yet their services are valuable. The World Bank in its annual report in 1989 observed that 35 percent of Indian households' below the poverty line were headed by women and in most cases, were dependent exclusively on female income. The report observed that women contribution

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² Article 39 (d) of the Indian Constitution

is significant in families with low economic status. The poorest families thus depend on women's economic productivity.

In a globalized economy where cost effectiveness is the prime mover of any business, cheap labour long with flexibility of employment easily matches with women labour force the supply side finds answer in low employment rate under privatization wave, patriarchal system and attached family responsibilities. The statement that women are paid low wages as compared to their male counterparts can either mean that women are themselves less productive or that they are employed in low productive areas, less secure employment/part time unpaid or casual job where their bargaining strength is very low. This research paper tries to look into the matter find out the real cause of their low wages.

This has resulted in widespread feminization of the labour force throughout the globe. There are many theories that have explained the reasons for unequal distribution of jobs among men and women. There is a general acceptance of the 'U-thesis' of feminization of labour force and the level of economic development along with worsening income distribution among men and women in a liberalized economy³. This research paper also attempts to identify the trends of gender segregation in employment in unorganized manufacturing sector of India during liberalization.

II. Unorganized Sector:

The employment in the organized sector requires certain minimum qualifications and most of these educated women workers are drawn from middle classes and richer section, a very few women from lower class would get chance in these jobs. Unorganized Sector workers are distinguished by regular salaried jobs with well-defined terms and conditions of employment, clear-cut rights and obligations and fairly social security protection. The unorganized sector on the other hand has no such clear-cut employer-employee relationship and lacks most forms of social protection. Having no fixed employer, these workers are casual, contractual, migrant, home based, own account workers who attempt to earn a living from whatever merger assets and skills they possess.

³Anupama, "Globalization and employment of women workers in the unorganised manufacturing sector of India" *IJLE* Vol 51,(4)2008

National Commission for Enterprises in the Unorganized Sector has noted that *'employment in India can be meaningfully grouped into four categories to reflect quality and its sectoral association.*

- (a) Formal employment in the formal or organized sector.*
- (b) Informal employment in the formal sector.*
- (c) Formal employment in the informal sector.*
- (d) Informal employment in the informal sector.*

Amongst these four categories, reports have shown that the Indian economy is characterized largely by the huge number of people employed informally in the informal or the unorganized sector. To exactly define unorganized sector, we can say it consists of all unincorporated private enterprises owned solely by individuals or households on a proprietary or partnership basis and involving less than ten workers in all. Unorganized sector is characterized by the presence of factors viz long hours of work, wage discrimination of men and women, lac of job security no minimum wages, lac of minimum facilities at work place, ill-treatment, heavy physical work and sexual exploitation etc.

Most of the domestic workers and construction workers are primarily women who have migrated from rural areas for economic gain. The influx of women workers to the cities for non-farm employment has saturated the existing sectors and one of the main reasons for her extreme exploitation. Hardship of city life, absence of basic amenities and exploitation of these women by employers has added to their misery.

The condition of women agriculture labour in rural areas is no better. Most of them do not have year round employment. They suffer vital disadvantages compared to men in their search for employment opportunities, real wages, and increased uncertainties irregularities of employment. There are legal provisions to protect their rights. Such working conditions are a hurdle in their overall development leading to under performance and not allowing them to raise their productive capacity in that very profession also.

The issues regarding unorganized sector is largely country specific and its many manifestations are too been viewed and analyzed in that context. Some of the most germane points to our theme are the working conditions,

duration and durability of work, earnings, labour rights and safety conditions at work. The Arjun SenGupta Committee Report shows an estimated 92-93 percent of the workforce would be employed in the informal sector by the year 2017.

III. Reasons of women's Engagement and Problems:

Poverty is the main reasons for women's engagement as labours in construction and agriculture sector. To support the family they took up work in construction sector whereas inadequacy of husband's income is an added cause for women to as agricultural labourers. However women took up domestic work primarily because of inadequate income of the husband and poverty. The major problem faced by most of the women labourers in unorganized sector is lack of benefits. Among construction labourer's lack of benefits 95%, excessive burden of work 90% and fatigue 89% were the three main problems faced by them. Among agriculture labourers wage discrimination 100%, seasonal nature of employment 100% and lack benefits 96% are the main problems and among domestic workers lack of benefits 72%, Lack of job security 64% and lack of skill and knowledge 58% are the three main problems faced by the women. There are excessive exploitation of the women labour, resulting in long working hours, unsatisfactory working conditions, and occupational health hazards. These are the principal employers with massive capital outlay at one end and hundred of construction working with highly insecure subsistence level of living on the other end.

The women play a pivotal role in agriculture. They assist the bread earner or the family beading to the family income as wage earners. However, the traditional viewpoint still prevails particularly in rural areas assigning a secondary place to women. There are certain types of agriculture operations, which are mainly done by women labors for example harvesting, transplanting, weeding and thrashing. It is assumed that all female jobs need less skill and less strength however, such operations are much more strenuous and backbreaking. Such a great burden of work does not lead to sufficient amount of wages. Even, when men and women perform the same task the male labourers receive Rs. 20 – 40 more than the female workers. They work for longer hours, receive low wages, because of low level of skills, knowledge illiteracy and ignorance. The agricultural labourers face many problems viz. poor living conditions, lack of knowledge of proper sanitation, hygiene, lack of social security benefits and exploitation between employers. The poverty and landlessness push the poor rural women to do low paid jobs in agriculture as alternative supplementary occupations are just not available in rural area. Due to low wages, most of the women workers reported that they were incapable to maintain or fulfil the necessary requirements of their families hence they borrow money from the money

unorganized workers like National Family Benefit Scheme, JananiSurakshaYojna, Indira Gandhi National Old Age Pension Scheme, AamAdmiBimaYojna etc.

V. Right to work and Social Security:

The preamble of the Constitution is notable for two reasons. Firstly, it resort to a fiction by conferring on the people of India the ultimate authority for not only constituting the future society but also laying down the cherished ideals of the society and bringing into force the Constitution itself. Secondly it spells out a social mission that people of India resolve to pursue, namely setting up a Sovereign Socialist Secular Democratic Republic, securing the ideals of justice, Liberty, equality and fraternity and adopt enact and give a Constitution.

Part III of the Constitution assures the rights which are fundamental to the citizen and part IV provides certain fundamental principles of state policy. On a conjoint reading of the preamble, it is apparent that the founding fathers intended to usher in an egalitarian society where every citizen is assured of social and economic justice, equality of status and opportunity assuring him dignity of person. Justice the two 'Priceless jewels' occupying pride of place, are thus embedded as corner stones to restructure an egalitarian socialist republic.

The infractions of fundamental rights could be complained under Article 32 of the Constitution to the Supreme Court of India or under Article 226 to the respective High Courts of States. The Constitution guaranteed equality of opportunity in matter of public employment⁴ but does guarantee right to employment or work. Article 21 embraces the field of life and personal liberty of the citizens and are jealously guarded, "No person shall be deprived of his life or personal liberty except according to procedure established by law".

Certain principles of policy to be followed by state – The State shall, in particular, direct its policy towards securing that the equal pay for equal work for both men and women⁵. The State shall within the limits of its economic capacity and development, make effective provisions for securing right to work to education and public assistance in cases of unemployment and in other cases of undesired want⁶. The State shall make provision for securing just and humane conditions of work and for maternity relief⁷.

⁴ Article 16 Constitution of India

⁵ Article 39 (d) Constitution of India.

⁶ Article 41 Constitution of India

⁷ Article 42, Constitution of India

lenders. In this way they get trapped in the cycle of debt trap. One of the most important features of agricultural women labours is seasonally employed.

Due to introduction of new labour replacing machinery there has been a reduction in employment opportunities, particularly for women because they are unskilled and hired only for manual work. With more and more women stepping out of their homes to contribute to family's income the demand for domestic help is on the rise. These domestic helps are hired for doing all kinds of household chores like cleaning the house, cleaning utensils, washing clothes, cooking food, baby sitting and running little errands etc. The basic nature of their work could be described as physically exhausting, tedious, monotonous and repetitive. Domestic workers are amongst the worst paid workers, majority of these workers earned only Rs 30-40 per day. Domestic workers are treated like a marketable commodity. Employers determine who they want to employ, for how long, at what wages and conditions, and at what point the domestic worker should be dismissed with the domestic employee having negligible bargaining power is an easy victim of exploitation. Domestic workers are employed in the private sphere of the house and their work is deemed as subservient. They tend to work for irregular hours and are subject to many forms of abuse and humiliation including threats of job loss. They are prone to numerous problems like lack of living space, receiving less than the minimum wages, wage rates at the discretion of individual employers, health and sanitation problems, lack of job security, lack of sick or maternity benefits and others.

IV. The Unorganized Workers Social Security Act, 2008:

This Act was passed in 2008 to provide for the social security and welfare of unorganized workers. According to this Act the Central Government shall formulate suitable welfare schemes for unorganized workers on matters relating to life and disability cover, health and maternity benefits, old age protection and the State Government may formulate schemes relating to provident fund, employment injury benefit, housing educational schemes for children, skill up gradation of workers, funeral assistance and old age homes for unorganized workers. These schemes may be wholly funded by the Central Government or State Government or partly through contribution collected from the beneficiaries of the scheme or the employers. The Central Government shall constitute a National Social Security Board to recommend suitable schemes and to monitor and review the expenditure under various schemes. Under this Act every unorganized worker, above the age of fourteen years, will be registered and issued an identity card and will be eligible for social security benefits under the scheme. A number of schemes have been covered under this Act to provide social security to the

Social Security measures are significant from two viewpoints. First they constitute an important step towards the goal of a welfare state. Secondly, they enable workers to become more efficient and thus reduce wastage arising from industrial disputes. Lack of social security impedes production and prevents formation of stable and efficient labour force.

There are number of social security measures for workers have been provided in the form of compensation for employment injury¹¹, Pension,¹² Gratuity,¹³ and Maternity benefit etc.¹⁴

VI. Strategies for extension of Social Security:

Social protection for the poor and the deprived can be provided through a combination of measures including the expansion of the current social security schemes and the government funded social assistance programmes and the enlargement of the employment generations and poverty alleviation programmes. Apart from the conventional social security, crop and livestock insurance schemes exist in India; there is no awareness among the people

¹¹. Sec 3(1) of Workmen's Compensation Act 1923 provides the liability of the employer to pay compensation for the following four conditions:-

- i. Personal injury must have been caused to a workman.
- ii. Such injury must have been caused by an accident.
- iii. The accident must have been arisen out of and in the course of employment.
- iv. The injury must have resulted either in death of the workmen or in his total or partial disablement for a period exceeding three days.

¹². Section 6(a) provides Employees Pension Scheme-The Central Govt. may be notification in the official Gazette from a scheme to be called the Employees Pension Scheme for the purpose of providing for—

- a. Superannuation, pension, retiring pension or permanent total disablement pension to the employees of any establishment or class of establishments to which this act applies and
- b. Widows or widowers pension, children pension or orphan pension payable to the beneficiaries of such employers.

¹³. See 11(1) of the payment of Gratuity Act 1972- provided that Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years, (a) on his superannuation or (b) on his retirement or resignation or (c) on his death or disablement due to accident or disease.

¹⁴. Section 5 of the Maternity Benefit Act 1961:- Provides that the maternity benefit to which every women shall entitled and her Employer shall be liable for, is a payment to a worker at the rate of average daily wages for the period of her actual absence immediately proceeding and including the day of her delivery and for six weeks immediately following that day. In addition the judiciary has played significant role by providing social security to the workers.

The State shall endeavour to secure, by suitable legislation 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 and in particular, the State shall endeavour to promote cottage industries on an individual or cooperative basis in rural areas⁸.

The Social Security is a basic requirement of all people regardless of the sector of employment in which they work and live. It is an important form of social protection we should begin with birth and should continue till death. In a general sense social security refers to protection extended by the society and state to its members to enable them to overcome various contingencies of life. The main risks or insecurity to which human life is responsible and in relation to which an organized society can afford relief to the helpless individuals are the incidents occurring right from childhood up to old age and death. Which includes many sickness invalidity due to maternity, accident and occupational diseases, unemployment, old age etc. Though, we have enacted good number of social security legislations to meet the mandate of our Constitution and provide a sort of protection to the people in case of various providential mishaps, the scope and coverage of these legislations is limited to hardly 9.4 per cent of the total work force, who are in the so-called organized sector as per 1991 census¹. But remaining 90.6% of the persons working in unorganized sectors such as the small and marginal farmers, the landless agricultural labour, the rural artisans, the handicrafts men and women, the fisherman and women, the salt workers, the hamals and the building and construction workers etc., are deprived of protection under many social security legislations of the state. Thus majority of the work force in the above said unorganized sector are in an urgent need of a comprehensive social security protection which can be achieved by joint of Governmental and non-governmental organizations.

The quest for social security and freedom from want and distress has been the consistent urge of man through the ages. The urge has assumed several forms according to the needs of the people and their level of social consciousness, the advancement of technology and the peace of economic development.⁹ The concept of 'Social Security' is based on ideals of human dignity and social justice. The underlying idea behind social security measures is that a citizen who has contributed or is likely to contribute to his countries welfare should be given protection against certain hazardous.¹⁰

⁸ Article 43, of the Constitution

⁹ Report of National Commission on Labour, (1969) 162

¹⁰ I.L.O. Approaches to Social Security (1942) at 80 quoted in report of National Commission of Labour (1969) at 162.

who are often affected by crop failure etc. Further establishment of more and more institutions of mutual benefit funds can provide an alternative system of social security for the unorganized sector particularly for the self-employed person.

The panchayats and Nagarpalikas shall be involved in administering social security programmes which help to achieve effective targeting and accountability delivery of benefits, reduce overhead, mobilize local resources and create a basis for community solidarity. In addition to these, the role of non-governmental organizations and social workers in implementation of schemes is more significant. The needs of the people engaged in barely subsistence level activities such as semi-skilled craftsmen and vendors in urban areas and marginal farmers, fishermen, forestry workers and landless agricultural workers in rural areas require to be considered. Specifically with reference to their meagre incomes, the distinct social security measures are to be devised for them. Further, some measures are required to be taken to improve their conditions of work health etc. Though many health centres have been established in many villages, still the condition of health care is not up to mark due to lack of doctors, availability of medicine etc. Though many hospital buildings are constructed in rural area, they are lying vacant since several years without any medical staff and facilities. Therefore, government must take immediate appropriate steps for recruitment of necessary staff and ensure the supply of drugs.

The workers in the unorganized sector are facing problem of housing, due to low and uncertain income, they are unable to have their own shelter and as such are forced to live in huts etc. Though government has evolved housing scheme for poor, it has not yet reached millions of workers in the unorganized sector.

VII. Role of Judiciary:

Various rights of the workers in the unorganised sector have been recognised by the Supreme Court of India in its several decisions. In the case of Peoples Union for Democratic Rights¹⁵ the Supreme Court in its judgement has not only made a distinct contribution to the Labour Law but has displaced the creative attitude of judges to protect the interests of the weaker sections of the society. The Court has enlarged the contours of the fundamental right to equality, life and liberty, prohibition of traffic in human beings and forced labour and prohibition of employment of child labour provided in the Constitution. The case arose out of the denial of minimum

¹⁵*Peoples Union for Democratic Rights v Union of India*, (1982) 2 LL.J 454

wages to workmen engaged in various Asiad and non-enforcement of the Minimum Wages Act, 1948, Equal Remuneration Act, 1976, Article 24 of the Constitution, Employment of Children Act, 1938, Contract Labour Regulation and Abolition Act, 1970 and the Inter-State Migrant Workmen Act, 1979. The Court attention was drawn by a public spirited organisation by means of a letter addressed to Bhagawati, J. of the Supreme Court. The Supreme Court has accepted *locus standi* of the organisation to file the writ petition and converted the letter into a petition and observed that when legal wrong or legal injury is caused to a person or determinate class of persons and such person or persons are unable to approach the court for relief due to poverty, haplessness or disability or social and economic backwardness, they may be represented by any other person or organisation. The Court has held that employment of Children below the age of 14 years in the construction work of the Asiad project is violation of fundamental right and non-observance of the provisions of the Equal Remuneration Act, 1976 would amount to breach of Art. 14. Further the violation of Contract labour Act, 1970 and Inter -State Migrant Workmen Act, 1979 intended to ensure basic human dignity to workmen, is clearly in violation of Art 21. Similarly it was also held that non-payment of minimum wages to the workers engaged in construction work would amount to not only violation of Minimum Wages Act but also Art 23 of the Constitution, which intended to prevent forced labour and beggar.

In *Badhua Mukti Morcha*¹⁶ Case Court held that when action is imitated in the court through public interest litigation alleging the existence of the bonded labour, the Government should welcome it as it may give the government opportunity to examine whether bonded labour system exists and as well as to take appropriate steps to eradicate that system. This is the Constitutional obligation of the government under Article 23 which prohibits "Forced Labour "in any form. Article 23 has abolished the system of bonded labour but unfortunately no serious effort was made to give effect to this article. It was only in 1976 that the Parliament enacted the bonded labour system (Abolition) Act, 1976 providing for the abolition of bonded labour system with a view to prevent the economic and physical exploitation of the weaker section of the society. These are some of the landmark decisions of the Supreme Court wherein several basic rights of the individuals especially the workers in the unorganised sector have been unhealed and safeguarded.

VIII. Conclusion:

The female labour force constitute one third of the rural workers face serious problems and constrains related to work such as lack of continuity,

¹⁶*Badhua Mukti Morcha V Union Of India, AIR 1984SC 802*

insecurity, wage discrimination, unhealthy job relationship and major problem they face are poverty, lack of access to education and inadequate health care facilities. The exploitation of female labourers in rural regions happens both horizontally and vertically. It is not that there are no statutory provisions to ensure fair working conditions for women in India. In fact, the Constitution of India provides equal rights and opportunities to both the genders. In addition, there are specific provisions for protection and welfare of working women in many of the labour laws. Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) is a major step in the direction of providing security of employment to rural workers.

A part from the Constitution of India the social security for all is considered as basic Human Rights under the Universal Declaration of Human Rights. Every member nation of U.N.O. must strive to further and promote these basic rights. As the research on the subject of rights and social security for women workers in unorganised sector reveals, though many scheme and policies have been evolved both at central and state level to achieve the said object the result is not so satisfactory due to non- proper implementation of the schemes properly. To make these schemes effective, both governmental and non-governmental organisations must be encouraged.