

SOCIOLOGICAL LEGAL ASPECTS THAT GOVERNS AGRICULTURAL LABOURERS IN INDIA

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ABSTRACT

Labour is on the concurrent list in the Indian Constitution, and regulatory provisions of the conditions of work, therefore, appear within the domain of both the State and the Central Governments. The Centre has passed a number of laws, but here too, the coverage of these laws as well as the rules regarding their implementation can be framed by the State Governments. The agricultural workers are covered in a piece meal fashion in various legislations and lack comprehensive protection of the minimum conditions of work. The avenues of stable and durable employment for them have been limited leading to inter-district and inter-State migration in search of better avenues of employment and wages. This has caused considerable dislocation of family life, dislocation of education of children and numerous other handicaps. Several measures have been taken to protect the interests of the working class and uplift the condition of agricultural workers. Extension services like for e.g., training for skill development, encouragement of small scale industries, agri-business, are provided by Agricultural Universities, NABARD, NAFED, NIAM, Entrepreneurship and Development Centers, Zilla Parishad and likewise. The very first legislation, the Minimum Wages Act, 1948 was applied to the agricultural sector also. The Minimum Wage fixed by the State Government under for agricultural labourers, shall be considered as the wage rate applicable to that area. Subsequently, the Plantations Labour Act, 1951 was enacted to provide certain basic facilities to plantation workers. Many other existing labour laws are applicable or have direct bearing on agricultural labour. The problems of agricultural labourers have been sought to be tackled through multi-dimensional course of action viz., improvement of infrastructural facilities, diversification to non-farm activities, skill improvement programs, financial assistance to promote self-employment, optimizing the use of land resources etc., through a variety of rural development, employment generation and poverty alleviation programs.

KEY WORDS:

Conventions, Constitutional Safeguard Etc

INTRODUCTON

The Government has enacted and extended various social security legislations to protect the social and economic rights of agricultural labourers. They are the Debt Relief Act, 1976, Land Ceiling Laws, The Protection of Civil Rights, 1955, The Trade Unions Act, 1926, Equal Remuneration Act, 1976, The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, etc. In spite of welfare programs and various social security legislations, the real improvement in the condition of agricultural labour has not been achieved due to the failure of percolation of these benefits in totality to the actual beneficiaries. The plans and laws in paper seem to be perfect but in action often meet with hurdles and have been practiced more in their breach. The hurdles like, lack of employment, lack of awareness about the welfare measures and legal provisions, low social status, economic dependency, lack of political will, oppressive social conditions and above all, their unorganized nature are inhibiting them from participating in the developmental programs. It is here, on behalf of agricultural labourers and society, voluntary organizations can come forward and contribute their might.

ROLE OF JUDICIARY TO SAFEGUARD INTERESTS OF AGRICULTURAL LABOURERS IN INDIA

The judiciary in India under its policy for attainment of social justice has been very attendant to give effect the rights of agricultural labourers. The Supreme Court in protecting the poor and the weakest

of the weak, agricultural labour is very appreciating. Several rights of the agricultural labourers have been recognized by the Supreme Court of India in its various decisions.¹

In the Land Mark judgment delivered by the Supreme Court in *people's Union for Democratic Rights v. Union of India* popularly known as *Asiad Case*. In this case the Supreme Court has not only made a distinct contribution to labour law but has displayed the creative attitude of the judges to protect the interests of the weaker sections of the society including the agricultural labourers. The court has enlarges the contours of the fundamental right to equality, life and liberty, prohibition of traffic in human being and forced labour and prohibition of employment of child labour provided in the Constitution. The Supreme Court in the aforesaid case as discussed the objects of the Minimum Wages Act, 1948, the Contract Labour (Regulation and Abolition) Act, 1970, the Child Labour (Prohibition and Regulation) Act, 1986, the Inter-State Migrant Workmen (regulation of Employment and Condition of Services) Act, 1979, the Equal Remuneration Act, 1976 and the Bonded Labour System (Abolition) Act, 1976 in relevance to the various Directive Principles of State Policy of our Constitution.

The Supreme Court inter-alia directed the Union of India to implement in letter and spirit with respect to the aforesaid legislations. It could be construed that the order of the Supreme Court is in favour of the agricultural workers also since, bulk of the unorganized work force in our country is composed of agricultural workers including marginal, small and medium farmers residing in rural areas. The court in this case brought a revolutionary changes with regard to interpretation of Part III and Part IV of the Constitution when it observed, oint out with all emphasis as our command that when ever any fundamental right which is enforceable against private individuals such as, for example a fundamental right enacted in Articles 17 or 23 or 24 is being violated, it is the constitutional obligation of the state take the necessary steps for the purposes of interdicting such violation and ensuring observances of the fundamental right by the private individual who is transgressing the same².

In *D.N.Banerjee v. P.R.Mukherjee* the Supreme Court observed that nontechnical and ordinary meaning of "industry" is "an undertaking where capital and labour cooperates with each other for the purpose of producing wealth in shape of goods, machines, tools etc.", and from making profits, and "industry" in this sense includes agriculture, horticulture, etc. The Court, however, pointed out that this was too wide a view and every aspect of employer and employees relation does not result in an "industry". Hence, the need for limiting the scope of the term was felt. But later in *Harinagar Cane Farm v. State of Bihar*, Mr. Justice Gajendragadkar, as he then was, held that the two companies engaged in agricultural operations, i.e., in one case the production of sugarcane, wheat, paddy and other articles for sale in the market and in other case producing sugarcane for the use of sugar factories were "industry" under the Act although the Court had left the larger question; whether all agriculture and operations connected with it are included within the definition of "industry"? Undecidedly, however, the Court made it clear that under all circumstances agriculture cannot be called industry. A Division Bench of the Orissa High Court has held that, "unless agriculture is adopted as business or calling the operation cannot partake the character of "industry".

CONSTITUTIONAL PROVISIONS GOVERNING AGRICULTURALLABOUR IN INDIA

The sudras of ancient India or harijans of medieval and modern India have had no options except to chose agricultural occupations. The preindependence phase witnessed a spurt in cruelty to the Harijan agricultural labourers. The have not accepted their exploitation as their fortune. The painful position of harijans has attracted the framers of Indian Constitution. They thought that the vibrancy of secular socialist republic will depend upon the manner in which social justice will be extended to the weaker section. The functional failure of the rule of the law and the operational relevance of judicial justice will depend on the deep concern for the downtrodden in our constitution egalitarianism. Dr. B. R. Ambedkar have equated it with the commitment of socialism or socialization of production. Referring

¹ Khet Majoor Samity, "Creation of a Class and Land Reforms" Who Are the Agricultural Worker 03, New Delhi: Paschim Banga Khet Majoor Samity, 2010

² Singh S. P., "Agriculture" Magnifying Mal-Development: Alternative Economic Survey 58, India, Vol. 11, Noida: Rainbow Publishers, pp. 28 (2004).

to socio economic justice contemplated in the objective resolution. The preamble of the Indian constitution reflects the imagination of the founding fathers. It is a declaration of an egalitarian philosophy, aiming at social reconstruction, Justice- Social and economic, equality of status and liberty, dignity of individual and other radical humanist promises and spelt out in the opening words of the supreme lex the document on which rests the aspirations of teaming millions of this country³.

FUNDAMENTAL RIGHTS

Indian Constitution explains the concept of Equality before law. The concept of equality does not mean absolute equality among human beings which is physically not possible to achieve. It is a concept implying absence of any special privilege by reason of birth, creed or the like in favour of any individual, and also the equal subject of all individuals and classes to the ordinary law of the land. As Dr. Ainer Jennings puts it: "Equality before the law means that among equals the law should be equal and should be equally administered, that like should be treated alike. The right to sue and be sued, to prosecute and be prosecuted for the same kind of action should be same for all citizens of full age and understanding without distinctions of race, all persons similarly circumstance shall be treated alike both in the privileges conferred and liabilities imposed by the laws. Equal law should be applied to all in the same situation, and there should be no discrimination between one person and another. As regards the subject-matter of the legislation their position is the same. Thus, the rule is that the like should be treated alike and not that unlike should be treated alike. In *Randhir Singh v. Union of India* the Supreme Court has held that although the principle of 'equal pay for equal work' is not expressly declared by our Constitution to be a fundamental right, but it is certainly a constitutional goal under Articles 14, 16 and 39 (c) of the Constitution.

In *Olga Tellis v. Bombay Municipal Corporation* popularly known as the 'pavement dwellers case' a five judge bench of the Court has finally ruled that the word 'life' in Article 21 includes the 'right to livelihood' also. The court said: It does not mean merely that life cannot be extinguished or taken away as, for example, by the imposition and execution of death sentence, except according to procedure established by law. That is but one aspect of the right to life. An equally important facet of that right is the right to livelihood because no person can live without the means of livelihood. If the right to livelihood is not treated as a part of the constitutional right to life, the easiest ways of depriving a person of his right to life would be to deprive him of his means of livelihood. In view of the fact that Articles 39(a) and 41 require the State to secure to the citizen an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life.

DIRECTIVE PRINCIPLES OF STATE POLICIES

The principles contained in Articles must be regarded as equally fundamental in the understanding and interpretation of the meaning and content of fundamental rights. If there is an obligation upon the State to secure to the citizens an adequate means of livelihood and the right to work, it would be sheer pedantry to exclude the right to livelihood from the content of the right to life. The State may not, by affirmative action, be compellable to provide adequate means of livelihood or work to the citizens. But, any person, who is deprived of his right to livelihood except according to just and fair procedure established by law, can challenge the deprivation as offending the right conferred under the Article 21. In *State of Maharashtra v. Manubhai Pragaji Vashi* the Court has considerably widened the scope of the right to free legal aid. The right to free legal aid and speedy trial are guaranteed fundamental rights under Art. 21. Art 39A provides equal justice and free legal aid. It means justice according to law. In a democratic policy, governed by rule of law, it should be the main concern of the State to have a proper legal system. The crucial words are to provide free legal aid by suitable legislation or by schemes or in any other way so that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. These words in Article 39A are of very wide import. In order to enable the State to afford free legal aid and guarantee speedy trial vast number of persons trained in law are needed. Legal aid is regarded in many forms and at various stages, for obtaining guidance, for

³ Indian Labour Year Book 35, Chandigarh: Ministry of Labour and Employment, Government of India, 1960

resolving disputes in courts, tribunals or other authorities. It has manifold facets. The poor agricultural labourers usually involve all their family members in the process of earning their livelihood irrespective of their age and sex. Their wives and children are the worse victims of several malpractices. The need of preferential treatment in favour of women and children is a world wide phenomenon. Regarding women the American Supreme Court in *Muller v. Oregon* structure and the performance of material functions place her at a disadvantage in the struggle for assistance and her physical well-being becomes an object of public interest and in order to preserve the strength and vigor of race. The need of protective discrimination in favor of women and children was also felt by the founding fathers of the Indian Constitution.⁴

THE SOCIETIES REGISTRATION ACT, 1860

In view of the fact that small and marginal farmers and tenants find it difficult to get organized under the Trade Unions Act, 1926, they can form an organization under the Societies Registration Act, 1860 to promote the common interest through participation in various socio-economic projects, floated by Government and Non-Government agencies. A society registered under this Act acquires the legal status. This Act is applicable to both issue-operative societies. Only the NGOs and societies registered under the Act. Agricultural workers in India are largely unorganized. According to the Ministry of Labour verified statistics, hardly 1.8 million rural workers, out of 240 million were organized by major trade unions. Besides, *Bhartiya Khet Majdoor Union*, *All India Agricultural Workers Union* and *All India Kishan Sabha* reportedly organized about 5.5 million agricultural workers. Also, 3.09 million workers were organized by various co-operative societies. Thus, altogether, only 10.4 million rural workers, i.e., about 4.2 percent organized. Even if we include the membership of independent trade unions and NGOs, hardly 5 per cent of the rural workers seem to have been organized. Besides, there are nearly 3052 registered non-government Organizations which have made efforts to promote and participate in socioeconomic projects for the rural workers. Quite a few of them like UNIFRONT, RWO, WWF etc., perform the dual role of both unions and cooperatives. In recent years both government and non-government agencies have formed self-help groups of women and poor workers at the local level. The Government has set up *Rashtriya Mahila Kosh* for enabling groups of poor and asset less women in the informal sector to access credit through the rural relations in agriculture is quite complex. Since the agricultural workers are not a homogeneous group and there is no direct employer-employee relationship on regular basis, especially in traditional crop production sector, the workers are largely unorganized. Generally speaking, they do not have any bargaining power. In relatively higher productivity regions of Punjab, Haryana and Western Uttar Pradesh, wages are often higher than the minimum wages fixed because of high productivity of land and labour. But in other backward regions, this rule does not apply.⁵

AGRICULTURAL LABOUR AND THE TRADE UNIONS ACT, 1926

Trade unions means any combination, whether temporary or permanent formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workman and or between employers and employees or for imposing restrictive conditions on conduct of any trade or business and includes federation two or more trade unions registered under the Act. In the case of wage earners, the law specifically provides that any seven or more members may form a union and apply for registration under the Trade Unions Act, 1926. Every application for registration for the trade union shall have to be made to the registrar and shall be accompanied by the copy of rules of the trade union and the statement of the following particulars, namely the names, occupation and address of the members making the application; the name of the trade union and the address of Head Office and the titles, names, and address, occupation of the officers of the trade union. The Registrar, on being satisfied that the Trade Union has complied with all the requirements of this Act in regard to registration, shall register the Trade Union by entering in a register to be maintained in such form as

⁴ Supra note 01.

⁵ Agarwal, A. N., Report of Agricultural Labour Enquiry Committee 155, New Delhi: Vikas Publishing House, 1981

may be prescribed, the particulars relating to the Trade Union contained in the statement accompanying the application for registration. If all the terms of the Act are complied with, it is obligatory upon the Registrar to register a union and he has no discretion in the matter. The Registrar, on registering a Trade Union, shall issue a certificate of registration in the prescribed form which shall be conclusive evidence that the Trade Union has been duly registered under this Act. Any person aggrieved by any refusal of Registrar to register a Trade Union may appeal to High Court or any other court, as appointed by Government. The appellate court may dismiss the appeal or pass an order directing the registrar to register the Union.

MINIMUM WAGES ACT, 1948: ITS APPLICABILITY TO AGRICULTURAL LABOUR

Legislative protection for workers to receive a minimum wage can be considered as the hall mark of any progressive nation. It is one of the fundamental premises of decent work. In India, the Minimum Wages Act, 1948 provides for fixation and enforcement of minimum wages in respect of scheduled employments and to prevent exploitation of the workers and for this purpose the Act aims at fixation of minimum rates of wages which the employer must pay. This law provides for the fixation of minimum rates of wages of labourers including agricultural labourers and is thus in conformity with ILO Convention No.99 relating to Minimum Wage Fixing Machinery (Agriculture). The State Governments are empowered to fix the minimum wages. The law provides for revising the minimum rates of wages from time to time. Wages under the Act may be fixed for time work, known as a minimum time rate or for piece work known as a minimum piece rate. There are two methods for fixing or revising the minimum rates of wages. One is by constituting committees and the other is by issuing notification in the official gazette. This law also provides for fixing hours for a normal working day in regard to any scheduled employment in respect of which minimum rates of wages under this Act have been fixed. For the overtime work the wages to be paid are at the rate of twice for non agriculture work and one and a half time for agriculture work. The law provides for appointment of inspectors by the Government for proper implementation of this Act. These inspectors are empowered by the Act to make inspections regarding whether minimum wages are actually paid. Exaction of labour and services against payment of less than the minimum wages amounts to forced labour and violates Article 23 of the Constitution. A claim for non-payment of minimum wages may be made before an appropriate authority under the Act. In the Central sphere.⁶

BONDED LABOUR SYSTEM (ABOLITION) ACT, 1976 AND ITS EFFECT ON AGRICULTURAL LABOUR

Even if a person has contracted with another to perform service and there is consideration for such service in the shape of liquidation of debt or even remuneration, he cannot be forced by compulsion of law or otherwise to continue to perform such service, as that would be forced labour within the inhibition of Article

23. 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. It is often that in capitalist society economic circumstances exert much greater pressure on an individual in driving him to a particular course of action than physical compulsion or force of legislative provision. The economic literature, official and other, on agricultural and working class indebtedness is escalating and disturbing. Indeed, the moneylender is an oppressive component of the scheme. Money-lenders charge heavy interest ranging from 15 to 50 percent and often more. In addition to high interest, these people take advantage of illiteracy of agriculturists and manipulate the accounts regarding loans to their advantage. The conditions of loan repayment are so designed that the debtor is forced to sell his produce to the mahajan at low prices and purchase goods for consumption and production at high prices. In many other ways these money lenders take advantage of the poverty and the helplessness of farmers and exploit them. Unable to pay high interest and the principal, the farmers even lose their land or live from generation to generation under heavy debt. Unless viable

⁶ Black, Henry Campbell, Black's Law Dictionary 471, (5th edn.) Washington: West Publishing Co., 1979

alternatives are made available, the mahajan will continue to hold, an important, harmful and enervating place in this sphere. The harmful consequences of indebtedness are economic and affect efficient farming, social in that the relations between the loan givers and loan receivers take on the form of relations of hatred, poisoning the social life. The money-lenders, few in number, belong to poor class.⁷

CONCLUSION

The economy of India is predominantly agriculture oriented. The majority of labourers are dependant on agricultural sector. A substantial part of agricultural labour Force lies at the lowest rung of socio-economic ladder. They have passed their generations through socio-economic exploitations of upper caste resourceful rulers of the rural society. The laws and the so called developmental programmes launched by the Government have not achieved Protection to Agricultural Labourers in India – The initial planning was based upon the economic development of the country was the synonym of industrialization. The industrialization which was acquired by the developed nations was neither feasible nor needed due to the lack of resources and population explosion in a developing country like India. In gradual course it was felt by the planners that the remedy lies not merely in Industrialization so much as in development of agriculture and expansion of productive activities and employment opportunities in rural areas⁸

REFERENCES

- a) De Silva, S., Evenson, R.E. & Kimhi, A. (2006), "Labour Supervision and Institutional Conditions: Evidence from Bicol Rice Farms", *American Journal of Agricultural Economics*, Vol. 88, No. 4, pp. 851-865.
- b) Encyclopedia Britannica, "International Labour Organization" <http://www.britannica.com/EBchecked/topic/290987/International-Labour-Organization-ILO> [accessed on 24 May 2012].
- c) Forced Labour Convention, 1930 (No. 29); 164 ratifications as of 23 March 2005 and the Abolition of Forced Labour Convention, 1957 (No. 105); 162 ratifications as of 23 March 2005.
- d) Government of India (2010). *Agricultural Statistics at a Glance 2009-10*, Economics and Statistics Division, Ministry of Agriculture, (GOI)

⁷ Dayal Srivastava Kirpa, *The Industrial Disputes Act, 1947* 54, New Delhi: Eastern Book Company, 1980

⁸ *Agricultural Wages in India* 31, Vol., 1, Nashik: Government of India, Ministry of Labour, 1952.