

## SUGGESTIONS ON IMPROVEMENT OF CONSTRUCTION WORKERS

### PLIGHT

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Employers and Employees are the two wheels of cart. It is absolutely essential to have cordial relations between the two to run the cart smoothly. It must be clearly understood that the break down of any one wheel is not only not beneficial to the other but will make the other idle and wear out resting and rotting. If this conception is clear in the minds of both, then one will try to maintain the other in the best possible way.

Construction Industry is the 2nd largest industry, next only to the agricultural sector in terms of labour employed. But majority of the workers in both the fields are seasonal i.e. the same agricultural workers, when free from their routine work, seek employment in this Industry. Like agricultural industry, the employers here are mostly individuals. Out of approximately 15,000 registered or unregistered construction companies hardly 100 are limited Companies, Public Sector undertakings and Corporations. The rest are either one-man shows or partnership/

firms. This industry has got many characteristics distinct from other manufactured are mobile and the manufacturing set-ups are static, whereas in the construction industry, the product is static with the consequent need for making labour and also the set-ups mobile.

The clients of principal employers in the construction industry are mainly Government bodies or public sector undertakings and a few private enterprises or owners who like to build their own houses. The contractors submit tenders based on N. I. T. stipulations and sometimes with special stipulations. Thus the price is fixed before product is produced.

It will be observed that majority of workers engaged in this industry are rural based, socially backward and uneducated. They are migratory and floating and hence labour turnover is quite high. In specialised categories demand is more than the supply. Hence frequency of labour turnover/rotation is equally high.

It is quite justified that the Government takes social security measures to uplift the downtrodden particularly when they constitute a bulk of the working class. This labour intensive Industry is equally keen to improve the lot of these poor workers and they accept it as a social and moral responsibility apart from their legal obligations. It is, therefore, necessary to identify the lacunae in the labour Laws and to streamline the operations for uniform and better implementation.

The list of labour Laws and Acts applicable to construction Industry is quite long. They are confusing sometimes contradictory. Therefore, all these Acts need to be clubbed together to one single Act and lacunae removed for effective implementation.

Some suggestions are as under :-

1. In workmen compensation Act, 1923, procedure for obtaining compensation needs to be simplified so as to avoid hardships to the dependent of the deceased. Act should fix up the time limit to the Insurance Co. to remit the funds to Workmen Compensation Commissioner, & in turn the Commissioner to dispose of the amount to the deceased family within a specified period.

In case E.S.I.S. Act is made applicable in place of Workmen Compensation Act similar streamlining has to be there with better machinery and equipment to operate.

2. Minimum Wages Act, 1948:

An anomaly is caused due to different wage rates published by Centre and States for the same location.

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The anomaly is caused due to the payment of wages for Sundays and holidays. It is suggested that there should be only one set of wages in a particular area and zones should be well defined for both state & Centre. Sundays and

holidays should be clearly defined as paid holidays at the same rate as for other working days and the computation made for deriving the daily wage for Sunday wages has to be deleted finally. Inspecting authority should be common for Centre and State.

3. The Employees State Insurance Act, 1948:-

Although this Act has so far not been made applicable to the construction Industry but an attempt is being made to extend this act to this Industry. This will further complicate the matter particularly because most of the construction work sites are located at interior places and the civil amenities are not available.

So naturally the workers will not allow deductions on this account. At the moment, the Contractors apart from Workmen's Compensation Policy consider it their social and moral obligations to treat the ailment of their workers either by employing visiting doctors or by taking the patients to the nearest available Doctors but afterwards they will feel relieved of their responsibility after paying their share to the exchequer. The workers will thus be deprived of the treatment. Naturally they will protest to recover their shares when they have not paid so long this amount.

Simultaneously even by paying this amount they may or may not get the treatment which otherwise they are getting or must get even without paying. No doubt the contractors will feel happy to relieve themselves of all worries and anxieties by paying a fixed sum to the exchequer on this account what they are afraid of (1) Voluminous record building operation, (2) Resistance from workers to recover the amount, (3) Legal Proceedings. It is, therefore, suggested that if at all this Act, is to be extended let it be decided that there should not be any deductions from the workers, full amount in term of % of bill value be statutorily recovered from his bill by the clients and deposit the same to the exchequer on this account just like tax deducted at source. This fund can be utilised for medical treatment of the labour. The labourers will be given the ESIC Cards. Govt. will however have to arrange within one Km. distance dispensaries and doctors for their treatment on this account.

5. Employees Provident Fund and Misc. Provisions

Act, 1952:-

The provisions of this Act, have been extended to the construction workers from October, 1980. The provident fund is meant to create a fund for the benefit of a person at old age, or for the family in the event of

unfortunate death of the person. The contributions are from hard earned wages of the person and equal amount from the employer which also should be considered as hard earned.

The Industry is fully conscious that the intent of this Act is genuinely to let each and every worker or his family feel secure at old age. The issue before all of us is how best this should be implemented so that the objective is achieved. In this short period of 4 to 5 years of formulation of this Act, we observe the following:-

1. Uniform implementation of Act has not been possible because:
  - a) Resistance from the workers to allow any deduction of hard-earned wages—mostly due to illiteracy.
  - b) Out of 15000 registered contractors hardly 100 have professional management system to maintain voluminous records and balance 14900 are individuals or group of individuals who hardly have establishments to maintain proper accounts. Nor do they know how to maintain such records. Even the Govt. machinery to educate or insist on these contractors to implement the Act is inadequate. Even many of these contractors are illiterate and cannot be expected to maintain such sophisticated accounts.

- c) In the absence of sophisticated accounting system even the professionally managed organisations are facing difficulties with the P.F. Commissioner and are involved in litigations. Therefore, it is not expected that majority of 14900 contractors can at all fall within the scope of this Act and therefore, the Act needs definite streamlining.
2. Due to distinctive characteristics of the industry as stated earlier, the continuity of majority of the workers at any particular worksite with any one contractor is next to impossible to maintain a proper P.F. Account.
  3. The situation is further aggravated due to locations of the worksites in jungles, on mountains or rivers far away from the P.F. Commissioner's Office.
  4. The situation becomes worse when the contractors have to deal with only illiterate agricultural labourers who do not understand the purpose of such deductions and only consider this deduction as cheating done by the contractor/employer.
  5. As mentioned earlier, in the same contracts there are different agencies doing their part of work with their own workers. They come and go as and when the specialised activities are carried out.

6. Finally the issue before the depositors is how do they get back their hard earned life long savings? It is known to all that even the educated persons residing in cities have to correspond and spend days and months together to get back their dues from the P.F Commissioner. Then how these illiterate villages or the beneficiaries will collect their dues? Then how this social security can be extended?

In our opinion, the best way to implement the scheme is to issue passbooks to each worker just like wage card. These passbooks will indicate the amounts everytime deposited on his behalf. These passbooks should again be valid to any bank anywhere in the Country i.e. the amounts should be transferred automatically when the same is produced to the local banker. Alternatively the contractors should be asked to deposit a fixed percentage of bill value to the exchequer and relieved of their obligations.

Govt. should endeavour to educate not only the workers but even the Contractor. Simultaneously Govt. should increase its own machinery to see that the implementation is done uniformly, otherwise this will never be a success in this era of acute competition in the business world.

7.) The Contract Labour (Regulation & Abolition)

Act, 1970:



This Act, since its promulgation has been extensively discussed in various forums and law courts. The industry has no doubt reconciled itself to the Act but in keeping all factors in mind suggestions for uniform implementation are as under:-

a) Rules pertaining to Welfare and Health of Contract Labour:

- (i) The provisions under these clauses require each contractor to provide for certain amenities for proper welfare & health of the contract Labour. In the case of major projects wherein a number of contractors are employed by the Principal Employer, strict enforcement of these provisions is invariably impossible.

Since in the final analysis it is the principal employer who is held responsible for <sup>violations</sup> under the Act, it is suggested that the ultimate responsibility for provisions of proper welfare, health amenities at project sites is enjoined on and brought within the purview of project authorities themselves as Principal Employer.

It is rightly the project authority who can, at the planning stage itself estimate the labour strength required at peak period of the project and on the basis of this strength suitably plan the entire labour colony, alongwith appropriate welfare and health amenities, keeping in view the permanent nature of some

of these requirements, as also appropriate locations, build semi-permanent or temporary structures depending on the availability of adequate space, either within the compound of the project site or even outside the compound. Since during the operational stages of the project, the labour strength required is considerably smaller, some of the temporary structures so constructed could eventually be removed after completion of the entire project.

In this way there would be proper implementation of the legal provisions and there could be also considerable saving in the otherwise wasteful expenditure by the contractors or petty contractors (which is the primary reason for the tendency on their part to violate the legal provisions).

To this extent, it is also suggested that there should be a stipulation under the Act for the Principal Employer to specify, in the tender documents, payment of appropriate sums by the contractors towards such arrangement for provisions of proper amenities, depending on the likely labour employed by major contractors or in the final analysis even the petty sub-contractors, which will be recovered from their bills.

ii) Provisions of other welfare programmes for labour such as Creche, Nurses, provision of medical facilities, education etc.

It is suggested that all such welfare programmes should be vested in a separate department or organisation under the supervision of labour Commission through an appropriate Labour Welfare Department in the project, who would be in a position to maintain regular trained workers with them for ensuring adherence the predetermined labour welfare activities. Such labour Welfare Departments can in turn charge appropriate fees to different contractors or their subcontractors/petty contractors, as a fixed % of contract value, to be clearly specified mandatorily in the tender document, and to be paid immediately the contract is registered under I.T. 192-C. With the present moral, social and economic conditions of the country as they are-wherein there is always a tendency to avoid incurring expenditure on such amenities this is considered to be the only sure way of following all desirable stipulations of the Act.

iii) Evolving National Wage Policy

According to the provisions of clause no. 25(2) (9-V) (a) and (b) of the Rules under Contract Labour Act, different workers employed by the Constructors or sub-contractors are to get besides, wages appropriate compensation under "Holidays", "Leave", "Housing" etc., similar

to like employees of the Principal Employer. In the case of contractors migrating from place to place, the contractors take with them a few willing and good workers for working at different sites for different principals employer. Quite paradoxically situations are known to arise from time to time where the wage structure at the new site is lower than the ways prevalent at previous site. Obviously reduction of wages cannot be thought of for such workers who have migrated to the new site, nor is it appropriate to suddenly enhance their local wage structure. The disparities arising out of such a situation can in turn cause considerable tension among different workers leading to serious labour problems. An early solution to such impasse has to be contemplated.

A worthwhile suggestion that could be offered in this regard is introduction of clear direction in this respect to all bidders before tendering to consider prevailing wage structure in the area so that different contractors tendering for principal employer are aware of the local conditions and can ensure adoption of existing wage structure approximately in their pricing patterns.

Such a provision also needs to be made absolutely mandatory, failing which the only other remedy would be to quickly evolve and adopt a uniform

National Wage Policy for the entire country.

5). As regards other Acts applicable to this Industry, we can only mention that these Acts literally do not contribute much to the welfare of the workers but increases the burden of maintenance of records, inspection and finally legal proceedings. It is suggested in conclusion as under:-

i) AVOIDING confusion & inconvenience resulting from the magnitude of Labour Laws prevailing in the country :

There is a very strong consensus of opinion of various employers as well as legal experts in the Country that the definitions available on a number of terms such as "Workmen", "Wages", "Employer", "Contractor", "Sub-Contractor" etc., available in different Acts, is not at all uniform and differs from Act to Act.

In some cases even contradictory definitions of such terms are available. This is hardly desirable. With a view to eliminating such anomalies, the National Labour Commission appointed under the Chairmanship of the Retired Chief Justice of Supreme Court, Mr. Gajendragadkar, had submitted a report in the light of which the Government was to examine the possibility of replacing all Labour

Laws with one Central Act encompassing all aims and objective of different Labour Legislations. For reasons best known to those at the helm of affairs, the report submitted by this Commission is understood to have been shelved. Even now it is not too late to reexamine the recommendations in the report, so as to avoid future wrong interpretations of the Act by unscrupulous subcontractors for their own benefits.

If this is done, interpretation of the Law will become absolutely easy and uniform, and consequently would encourage willing compliance by all concerned with the legal provisions stipulated.

ii) Evolving National Wage Policy at the earliest:-

Till the time a National Wage Policy is evolved for uniform implementation all over the country, it is suggested to give a clear direction to all bidders in N.I.T. to consider the exact wage structure to be considered for particular tender so that different contractors tendering for Principal employer are aware of the local conditions and assume uniform wage pattern.

iii) Need for simplification of procedure and registers required to be maintained:-

The existing procedure and the various kinds of registers required to be maintained by any contractor appear to be extremely complicated and cumbersome involving a great deal of unnecessary and otherwise avoidable paper work. The same is therefore disliked by most of the contractors and even educated persons shun it. Simplification of the procedure would definitely encourage the contractors/sub-contractors to comply with all provisions of the Act. A suitable study of this aspect may therefore be initiated for remedying the situation.

iv) Classification of establishments into 3 distinct categories:

For effective and uniform implementation of all the Acts, it is suggested that all establishments are appropriately classified into 3 distinct categories as under:

- (a) permanent establishments, duly registered, but with locations at one of several fixed places of business within the country and regularly employing casual workers for carrying out same type of jobs such as Railways, Mining, Port Authorities etc.

- (b) Permanent establishments, having registered  
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HQ at one place but carrying out contact works at different places through temporary and periodical migration either of their permanent staff wholly or by employing in part local and casual recruits as per requirements.
- (c) The last category of smaller establishments who constitute bulk of such contractors and sub-contractors establishments and who carry-out business throughout the country many of them as un-registered dealers, without having proper offices or establishments. They also include various Labour Supplier Agencies.

2) Registration of Establishments:

After obtaining appropriate categorisation of individual establishments, the Act should provide that Government Labour Department should allot a Central or State registration number to such establishments in the 3 categories requiring them to furnish proper annual reports/returns. Submissions of all such returns shall invariably be enjoined on the one or more HQ of such establishment, wherever it may be, thereby ensuring that this vital issue is not allowed to be lost or



misused by entrusting the same to various temporary establishments at different work sites.

3) Lodging of security deposit:

Once such registration or licensing certificate is available to different contracting or sub-contracting establishments, some of whom would be getting the works done through subletting jobs either civil or electrical or erection work through equally reputed firms. The present practice of requiring the sub-contractor to deposit a sum of Rs. 30/- per head of labour employed may not be necessary, so as to be in line with the practice adopted under the Sales Tax or Income Tax Department.

It should be adequate instead to insist on lodging of a specific amount of security deposit with principal employer depending on the estimated number of persons to be employed from year to year to be adjusted eventually in the succeeding year. There should also be provision for penal deposits in the case of due demands being not met with as per stipulations of the Act. An additional suggestion that could be made in this regard would be in respect of major contractors.

Arrangements of fixed deposit of say Rs. 1 to Rs. 5.00 lacs by way of Guarantee Bonds could be insisted upon wherever such arrangements would be found to be

financially advantageous to such contractor.

FINAL APPEAL:

We have described the various practical difficulties with which the Industry is confronted in the matter of proper implementation of the various labour laws made applicable to it. We whole-heartedly support the overall objective and the good intentions of the Govt. in extending various labour laws to better the lot of construction workers. However, many of the intended benefits have not reached the beneficiary group of the construction workers. Our experience shows that progress in this direction can be faster and more substantial, if a set of national coordinated policy guidelines are evolved keeping in view the peculiar features of this Industry.

We strongly feel that taking into account the seasonal and temporary nature of employment and the short-lived and unstable nature of the employer-employee relationship coupled with ignorance, illiteracy and social backwardness of the bulk of workforce, laws meant for other industries and organised workers are not suitable to this -----Industry. We feel that the construction industry needs altogether a different and new approach. Instead of extending various existing laws, compelling employers to get registration and licences under different laws and to force them to maintain dozen of registers and records which in reality is well-nigh

impossible, it would be more beneficial and more practical to have a consolidate enactment. Such a piece of legislation should cover licencing, working conditions, health, safety, social security, and welfare measures with a single administrative machinery. Such an enactment must also precisely define the relationship between the principal employer, the contractor and the sub-contractor and the ratio of responsibility between them towards contributing to a common fund for payment of bonus, gratuity, provident fund and ESI benefits. Such a comprehensive legislation would also reduce the number of records and returns to be maintained and submitted to various authorities.

In this process I am sure that the construction workers who play a vital role in the country's development will no longer remain as neglected sections of our society and they will also have the pride of building for others.