

## LEGAL PROTECTION FOR WOMEN CONSTRUCTION WORKERS

ANJALI AND GEETHA

Construction is an industry basic to human Society. It is seldom acknowledged that the construction of roads, dams, bridges, factories buildings etc. provides the basis of all economic development. Ironically enough, though the Central State and Local Governments are the biggest employers in this sector, spending crores of rupees annually on construction as part of State developmental activity, this sector remains the most neglected with the women labour being the most exploited and their social backwardness reinforced through child labour. The unprotected state of women labour who sweat and toil on construction sites is a consistent feature of this industry throughout the country.

According to the estimate of Tamil Manila Kattida Thozhilalar Sangam, nearly 2 crores of workers are involved in construction activity of which 40% are women and children. Prof. K.N. Vaid has estimated the number of workers in Construction industry to be 1.1 crore calculated from investment figures in construction. He has estimated female participation to be 10% following the census. Hence by both estimates, it is evident that lakhs of women are employed in construction in cities, towns and villages through the country.

In this paper we attempt to situate the women in the industry, identify the problems and discriminations faced by women at work, at residence and in family, review the existing labour Laws, their applicability as well as

enforcement, infer from the struggles of construction workers and suggest laws and schemes to protect and provide for women construction Labour.

For the study, data has been collected on the nature of industry and conditions of women construction workers from Madras, 3 districts of Tamil Nadu, Trivandrum, Bangalore, Delhi, Bombay and Ahmedabad. The survey covered women employed in Government sites as well as sites of private owners in all these places. Also the experiences of construction Labour Unions in Tamil Nadu, Kerala, Karnataka as well as in public sector organisations such as NBCC & NPCC have been taken into account.

The study is divided into four sections

- (1) Organisation of industry and Labour groups.
- (2) Conditions of work, living and family of women construction workers.
- (3) Labour Laws - their applicability and enforcement.
- (4) Legal Perspective.

1. Organisation of Industry and Labour Groups:

Construction industry is organised in both public and private sectors on the basis of contracting, sub-contracting and Labour Contracts.

In all public sector sites, whether construction of building factory road or railway line, work is given for contract. Each public sector department has a construction

division which draws up plans, works out estimates and calls for tenders. Normally the persons who give the lowest quotations are given the contract. In the absence of any enforcement machinery as to the quality of construction or protective provisions for workers, this method of awarding contracts to the one offering lowest quotation is not only simplistic but often results in poor quality of construction and squeezing of workers. For particular types of construction, contractors registered with the particular department would be given the contract. The contractors are classified into ABCD and E according to liquidity and financial capacity while the number and list of workers are not even asked for. In public sector the contractors would provide construction materials (cement and steel would be provided by the departments) engage sub-contractors who in turn would bring in their own groups of workers and complete the work.

In the private sector factories and institutions engage consultancy firms to draw up plans, work out estimates and call for tenders. Here again contractors are engaged who would provide construction materials and engage sub-contractors to carry out the work. Certain private owners engage engineering contractors who'd carry out the work on sub-contract.

The apartment builders buy up land, take money from buyers and build the apartments. They provide the materials and engage groups of labour on labour contract and execute

the work. Small houseowners would provide construction materials, engage maistris on Labour Contract for masonry, carpentry, electrical work, plumbing etc.

[ Thus neither the principal employers nor the contractors take the responsibility to organise the labour process or the Labour. This is true even in Public Sector Departments such as Public Works Department, Central Public Works Department which are exclusively construction departments planning and spending crores annually in construction. ] They do not have any labour force of their own but continue the colonial practice of contracting out the construction work.

[ In Public Sector the contract is accompanied by conditions which include stipulations with respect to labour. ] In CPWD Contract conditions, payment of fair wages to workers, provision of employment card amenities such as drinking water toilets First Aid etc. and housing on the site and payment of maternity benefit are stipulations to be met by contractors. The list of workers is supposed to be given to the engineer incharge every fortnight. The Labour Officer of CPWD who's appointed exclusively to look into the conditions of the contract labour, has to make periodic inspections and only when he gives clearance certificates, can the contractor collect his payment at every stage. If the contractor fails to comply with the conditions, the bill could be withheld, wage payments and amenities could be provided by CPWD. In the CPWD sites visited in Madras as well as in Delhi, the Labour Officer

never enforced the provisions and instead gave certificates without proper inspection. In Madras ESIC Bhavan the Zoo workers including eighty women were put to great hardship due to lack of drinking water and toilet facilities while the children were seen playing about in puddles of cement water due to lack of creches facility. The women were paid Rs. 11 and Rs. 13 which is well below the minimum wage of Rs. 17/-.

Similarly conditions for contract in Public Works Department in Kerala Tamil Nadu and Karnataka were violated with impunity.

Thus the conditions for contract were not enforced by the Principal Employers. In fact in all the sites the attitude of principal Employers was one of total indifference. They asserted that the workers were not theirs and that they had no information about the numbers or list of workers or any break-up skillwise or sexwise.

sub-contracting and Labour Contract:

The Contractors maintain a small number of workers on musterroll for masonry, carpentry and curing work and the rest are given for sub-contract. Public Sector companies, such as Kerala State Construction Corporation and Tamil Nadu State Construction Corporation do not have musterroll workers to talk about. Big Public Sector Corporations, such as NBCC, NPCC have a set of muster roll workers who are skilled workers moving from site to site with the company. The women constitute an insignificant minority of the muster roll workers.

The big private apartment builders as well as small private owners give out the work to labour contractors who in turn will recruit the Labour, supervise the work and make wage payments. The relation between contractor and sub-contractor as well as between sub-contractor and the workers are mostly on oral contract. Thus the worker is invisible to the employers, both principal and the contractors. Women are in the lowest rung in the hierarchy of relationships.

Labour groups and Types of recruitment:

Based on different types of recruitment, labour groups with each having cultural homogeneity and specific characteristics with respect to type of work, migration and housing can be found in this industry throughout the country. There are broadly four types of labour groups.

- 1) Contractor recruited labour retained on muster roll and moving from site to site and housed on site.
- 2) Sub-contractor recruited labour from rural areas from the same state or different states. The group will be either relatives or neighbours of the sub-contractors from their respective native villages. They are housed on the site and move from site to site along with the employer.
- 3) Maistry attached labour drawn from city slums or local areas.
- 4) Market place workers recruited daily from market place

by maistis or principal employers. They live in slums or on pavements in the Local areas.

In all the sites in Bombay and Delhi, and in the big sites in Madras, the sub-contractor recruited labour predominated while the number of contractor attached Labour was small. In Delhi the groups were headed by Jamadar and recruited from drought hit districts of Bihar, U.P., Rajasthan and Orissa. In Bombay they were brought by Mukkadan from Marathawaja and Vidarbha Districts of Maharashtra, Gulbarga and Bijapur districts of Karnataka. In Madras the labour groups were from North Arcot South Arcot Salem PMT districts as well as from Andhra Pradesh.

The maistri attached labour predominate in Bangalore and Ahmedabad as well as in the housing and medium constructions in Madras. These workers are drawn from city slums the majority of whom are migrants settled in the city.

The workers assembling in market places are recruited for small sectors in Madras and Delhi while in Trivandrum recruitment of all labour whether for medium or small sites is done at market places.

In the same site different types of labour groups or labour groups from different areas may be found thus offering a convenient situation for divide and rule policy of the contractor.

The position of women is also related to the nature of labour group they belong to and the specific conditions obtaining in the geographical area.

Relations and Terms of Employment:

There's no direct employer\_employee relation except for the muster roll workers who constitute a small segment of construction labour. In big sites the workers engaged by sub-contractors and housed on site move with the contractor from site to site and yet are not considered the workers of the contractors. Since in each Labour Group the workers are either relatives or neighbours of the sub-contractors, the latter has a social control apart from ties due to the advances taken at the time of recruitment and during periods of lay-off and sickness. Moreover, since these workers have moved from drought hit areas due to lack of employment opportunities regular employment itself is a bait. The low wages paid to the workers make them get indebted to the sub-contractor and the contractor. The whole family including men, women and children work in order to make both ends meet. The housing on site also helps the sub-contractor to keep track of the movements of the workers and ensure that they do not mix with the local labour. Thus housing on site, the advances received, Low wages and regular employment tie them to the sub-contractor and the employer. Thus in big sites where there's continuous employment and under contractors who can provide such opportunities bonded labour was found in Madras, Bombay Delhi and Bangalore.



In the medium and small constructions the relation between employer and workers lasts only till that stage of construction lasts. Since the maistries are paid either on piece rate or the total wages of the group, and they in turn pay the workers on daily rate, the maistry is looked upon as employer by the workers, while the employer-employee relation is neither direct nor constant. The women have long standing relationship with maistri who finds work for them; the terms of employment are dictated by the maistri who in turn determines it by the competitive piece-rate and by ensuring a profit margin for himself. This was the condition of maistri attached Labour in Ahmedabad, Bangalore Madras Salem and Madurai.

In the small sector the market place workers have a relative bargaining power. They normally fix the wage rate, hours of work, provision of tea, lunch break before they agree to go with any maistri or employer. They would starve rather than go with anyone who does not assure these conditions; they are employed for less number of days. Thus starvation is the price they pay for the relative freedom they enjoy. Since no social security or old age pension is offered by the industry, older women are found in market places. In the market places of Madras, Trivandrum Delhi Madurai and Salem there are similar features though women are found in large numbers only in Trivandrum and Tamil Nadu.

2. Conditions of Work, Living and family:

The conditions of work and living for the women have similarities throughout the country. Women labour is the most exploited and is paid lowest wages, though they do the hard back breaking work. They face insecurity and long hours of work, suffer lack of amenities, welfare measures and social security like all workers. In addition they face discrimination with respect to wages and skill acquisition.

Since construction work is carried out by a system of contract in both public and private sectors, there is no difference between conditions obtaining in the two sectors. There are variations only with respect to differences in types of recruitment, size of construction and the geographical area.

Factors affecting employment:

In the big sites the women are employed on a continuous basis and the musterroll workers and the sub-contractor recruited workers from rural areas have full employment from 20 to 30 days of work in a month.

In the medium sector, for maistry attached labour employed in Bangalore Madras Ahmedabad Salem and for sub-contractor attached rural workers working in Delhi and Bombay there's near full employment of 18 to 26 days in a month; only when they choose to remain at home due to sickness or exhaustion, they happen to be out of work.

The market place workers of Madras, Trivandrum, Madurai and Salem are employed upto 14 days in a month.

In Ahmedabad, the construction industry is facing a slump due to communal tension and water shortage. Shortage of water and construction materials and monsoon affect the availability of job in construction. The monsoon months also witness the rise in prices of bricks which brings house construction to a halt. Since the industry does not offer a lay off wage there are periods during which the local workers get indebted to money lenders (Ahmedabad, Bangalore and Madras) or to shopkeepers (Trivandrum).

The sub-contractors attached labour living in sites would go back to native villages during the monsoon months since the industry offers neither job nor lay off wage and in addition their shacks get flooded living this period while their rural links help them to survive during the rainy season they get indebted to sub-contractors as well.

RECORDS:

The contract Labour Regulation Act as well as the minimum wages Act stipulate that the employer must maintain muster roll of workers and payment register and provide employment card and wage slip to workers. In all the sites visited, there was muster roll of only the contractor recruited labour which is significantly small as compared

to the sub-contract labour for which no records are maintained. Even in the muster roll of direct recruits the child labour on the site were not recorded. When asked, the contractors maintained that the workers brought by the sub-contractors did not matter to them and since they had come from rural areas they need not be taken as construction labour.

Not a single worker in any of the sites was given an employment card. Wage slips were issued only in one site of Southern Railway in Madras indicating the wage rate, number of days of work in the particular week, they were taken back every week and fresh ones issued to workers. In fact an enquiry it was found that the wage rate indicated in the slip bore no relevance to the actual wage paid to the workers. The wage indicated in the slip was for hoodwinking the inspecting authorities.

Thus the workers had no proof of employment. In big sites the workers had been working with the same contractor for periods ranging from 4 to 20 years but had no service record. The market place and maistri attached labour too had been in construction for long years but had no record. Without any proof of employment, they felt totally insecure and feared to demand even minimum wages from the employer.

#### Worktime and Workload:

The worktime is similar in all sites. The work starts at 8 a.m. and goes on till 6 to 7 p.m. The women are constantly exposed to scorching heat while doing hard

work. There's no rest except a short lunch break . Only the market place and muster roll workers take an hour off for lunch. The sub-contract labour are normally let off for 15 minutes for lunch. Only small number of maistri attached groups and the market place workers had tea at 11 a.m. and 4 p.m. The concreting groups in small and medium sectors would work even upto 10 p.m., Since the process had to be completed in one stretch.

On the whole the women work between 9 to 12 hours in the heat on any given day.

The women do the lifting of construction materials and concrete, cleaning and curing work.

In Delhi Bombay Madras Madurai Salem and Bangalore the women carry upto 14 bricks, cement mortar, earth, concrete mixture and water. In Trivandrum, Ahmedabad, Sivaganga the women carry cement bags, 25 bricks and very heavy loads of earth at a time.

The work involves climbing of ladders and constant walking while carrying materials. In concreting, they form a human conveyor belt to pass the concrete mixture. The pace and intensity of work in concreting, masonry and earthwork is amazing and is constant over the long working day.

The women who have moved from agriculture to construction complain that workload and worktime is much more in construction than agriculture while the wage difference is offset by the increase in expenses for food, fuel in the towns.

Wage Rates:

The wage rate is lowest for women in every part of the country. In any particular city or town, bigger the construction, lower the wage. The wage rate bears an inverse relation to the regularity of employment. In big sites at Madras the women are paid Rs. 7 to 13, in Bombay Rs. 12-13 in Delhi Rs. 16, in Trivandrum Rs. 10 to 25, in Bangalore Rs. 10-12. In small and medium sites the women are paid Rs. 16-18 in Madras, Rs. 14-16 in Bombay, Rs. 17 in Delhi, Rs. 30 in Trivandrum, Rs. 15 in Ahmedabad, Rs. 13 to 15 in Bangalore.

The minimum wages for construction are fixed by Central Government and by some State Governments such as Tamil Nadu and Maharashtra. In Delhi, the minimum wage of Rs. 18 -30 is paid to Jamadar who takes a cut of Rs. 1 to 2.50 and gives the rest to the women. It should be noted that the Jamadar is not paid a piece rate or even a wage in Delhi. In Madras even though the minimum wage fixed by State Government is Rs. 17/- the same is paid only to market place workers and some groups of maistri attached workers. In big sites including public sector construction the provisions of minimum wage stand violated with impunity and PWD refuses to work out the rates taking into account the present minimum wages inspite of pressures from the union. In districts of Tamil Nadu no where is minimum wage paid to women. The women are paid between Rs. 10 and 12 in Sivaganga, Salem and Madurai. The agricultural wage rate being very low in

the districts (Rs. 5,6) has had the effect of keeping the wages of women construction workers at a low level even though the wage of skilled workers has become uniform i.e. Rs. 30 to 35.

In Kerala, even without the fixation of minimum wage for construction labour, the wage of the woman worker is between Rs. 25 and 30 and that is due to the fact that women agricultural workers wage is between Rs. 20-25 in the State. However even there in big sites arbitrary payment of even Rs. 10/- is being made (for<sup>e.g.</sup> concreting at the site of assembly building construction with Kerala State Construction Corporation as contractor).

Overtime Wage:

Working after 6 p.m. does not normally lead to extra payment.

For the maistri attached Labour in Madras, Ahmedabad, and Bangalore refreshments are provided. The concreting groups get one day's extra wage if they work upto 10 p.m. or 12 p.m.

It should be noted that as things stand the working day for construction labour stretches to nine labour packed hours as a matter of routine. Despite this, when work stretches beyond this period, there's no adequate compensation of wage.

## Transport

The women are paid for transport only <sup>in</sup> some maistri attached groups in Madras, Bangalore and in Trivandrum. In Ahmedabad some maistris arrange rickshaws for the transport. The big companies may have sheds in a place different from the site in which case they arrange trucks for transport. In all other cases, the women walk upto the site if the distance is upto 5 kms. otherwise spend on transport from the meagre wage.

## Increments, leave etc.

The women even after working for their whole life in construction sites, get no increment. The wages are determined by market forces and experience has no bearing on the wage rates.

There's no leave facility so when they fall sick and stay off from work, they have no compensation they have to starve or borrow from money lenders or sub-contractors in order to survive.

## Wage Differentials:

The hard work done by women in construction is not only termed unskilled but attracts less wages as compared to their male counterparts. In concreting the men may stand on scaffoldings while the women may stand on the roof which is a bed of iron rods. Climbing ladders and standing on roof in a totally unprotected state are as risky as standing on scaffoldings. Yet the differences between wages of men and women are being justified by not considering one as risky as the other. Even when they actually stand



on the scaffolding-except in a few cases they <sup>men</sup> are paid more than the woman. The difference ranged between Rs. 5 (Madras Trivandrum, Ahmedabad, Bangalore and Bombay) to Rs. 3 in Delhi.

Skill Acquisition:

Women construction workers are employed normally only for 'unskilled' work. The work of skilled workers such as masons, carpenters mosaic worker, barbender electrician welder and plumber are purely male domains in the present day. A few women masons through are found in the districts of Salem Ramnad and Tanjore in Tamil Nadu. This is in contrast to the census data of 1881 and 1891 which show a very high female participation rate in carpenters and masons of Madras.

Skills are normally imparted by head masons, carpenters etc. to select male helpers chosen arbitrarily. The training would be sporadic and would take even upto six years to acquire the skill. The women are totally kept out of bounds of such training that goes on in construction. It is the housing sector which trains the workers and provides the skilled hands to the big sector. The traditional attitude that women cannot do masonry or carpentry or rather should not do them is the dominant attitude among the employers and workers including the older women in the industry.

Amenities:

Amenities are commonly absent in all the sites. Even basic amenities such as drinking water and toilets are absent even in public sector. Very often the workers consume the water meant for construction work which may not be fit for drinking. Women have to go to dark places in the site to answer nature's calls. Though the contract Labour Act, P.W.D. & C.P.W.D. regulations stipulate the number and details of the amenities such as toilets, rest-rooms, canteen, creche and drinking water to be provided and that the principal employer can provide the facility and recover the cost from the contractor, the principal employers never bothers about providing these facilities.

Health Care:

The women complain of neck pain, chest pain, head ache, body ache and fever due to exhaustion. This compels them to take off for a few days every fortnight or month. They either go to the Government hospital or private doctors for medical care and in both cases spend money out of their meagre wages.

The migrant labour in Delhi periodically go back to their villages to recoup their energy and build up their physical stamina. Whenever there is severe sickness and exhaustion, they return to the villages.

Maternity and Child care:

The women carry heavy loads even till the day of delivery and sometimes the delivery itself takes place during the work.

They return to work within a month after child birth. In big sites where the labourers are housed on the site, the husband may stay off from work to help during the child birth. During such periods they ~~would~~ get indebted to the sub-contractors. The Rajasthani women labour in Delhi go back to their villages for child birth; thus the village link sustain them during this period.

( They leave the young ones in the custody of elders if not with the girl children). Only in Ahmedabad there is a habit of baby sitting done by girl children of the locality for which Rs. 2/- is paid by the women. In Trivandrum the babies are left in the custody of elderly women either of their own home or of the neighbours. The older children compulsorily go to school. In all other places, (women take babies as well as children upto 5 years to site and leave them exposed to the hazards). Fatal accidents involving children were reported in (Ahmedabad) and in Madras.

#### Occupational Hazards and Accidents:

( Construction activity is hazardous and accidents involving simple injuries occur every day while fatal accidents are not uncommon. Falling from heights, electric shock, earth caving in and materials falling on workers are major types of accidents. There are no rules for safety in construction nor are the accidents compensated for. In big sites, it is not uncommon to find fatal accidents hidden by the employer from official records and the family or even the labour group sent off to their native villages. Unless there is a pressure from the Union no accident gets compensated. For.

The cases filed by the Union before the Commissioner for workmen's Compensation, take time and eventually the liability of the Principal employer and contractor may or may not be upheld and then it goes for appeal to the High Court. The process is time consuming and may not yield positive results. The sub-contracting and the total lack of records are the major hurdles in proving the accident, wage rate, employer-employee relationship etc.

#### Social Security:

There is total lack of social security. So the women have to survive by working till their energies last. When the women attain the age of 50, they start losing the work capacity and get dropped by maistries and land up in market places looking for employment.) Even old women aged upto 70 years were found in big sites as well as in market places.

It was in a few companies that Provident Fund contribution was deducted and in those sites the women were paid even less than the minimum wages and so the women resented the deduction. They also were anxious about where the money went, since they had no proof of the money accruing in their account.

#### Bonus:

Inspite of the huge profits made by the contractors bonus is not given to construction labour. The maistries attached labour from Ahmedabad would get gifts such as vessels from the maistry during festivals; maistri attached labour in Madras would get saree for the festival. But concept of bonus either as profits sharing or deferred wage does not exist in the industry. Only the muster roll workers in some big companies receive bonus.

Living Conditions:

The construction workers who provide housing to others themselves live in pitiable conditions. The city labour lives mostly in rented huts on poramboke land which has no amenities, such as drinking water, toilet, electric light and road. Even the huts which they have put up on their own get demolished due to pressure from vested interests. Normally the hut size would be 8' x 10' or 10' x 10' whichever be the place of residence in the country.

The condition of labour housed in the site is even worse. Normally these shacks are made of thatch (Madras and Bangalore) mat and plastic (Bombay) bricks and plastic sheets (Delhi). The size would be 4' x 4' or 4' x 6'. In some sites water would be provided. In many, even that is not available, Toilets Electric lights and sanitation are totally absent.

Incidence of Child Labour:

Child Labour was found in many big and medium sites in Madras, Bangalore, Ahmedabad, Bombay, Delhi, Madurai, Salem and Sivaganga. Kerala was the only state where child labour was totally absent. In Madras Children even from the age of 7 were found working, while in Ahmedabad, Bombay and Delhi children above age of 10 were employed. (These boys and girls were children of the women construction labour, In the big sites all members of the migrant family work excepting the babies and other children attending to house work and child care. The maistri attached workers from local area took

children to work due to poverty. Thus the incidence of child labour is integrally related to the situation of the wage rates, educational facilities<sup>etc.</sup> (for women labour.) Kerala having highest wage rate i.e. Rs. 30/- for the women construction labour, had no child labour. While in all other states the child labour existed alongside women labour, getting paid Rs. 15/- or less.

(The children were paid equal to adult labourers in most sites and did as much hard work. It must be noted that the adult workers interviewed had started their worklife from the very early age of 8, 9 or 10 either as construction worker or as agricultural labour.)

#### Social Origin of Women Construction Workers:

(The women in construction belonged to Scheduled Caste, Backward Castes (either traditional construction labour or agriculturists) or Scheduled Tribes.) Among the maistri attached and market place groups a few women workers belonging to other communities were also found. The literacy level was very low. 95% of the respondents were illiterates while in Kerala 70% of the women labour was literate.

(The women workers due to social and economic backwardness, did not educate their children. The children either looked after the young ones or did housework or worked on construction sites along with the parents or elsewhere. Thus the social backwardness got reproduced from one generation to another due to very low wages and lack of facilities for the women labour in construction industry.)

(Among the women labour who were settled in the cities a large percentage (40 to 50%) were heads of families, either because of being widows or deserted thus they had to solely bear the burden of supporting themselves and their children. Even where husband and wife were working, drunkenness and ill-treatment of women were reported widely. Thus the women's income and the earnings of children became very important for the sustenance.)

✓ Triple Burden:

After the long tedious working day on the site the women have to fetch water, do the domestic chores thus help in recreating energies which would be employed in construction work on the following day. In the absence of the industry providing for maternity and child care, the women have to struggle to take care of child birth and child care in order to provide cheap labour for the industry. Thus the working for low wages on the site, performing house work every day so that the family can recreate their energies for work on the next day, reproducing in order to supply cheap labour are the triple burden on the women's <sup>labour</sup> construction/which need urgent attention.

3. Labour Laws and Their Implementation:

In the context of the common plight of women labourers elaborated in the earlier sections it would be relevant to study the impact and the lacunae in the existing labour laws in providing relief to women labour.

After Independence, Government of India enacted a number of laws to protect the organised labour with a special provisions for women workers such as Factories Act, E.S.I. Act, Payment of Gratuity Act, Maternity Benefit Act, Bonus Act, to provide for decent working conditions, safety, health care and social security creches etc. Industrial Disputes Act provides for methods to resolve disputes and remedial measures against retrenchment and victimisation of workers. These laws have been neither extended to construction industry nor can they become applicable due to the unstable employer employee relationships prevailing in constructions.

The Government has also enacted laws to regulate working conditions and provide welfare measures for workers employed in particular industries such as plantations, Beedi industry, Handloom industry Shops and Establishments etc. Also Dock Labour who were employed on sub-contract basis and whose employment was fluctuating and dependent on the arrival of ships, and their employment regulated by Dock Labour Board through the enactment of Dock Labour (Regulation of Employment) Act. Following the same pattern Government of Maharashtra enacted Mathadi Workers (Regulation of Employment) Act for workers employed in different markets and in the unorganised sector. It must be noted that all the above laws came into being due to struggles of different sections of labour force. As of now, Government of India has been promising a comprehensive law for construction labour for the past six years but is yet to enact one.



The Tamil Nadu Government brought a law specially to cover construction labour due to sustained struggles of trade union of Construction Labour in the State. Tamil Nadu Construction Workers (Conditions of Employment and Miscellaneous Provisions) Act, 1984 is yet to be notified. The law only serves to extend the existing laws to construction. With the unstable employer-employee relation, such extensions will be of no consequence. While the factories Act fixed hours of work in shade to be eight hours, Tamil Nadu Act for construction labour stipulated the work time to be nine hours and only above that to be counted for over time. Tamil Nadu construction Workers (Conditions of Employment and Miscellaneous Provisions) Act had in Chapter VII Special provisions supposedly to protect the women construction labour and the women had raised relevant questions about their validity. These were widely debated among the members.

Section 27 states restrictions on employment of women. Like in Factories Act construction women shall not be allowed to work after 7 p.m. The workers expressed that instead of protecting the women it would deprive the women of existing employment opportunities. In concreting work, since the work has to be completed in one stretch and if women could not be employed then men would take their place. In fact on concreting large number of women were getting employed and that they wanted was proper overtime wages. Since they worked in groups they did not need the protection envisaged by imposing restrictions.

Such measures only <sup>served</sup> ~~served~~ to be diversionary while at the same time patronising.

Social Security:

Employees Provident Fund and Miscellaneous provisions Act has been extended in 1980 to cover construction activity. As on March 31, 1984 only 1284 construction establishments were brought under the scheme covering 71,588 workers. The Provident Fund Scheme operates as follows:

The workers' contribution is collected by the employer and along with the employee's contribution deposited with the authorities. There is no proof with the worker for the money that accrues in his account. Thus even if the worker joins the scheme he or she cannot avail the benefit. Thus the shifting employer as well as the loopholes in the scheme are the reason why Provident Fund is not implemented. In fact the workers governed by the scheme feel only the pinch of deductions, especially in the context of low wages.

The Employees State Insurance Scheme which is medical, sickness, accident and maternity benefit rolled into one operates on a similar principle. The Scheme is implemented out of fund accumulated from contributions of workers collected by the employer and contributions of employers paid to the scheme as well as State Government's and Central Government's contributions. Government of India tried to extend the scheme to construction labour in 1979 but found it impossible to do so.

Maternity benefit Act stipulates that the employer is liable to pay maternity benefit to women workers employed by him. This again will become difficult to implement, even if extended to construction. In small and medium sector the employer keeps shifting while in the big sector it would be difficult to implement since the workers are neither provided with identity cards, nor can they get even minimum wages enforced and suffer insecurity of employment.

A Tripartite working group of construction industry was set up in 1985 by Government of India to study problems in implementing existing social security laws and to evolve alternate schemes. It has been pointed out by representatives of labour that the difficulties in implementation of social security could be overcome only if stability in employer-employee relations is brought about through formation of Construction Labour Boards.

#### Protective Laws:

Minimum Wages Act was enacted in 1948 to protect the "Sweated Labour" in the country and was extended to construction in 1970 and since then periodically minimum wages for various categories of workers is fixed by both Central and State Governments. The minimum wages fixed by Central Government is Rs. 15 while the State Government linked the minimum wage with consumer price index and the present minimum wage is Rs. 17 for Class I Mazdoor and Rs. 19 for Class II Mazdoor. These two categories came to be interpreted as the female (Sithal) and the male (perial) workers respectively.

The contract Labour Regulation and Abolition Act of 1972 stipulates licensing of contractors, registration of principal employers, provisions of amenities such as drinking water, toilets, urinals rest rooms (separate for women and men), creches, canteen etc., maintenance of muster-rolls, provision of wage slips and employment cards to workers; payment of wages in presence of representative of principal employer, liability of Principal Employer in providing all the amenities. The law is applicable only where 20 workers are employed by contractors.

The Inter State Migrant Workers Act of 1979 stipulates that the agency for recruitment of labour must be registered in the home state as well as in the State in which work is carried out. Besides what is provided by the Contract Labour Act, this provides for housing facility and transport charges.

Equal Remuneration Act of 1976 states that men and women employed to do same tasks or work of similar nature have to be paid equally.

Payment of Wages Act of 1936 provides for the recovery of arrears in payments. Workmen's Compensation Act of 1923, provides for compensation in case of accidents suffered by workers during the course of their employment.

Child Labour Act is intended to prohibit employment of children in hazardous occupation such as construction.

In this context, the problems faced are two fold. On

the one hand the formulations of laws themselves due to their inherent weaknesses scuttle their applicability to the construction industry while on the other hand, the deficiencies in the enforcement machinery contributes to the failure in achieving stated objectives.

Shortcomings of the above Laws:

All those laws meant to protect the exploited sections failed to make provisions for some of the basic issues faced by workers, namely victimisation retrenchment and fluctuations in construction work. There is no means by which workers could be active in the implementation of these laws. The enforcement procedures is through prosecution of the offender on the basis of inspection by Labour enforcement authorities. The workers neither have the right to inspect or talk against erring employers, without getting victimised.

The contract Labour Act although makes provisions for compulsory licensing of contractors, does not at the same time make demands on the contractors to provide names of workers, skillwise and sexwise breakup and number of workers required at different stages of construction work. In fact the contract Labour Act is designed to suit contractor labour employed in factories and industrial establishments.

Equal Remuneration Act is again based on similar principles of implementation through prosecution of the offender. There is no authority which can compare the worth of the tasks done by men and women and enforce equal wages.

The Inter State Migrant Workmen Act protects inter state migrant workman who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State, whether with or without the knowledge of the Principal employer in relation to such establishment.

Regional Labour Commissioners in fact said that since no contractor or sub-contractor even has record or proof of having entered into an agreement for recruitment of workers from other State, it would be construed as voluntary migration of labour from other States and recruitment of labour in this State. So the Act would not apply.

Thus there is no establishment registered under the Act and no worker is covered even though they may be brought from other State. The Act, instead of making it compulsory for employer to register in home state of workers, had defined Inter State Migrant worker in such a way as to avoid the implementation of such a law. So unless there is a mechanism of registration of workers and regulation of employment, such welfare provisions cannot be implemented. In fact such an arrangement can provide protection for inter state migrants as well.

Though the Child Labour Act states that child labour should be prohibited there is no effective system of prevention. Prevention can be effected only if employment is regulated in the industry and women labour provided with fair wages, creche facility and educational facilities for children.

Problems with respect to enforcement:

The sole enforcement authority for all categories of unorganised labour is the Enforcement Officer under the Regional Labour Commissioner (RLC) for the Central sphere and the Assistant Labour Commissioner under the Labour Commissioner of State Government for the State sphere in every State Government for the State sphere in every state. The problems with respect to enforcement were studied only for Madras City.

In the City of Madras in the year 1986 Regional Labour Commissioner had registered sixty five principal employers and thirty eight licensed contractors, engaging 1948 workers. In the State sphere only eight principal employers were registered.

Out of these 3 were Government agencies and all belonged to the same department namely Tamil Nadu Housing Board. Even departments like PWD, Corporation of Madras, Madras Metrowaters and Sewage Board, Tamil Nadu Electricity Board etc. who are responsible for the large chunk of construction activity in the City were not themselves registered as principal employers, while the scores of private agencies and individuals involved

in construction go unregistered under the present scheme of things. As for the contractors of the State Scheme, the contradiction is equally glaring. Only 2 were licensed contractors, although the number of contractors officially engaged by the 8 registered principal employers were stated to be 26 in number. Even Tamil Nadu State Construction Corporation, a contract company in Transport Ministry, is not a registered contractor. As mentioned earlier, the sole enforcement authorities for all categories of unorganised labour being confined to the two officials with their clerical assistance, it leads to the inference that there were no intentions on the part of the Government to enforce these laws.

The State Labour Commissioners office had no data to provide on any matter related to inspection of sites, violations of laws and prosecutions. The reasons for this were attributed to the lack of elaborate enforcement machinery.

The Central enforcement Officer said "I am not able to visit all the sites in my jurisdiction i.e. Madras and North Arcot. I can cover the sites of licensed contractors only once in a year. Till now I have visited 20 sites of contractors without licence. It is a surprise check. I ask the contractor to show the records he maintains and he is supposed to maintain. I try to talk to labourers. I find it difficult because of the language. Being Oriya, I don't know Tamil. I am the only person for doing inspection. There is no vehicle. There is one Clerk to attend to correspondence; after inspection



if there is any case to be filed, I have to do everything from the report to filing the case and following up the Lawyer and Court. The laws are applicable only where more than 20 or more workers are employed. The licence fee is a mere Rs. 12.50 per worker and security fee of Rs. 30/- per worker. There is no list of workers submitted with the application for licence. Moreover the licensing authority never visits the site. In many cases, the contractor employs more workers than the number for which he has got the licence. The penalty is very low (Rs. 15/- per violation of a rule) compared to the amount involved in construction. It is cheaper to pay fine than pay minimum wages. Even if a person is prosecuted a number of times for violations, his licence is not cancelled. The other problems with the implementation is the fear that the worker have in talking the truth, since they stand the risk of losing the job. The legal machinery also takes time. For example five months after commencement of construction, the inspector conducts the investigation. Within 3 months of the report the prosecution begins and takes nearly 9 months. The contractor walks off paying the penalty. Construction will be over by the time the process gets finished. Hence this does not ensure that the contractor will atleast make proper payments in his future contracts. In fact for all one knows the contractor continues with violation."

It is obvious from these, that apart from the basic inherent flaws in the laws, such inspections and prosecutions, which have no bite, but on the other hand provide a cheap way

out of the exploiters can never sure to protect the interests of women construction labour.

4. Legal Perspectives:

It is evident from the previous sections that the labour laws so far enacted have failed to grapple with the basic issues confronting the construction labour in general and women in particular. Thus the bonded labour, Child Labour, low wages a total absence of social Security and Welfare and discriminations faced by the women labour are being perpetuated in the existing situation. It has been pointed out that protective laws have no mechanism for implementation while at the same time there's total lack of enforcement due to inadequacies in the system of enforcement. The social security laws can be applied only in a stable employer employee conditions.

The construction workers had been in an unorganised state for a very long time and only in this decade attempts to organise construction workers in Tamil Nadu Kerala and Karnataka and in public sector construction organisations have borne fruit. In the first phase the unions at the State level had been agitating for comprehensive law to be enacted by State Governments to include welfare Fund composed of contribution from employers by a cess on construction before plan sanction and licence fee from contractors, as well as State and Central Governments contributions.

The Tamil Nadu Government in response to the continuous agitations of the Union brought its own Bill and refused to involve the Union in deciding the policy of the Bill. As already pointed out, the Bill was seriously flawed and otherwise contained only extensions of existing laws to construction. Suggestions for amendments were formulated by Justice V R Krishna Iyer and continuous protests forced the Government to accept in principle registration of construction labour, and compulsory <sup>insurance and</sup> payment of Rs. 10,000 for victims of fatal accidents; the other amendments including Welfare Fund were not accepted. Finally at the stage of passing the Bill, even the changes promised were not incorporated thus leading to State wide agitation. In response to the agitation the State Government brought a self insurance scheme according to which the worker has to keep paying Rs. 10 every month; of the Rs. 120 collected for the year, Rs. 45 would go to LIC towards premium of group insurance for death benefit of Rs.5000 and Rs. 75 would go towards retirement benefit.

The Union opposed the scheme on three grounds

- (1) Fundamentally insurance and retirement benefit was to be provided merely out of contribution of workers while neither the Government nor employer was responsible.
- (2) Rs. 45 is collected from every worker as Premium for group insurance every year though the LIC would return the money over and above payment of death benefit and overheads back to Tamil Nadu Government thus the Govt. would be gaining out of the scheme.

(3) The accumulated money from Rs. 75 collected every year would be returned to the worker at the age of 58 with an interest rate of 8% while actually the money would be in either a nationalised bank or Tamil Nadu State Co-operative Bank which would pay 11% towards recurring deposits. Moreover the scheme was to be implemented by Special Tahsildars and RIs who would be paid out of the Fund.

The only <sup>useful</sup> scheme of Tamil Nadu Government which has benefited families of victims of fatal accidents is the provision of Rs. 10000 from CMS relief Fund by an executive order. The Union had to struggle not only to get the order passed but also in implementation for specific cases since the implementation is by Revenue authorities who have no sympathetic attitude to labour.

In Karnataka, the State Government has Asha Kiran Scheme to pay Rs. 2000 for victims of fatal accidents. Also a welfare Fund for PWD contractors and workers was formed to provide Rs. 10000 in case of accidents, educational benefit health and housing for workers and assistance for contractors. The contractors are supposed to get workers registered and that is not practicable due to the sub-contracting prevailing in the industry. The State Government has not implemented the scheme for the workers till now.

The collapse of Gangaam building in Bangalore had killed nearly 120 workers including 40 women and though there was a commission to investigate into the causes for the collapse, neither

safety measures have been evolved nor the compensation paid to the families of victims. This is the state inspite of the continuous pressure of the Karnataka Construction Labour Union for the past five years.

Kerala State Government had instituted Mahabala Rao Commission in 1983 to evolve a social security scheme for construction labour. In his report he had suggested registration of workers by Department of Labour and Welfare Fund composed of cess on building as well as Central and State Government contributions. The Fund would be utilised for welfare schemes such as housing, educational facilities for children, pension, maternity benefit etc. In spite of the relentless agitation by Kerala State Construction Labour Union, the State Government has not taken any action.

The demands of the Unions in Public Sector organisations such as NBCC and NPCC have been regularisation of musterroll workers and provision of Provident Fund and other benefits as well as amenities on the construction sites. But these companies have been resorting to sub-contracting in a big way and retrenching the muster roll workers thus shirking the responsibility towards workers and the labour process.

Government of India in response to **repeated** pressure from **Trade Unions** has been making periodical announcements that a comprehensive law would be enacted.

In 1985 a Tripartite Study group to suggest alternate social security laws has been set up.

Due to the initiative taken by the trade Unions, there was a National Seminar in November, 1985 in which workers from different parts of the country participated and <sup>evolved</sup> ~~evoked~~ a policy for the new bill. At the end of the Seminar National Campaign Committee headed by Justice VR Krishna Iyer was formed with different trade Unions as constituents.

The Bill and Scheme have been drafted and campaign in the form of signature petition to Parliament's petition committee, Procession to Lok Sabha, conventions at State levels have taken place. This bill and scheme has pointed to a practical method of regulation of employment in the industry and protection of construction workers.

Brief outline of the Bill and Scheme:

In order to stabilise the fluctuating factor in the employment situation, construction labour boards should be established out various levels namely Central State District and at local levels.

All the construction workers should be registered in the board and a method could be evolved to identify construction workers. It could be done through identification certificates certified by the Employers or trade unions or by latest census information taken by the Government. The board had a responsibility to provide 180 days of actual work in a period of twelve months and provide wages for non-employment days (12-21 days)

if non-employment was due to reasons not attributable to workers.

It was suggested in the seminar that the Board should be managed by a tripartite committee comprising representatives of workers, contractors and government officials in the ratio of 5:3:2. Thus the veto power of the worker is inherent in the composition. The representatives of workers would be elected by registered workers every two years and could be recalled.

Two percent of construction cost would be paid by principal employer towards welfare fund to be utilised for housing, education of children, creches, training etc. The employer along with wage has to pay a levy to be utilised for social security and expenses of the Board.

The following points could be considered as duties of the board. It has to provisionally register all employees and work has to be assigned in rotation to all. Attendance should be marked, the board has to receive wages from the employers and disburse the same to employees. The board has to maintain accounts and forward welfare deductions like ESI deduction to the State Board. It has to send returns to district and State board and to prosecute if schemes and statutes are violated. If there is commencement of any construction without obtaining the prior consent of the Board, the people who originate such construction can be prosecuted. Not adopting safety and welfare measures are also considered to be violations.

It was discussed that on the boards women should be represented according to their numbers in the work force. Women were in fact very vocal in spelling out necessary welfare demands and organisational measures. They demanded introduction of service cards to make increment possible. They also suggested that the policies of central board should be evolved in consultation with the local boards. Women should be given training to become masons and other skilled worker. They must be entitled to maternity leave (3 months), feeding time in case they have to bring the child along and creche facility both at site and in residential areas.

The central board should be in charge of inter-state mobility and give consent for inter-state projects and projects requiring labour in hurry. As obtained in cement, steel and textile Industry, minimum wages for an unskilled worker in construction Industry should be Rs. 900/- month.

Apart from the setting up of construction Labour boards. Equal Opportunities commission should be set up through a central legislation to enquire into inequalities prevailing in construction and other sectors in payment of wages, acquisition of skills, evolve a scientific assessment of work done by men and women and enforce equality in wages as well as work opportunities.