

Covering Note to the Revision Committee
in Dec '88

NATIONAL CAMPAIGN COMMITTEE
for Central Legislation on Construction Labour

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INTRODUCTORY NOTE

1. The Size and Nature of Construction Industry

The Construction Industry is the 2nd largest segment of economic activity in India, next only to Agriculture. Both in terms of capital investment and manpower employed, this industry is larger than any other industry.

2. The Investment Figures

We have to look at the investment figures to understand the magnitude of the Construction Industry. The importance of this industry can be judged from the fact that the capital outlay on construction in the first six 5 years plans ranged from 36-50% of the total outlay. Investment in Construction during the 7th Plan was estimated to be about 52% of the total public sector outlay, i.e. Rs. 93600 crores. The 7th Plan had further estimated that Rs. 72800 crores would be invested by the private sector during the Plan period on construction alone. According to RBI, India was likely to get 1300 crores in 1985-90 from the World Bank and other development Banking Institutions for construction activity in this country. Thus, in the construction industry, Rs. 1,66,400 crores investment was planned during the 7th Five Year Plan, while Rs. 1,70,239 crores was already invested during 35 years before the 7th Five Year Plan. Investment in Construction works after Independence is greater than the investment in such works during the previous 150 years of British Rule in India.

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3. The Work Force In the Industry

Despite the tremendous growth in the size and spread of the Construction Industry, there is no orderliness in the employment structure and relationships. Even the estimates of the economically active population engaged in the Construction Industry are as far apart as 2 million to 20 million. From the scale of investment in this industry shown in the figures quoted above, it is obvious that the figure of 2 million persons engaged in the Industry is a gross under estimation and that 20 million seems more realistic. Similarly, gross misinformation prevails about the characteristics of the industry, which ought to be clarified to understand the need, importance and ^{content} of a feasible legislation.

4. Government the Largest Employer

The most important point to understand about the Construction Industry is that the Government is the Largest Principal Employer. Most of the construction activities are either sponsored by the Government or a public undertaking/authority such as a Ministry/CPWD/PWD's/other Public Construction Corporations funded by Public Finance Institutions. Although the Government accounts for more than 70% of the Construction Activities, the continuation of contracting & sub-contracting system of employment has perpetuated a situation in which the Industry is virtually without any regulation and is not subject to protective labour legislations. The phenomenon

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of sub-contracting for doing permanent and regular work is on the increase, contrary to the Philosophy and Constitutional objective of the Contract Labour (Regulation and Abolition) Act, 1970. The recent judgment of Supreme Court in Southern Railway catering cleaners case (1987) 1 SCC 200 is a severe criticism of the evil of the sub-contracting system.

5. Existing Legislations are inapplicable

The State's role to regulate the employment in unorganised sector is by now being well recognised. A large number of legislations to provide for Labour Welfare and Social Security for the workers engaged in organized sector have been enacted by the Parliament & various State Legislatures, since Independence. Some of these legislations have attempted to cover the workers employed in unorganized sector including the Construction Industry. But it has not been feasible to implement these legislations in the unorganized sector because of their failure to consider the basic employment characteristics of these industries.

6. The Nature of Construction Industry defies application of the existing Legislations

The nature of Construction Industry is so different from other industries in that the normal pattern of fixed or determinate employer-employee relationship do not exist. The Labour Welfare and Social Security Legislations are thus conceptually and structurally not tuned to this Industry. In organized industry continuous employer-employee relationship and 'management' is a given factor. Construction industry has no stable or determinate

employer-employee relationship or 'management'. It is unorganized. The work and the work-place shifts. The employer changes. There is a flux which left to the whim and caprice of employers would prohibit application of any legislation. The answer is, regulate the employment and bring in order in the Industry and employment. To this end we need a specific and comprehensive legislation.

7. The Reports from time to time recommend towards this end

As far back as 1968, the National Commission on labour under the chairmanship of Justice P.B. Gajendra Gadekar had appointed a study group on construction Industry. The report of this group on the working and living conditions of workers noted the following situation, which is as true today as it was 20 years ago:

Para 30: "It is well known that the working & living conditions of construction workers are appalling. These conditions have been discussed again and again on different forums for the past 15 to 20 years and various specific proposals to ameliorate them have also emerged from time to time.....even the draft of protective legislation was prepared many years ago and was discussed in the year 1965 in the Tripartite Industrial Committee for construction Industry convened by the Government of India, Ministry of Labour."

The following observations of this study group are still important to understand before enacting any labour legislation for the Construction Workers.

Para 11 - "The construction industry is unique in several respects. The conditions of labour in this industry have to be viewed against the background of it's unique characteristics and the remedies that are considered feasible and adequate in other production or service industries are not always useful for the construction industry."

Para 17 - "The Govt. is the largest principal employer in the construction industry in the sense that most of the largest construction projects are usually sponsored by the Govt. or some local authorities. Besides, large numbers are employed directly to supervise such work and to do skilled work with the use of heavy machinery. Still others are employed on repairs & maintenance work. The practises favoured by the Govt. in relation to the contractors & Sub-contractors as well as to it's direct employees, therefore have a far reaching effect upon the conditions in the industry. It has been observed that though a vast amount of construction work goes on under the general sponsorship of the Govt., there is no-co-ordination or planning in such work with the express purpose of achieving a steady volume of work in the aggregate and consequently making a steady volume of employment possible. The un-co-ordinated launching of projects results in sudden peaks in demand of labour and also sudden retrenchment on a vast scale. It appears that with a little careful planning and co-ordination among the various Government & local authorities, it should be possible to phase the launching of the construction projects in such a way that these sudden peaks & troughs are avoided and a reasonably steady

volume of work and level of employment are maintained."

Para 24-"On the other hand, the problem regarding the unskilled workers is to ensure for them at least a minimum security of employment. Both the structure of the industry at the present to the inherent nature of the industry makes this some what difficult. All the same, since security of employment is of great importance to a worker, whatever is possible in this respect needs attention urgently."

Para 25 - "The problem can be approached sectorwise. In large urban centres where some construction activity can be reasonably expected to go on all the time even if the actual location of the construction work may move from point to point within the centre, it should be possible to evolve some kind of decasualisation schemes on the lines of those governing the cotton textile industry in Bombay and Ahmedabad or those applied in the Ports & Docks. All the construction workers in a particular city should be registered at at any one of a suitable number of decasualisation centres distributed over the whole city. The construction contractors should be required to recruit their respective requirements from the post of the registered workers available at these centres.

Wherever possible, a worker should be recruited for a period to be stated, say a month, 3 months, a year etc. depending upon the period for which the contractor effects his work to continue, so that the workers and contractors may not have to go to the

decasualisation centre everyday. After the tenure of one job is completed the workers can report back to their decasualisation centre from where they might get recruited for some other work project."

Para 29 - "There are certain kinds of jobs in the construction industry which are not really casual at all. For instance the maintainance work on roads, buildings, airports, irrigation canals, etc. is not casual. Similarly, the work of operating a maintaining construction machinery is not casual. Unfortunately, even the workers doing these kinds of work, a large majority of whom are employed either by the Government or some other public authorities like the Zilla Parishads, do not enjoy the benefits of permanency. They are employed either as "muster rolls" or as ".... charged" staff. In either case they are not deemed to be permanent. We see no justification for denying these workers the benefits of permanency as are enjoyed by other employees both of the private sector and the public sector who do work which is essentially of a permanent nature. We would, therefore, strongly commend that employees on such work should not be treated as temporary or casual but they should be treated as permanent and given all benefits accordingly."

8. The Tripartite working Group: Its Deliberations

As recently as in Feb.'85 a 'Tripartite Working Group for Building and construction Industry' was constituted by the Central Government to identify the specific difficulties being faced by the industry in complying with the social security legislations and to work out appropriate type of social security measures to be formulated for the workers in the construction industry

This group was to give it's recommendations within one year. But even after 3 years it's report is pending approval from it's members because of the systematic attempt of the vested interests in sabotaging its functioning. During the proceedings of this group, the characteristics of the construction Industry and problems in implementing the social security legislations initially designed for the organised sector, were clearly understood. Also, an understanding was reached on a comprehensive legislation based on the Doc workers (Regulation of Employment) Act, 1948 and the Maharashtra Mathadi, Hammal & manual workers (Regulation of Employment & Welfare) Act, 1969. It was felt that, if the benefit of labour legislations is to reach a large mass of workers, then it is necessary that the law should take note of the unique features of this industry and should provide not merely for welfare measures for workers but also for the regulation of their employment itself which alone could secure to the workers all other entitlements. Due to the absence of a stable employer-employee relationship, such a Law can be executed only by a board which has to substitute some functions of the management and this regulate the employment.

8. The Central Government has agreed in principle for a comprehensive Law. The point is only its concept and structure.

A private members bill for construction workers, was moved by Mr. M. Kalyanasundaram (M.P.) in the Parliament. In December, 1985. the then Minister of

State in the Department of Rural Development, Sh. Chandulal Chandrakar assured on the floor of Rajya Sabha that the Labour Ministry will itself introduce such a bill. The Hon'ble Minister also stated that the Government is preparing a comprehensive bill. The Minister had also referred to the above mentioned Tripartite Working Group on the Building Construction Industry and to another Report. Mr. Kalyanasundaram withdraw his bill in view of the categorical assurance given by the Minister.

10. The task before the Petition Committee

In view of this background, the petition committee is requested to examine in detail the peculiarities of construction Industry which need to be taken into account in enacting a comprehensive Law providing for Regulation of the Industry and social security and other welfare measures for construction workers. The draft bill and scheme submitted to the Petition Committee was designed on such study and understanding. The incomplete recommendations of the Tripartite working Group as they stand today ignores the basic features of the Industry and proceeds on the thesis that the disordered employment structure is not capable of Regulation. The petition committee has at its disposal the 40 years experience of the Dock Labour Act, 1948, and almost 20 years experience of the working of Maharashtra Mathadi Workers Act, 1969. Also there are Andhra Pradesh Muttah Jattu Hammals & other Manual Workers (Regulation of Employment &

reflects the full labour cost and the economic viability or otherwise of the scheme can be assessed. Fourthly, the introduction of Dock Labour Boards also brought significant reduction to a number of wildcat strikes and prevalence of serious crimes on port waters as well as waterfront. Lastly, the system gives an identity to the workers and helps them in getting organised. The system has become so ingrained in port working that even the four major ports which do not have Dock Labour Boards have pools and advance some benefits to the workers.

B. Other Acts suitable for the unorganised Sector:

Various states in India have taken initiative in extending the social security and welfare measures to the unorganised sectors by forming legislations on the concept of a tripartite board to substitute the absence of a stable employer-employee relationship in the unorganised sector. The path finder in this direction has been:

B.1 The Maharashtra Mathadi, Hamal and Manual Workers (Regulation of Employment and Welfare) Act 1969.

In order to regulate the employment of unprotected manual workers such as Mathadi, Hamal etc., engaged in certain employment, to make better provisions for their terms and conditions of employments, health and safety measures and general welfare, to ensure an adequate supply and full and proper integration of such workers in such employments, to prevent avoidable unemployment, the Government of Maharashtra had enacted this novel Act in 1969.

At present more than sixty three thousand workers are getting benefits under this Act such as:

the Provident fund, paid weekly and public holiday, bonus, Gratuity, Medical Allowance, Travelling Allowance, House Rent Allowance etc. Financial assistance to workers for house building is also given. The expenditure on these facilities to the workers and the expenditure required for administration of the Board are met by the amount credited to the Board by the registered employers by way of levy.

Unless a specific legislation is framed for construction labour, as provided in the bill and scheme submitted by us, it is not possible to implement the social security and labour welfare measures in this Industry.

12. While framing an appropriate legislation for construction Industry it is also important to have a proper understanding of the Industry, and to do away with the myths which have been propagated by vested interests to create an illusion that no legislation can be framed or implemented for providing labour welfare and Social Security. There are various studies available on construction industry which clarify the myths about the industry and gives a more realistic picture. Some of them are as follows:
- (a) **Study by Prof. K.N. Vaid** on investment and employment in the Industry gives a realistic view about the size of employment. The census data are absolutely inadequate. (PP. 83-93)
 - (b) The study of C.K. Johri & S.M. Pandey on employment relationships in the building industry sponsored by National Building Organization, conducted in Delhi in 1968, explains how the entire structure of employment relationships is caught in a social framework of mutually reinforcing vicious circles. This study also recommends a radical departure in public policy through decasualisation of labour and a construction labour board modelled after the Dock workers board as provided for in the Dock Labour Act, 1948. (PP. 94 - 107)

- (c) "The Construction Labour Market - Study in Ahmedabad" is a study by K.K. Subramaniam, D.R. Veena, & B.K. Farekh, also sponsored by National Buildings Organisation. This study shows how it is misleading to treat the Building Construction as a casual economic activity. This study calls for a policy intervention simultaneously on various fronts, such as planned expansion of activity, technical change, restructuring the labour market, and application of suitable labour legislation. This study points out that the institutionalization of labour market and stability of employment are the two main needs to be fulfilled. (P. 108-123)
- (d) The study of chittals - women construction Labour Boards is a must for providing Social Security & Labour Welfare 'Legal protection for women construction workers' by Anjali & Geetha also points out the need for construction Labour Boards. (PP.124-133)
13. We are therefore petitioning to the conscience of the constitution: the Directive Principles of State Policy, through its torch bearers: the People's representatives. Orderliness and Regulation, are the twin facets of right to work, and security of employment. This alone would contribute to the enhanced quality of life of the toiling citizens who construct and build our living environment. Lack of Regulation of employment in the construction Industry is a social evil. The constitution demands its speedy eradication. Our constitutional ethos

demands an end to this evil and unprincipled crime against the humanity of this vast number of workers. From Regulation to security and welfare is the only course. The Petition Committee would be doing a great service of compassion and constitutional duty in recommending to the Central Government the enactment of a law as presented by the National Campaign Committee.

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NEW DELHI.

NATIONAL CAMPAIGN COMMITTEE