

ADJUDICATION FOR UNORGANIZED LABOUR

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I WOULD like to recommend the creation of boards for unorganized labour for the enforcement of their rights under various labour laws. Such a board should consist of experts in labour laws and labour relations drawn from trade unions, personnel managers, lawyers and economists. There should be one or more boards for each district in the country.

My recommendations for the creation of boards to adjudicate on and enforce the rights of individual workers emanates from the following study of some of the aspects of the laws pertaining to workers who are unorganized and need to have their legal rights enforced. This study comprises an evaluation of the implementation of law pertaining to child labour, minimum wages and bonded labour.

Enforcement of Child Labour Laws

When I was Professor and Dean, Faculty of Law, Kashmir University (1980-1987), I took a team of friends from the university to Mahagam, a small village in the carpet belt on way to Gulmarg from Srinagar. There we visited a number of houses and carpet manufacturing factories and units. We saw that the carpets were being made there by small children of tender ages. They were between the ages of seven and twelve years. We also visited a training school being run under the auspices of the central government to train children in carpet manufacture. There also children of ten to twelve years of age were being so trained. After seven hours of hard work of weaving the carpets these children were given other education for one hour. It appeared to us that these training-cum-education schools were merely an eye-wash and the real purpose behind the running of these schools was commercial.

We also visited the house of a poor child of eight years of age. He was sitting there weaving a carpet in a dark and dingy room where the employers had installed a loom. Cold wind was coming through the window in the room on that wintry morning, the only protection against it being a plastic sheet which was hanging over the window. The boy was sitting on the loom in his bare feet and a bowl of rice, supposedly

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his lunch, was lying in a corner of that room. On enquiry we were told that the parents had gone to the fields where they worked as farmers. The child was paid on piece rate basis for the work he would do in weaving the carpet on the loom everyday. The materials were supplied by the employers.

Compare what we saw in Kashmir with what Neera Burra says:¹ “such situation is rich with anomalies for on the one hand, the Child Labour (Prohibition and Regulation) Act, 1986, bans the working of children in the carpet industry... but on the other hand, the industries departments of some State Governments are actively drawing very small children into the carpet industry. What is truly reprehensible is that ostensibly developmental programme results in many children being taken away from school by poor parents enrolling them at these training centres. Once again, the state itself appears to be acting against the constitutional directive regarding the provision of universal primary education. Another consequence of setting up such training centres is that private trade in carpet industry—notorious for its rapacity and greed—gets trained child labour without investment since the state itself has funded the training process. In Rajasthan, carpet manufacturers/exporters are in close touch with the master weavers who train children under the State Government schemes. Once the children are trained, these entrepreneurs plan to install looms in the houses of these children in order to pass such activity as a traditional occupation of the family. A neat smokescreen is thus erected in order to circumvent the law. In a few years from now in Rajasthan the situation is likely to resemble that in Mirzapur-Bhadohi where the induction of children in the carpet industry was aided and abetted actively by the training programmes of the state government. Today in Uttar Pradesh, it is extremely difficult for anyone at all, let alone an understaffed and corrupt lower bureaucracy, to tell whether a carpet has been manufactured by children under the guise of family labour or not. It becomes a great deal more difficult to ascertain the truth in the face of strong popular belief that such activity is largely done by families and at home”.

The points raised by Neera Burra in the foregoing paragraph are significant and true, especially about the complicity of the states in encouraging child labour and corruption in the lower bureaucracy who are charged with the duty of enforcing labour laws. In late 1999 I presented a copy of my interview published in the *Free Press Journal*, Bombay, advocating abolition by a law made by the Parliament of all child labour, to Secretary of Labour, Government of India. He remarked, “I want to abolish child labour but the states are opposed to doing so.” To my suggestion that the labour secretary of the Government of India

1. Neera Burra, *Born to Work* 251 (1995).

was the most powerful person, he said that I was mistaken in my belief. When I was in Kashmir I had a television debate with a minister on the issue of child labour in the carpet industry. The minister most eloquently justified child labour for economic reasons.

As regards the second point that is of "corrupt lower bureaucracy" I can testify on the basis of my own experience. I was labour law officer of a well known company from 1974 to 1976. At that time both the government's labour inspector as well as the assistant factory inspector were on the pay roll of the company among other lower bureaucracy. The rate at that time of the labour inspector was two hundred rupees for each inspection or rather each visit on which he would collect the money from the time keeper of the factory at the factory gate and would go away. The rate of the assistant factory inspector was four hundred rupees for each inspection. The boiler inspector would get five hundred rupees, and so on. (In all fairness to that establishment it must be stated that these payments were made even though the company did its utmost to comply with the legally specified standards). The ratio of inspections and convictions bears out this corruption in lower bureaucracy. From 1992-93 through 1996-97 there were 1,22,127 inspections under the Child Labour Act but only 4345 prosecutions and 451 convictions throughout the country.² Perhaps the convictions resulted in small fines which the employers readily paid and continued to employ the children; "The Law says there can be a fine or imprisonment, but Judges will not imprison an employer. So the employer only needs to pay the fine and then he can break the law again".³

The complicity of the state in the non-enforcement of child labour laws is succinctly stated by G.P. Mishra and P.N. Pande, as follows:

The state is much more concerned with revenue than with the problem of child labour... Hence the Industry continues to be cottage-based but under the control of merchants who procure carpets manufactured by the weavers and realise their exchange value in home and foreign markets. In this way, revenue through sales tax and excise duty and foreign earnings through export are generated by the state. Therefore the dubious policy approach of the state to retain cottage-based character on the one hand and on the other, to promote exports without changing the present form of production in the industry, is by itself responsible for the use of child labour.^{3a}

Both the points mentioned in Neera Burra about the complicity of the states in not enforcing the laws preventing child labour and of there

2. Helen R. Sekar, *Child Labour Legislation in India* 170 (1997).

3. Myron Weiner, *The Child and the State in India* 46 (1991).

3a. G.P. Misra and P.N. Pande, *Child Labour in Carpet Industry* 90 (1996).

being a corrupt lower bureaucracy not willing to enforce these laws are borne out by Misra and Pande as follows:

“The above statement of the Government officials is more a cover than revelation of the facts. The main duty of the district official of the Labour Department is to protect the interests of labour. In fact they have a tacit understanding with the employers and discourage labour unions.... The irony of the fact is that labour leaders of INTUC, having tacit understanding with the Labour Department, work as an agent to bargain with employers as per the dictates of the labour officers. Our short stay of less than two months made us observe the employers who blame the Government officials and the Government officials in turn blame the employees, but they have a tacit understanding between them regarding their mutual gains....”^{3b}

Implementation of Protective Legislations : The Case of Minimum Wages

Factories employing large numbers of workers were established during the last thirty years of the nineteenth century. At the turn of the century there were 189 textile mills employing 167,000 and 38 jute mills employing 119,000 workers.⁴ Engineering companies and metal manufacturers also employed sizable numbers. These and other employers paid low wages to their workers, made them work for very long hours, and offered bad conditions of work and restrictive employment conditions.

A commission appointed by the British Parliament to enquire into the labour question in India reported in 1892 that cessation of work in consequence of any dissatisfaction with the conditions of employment occurred only on a small scale and did not affect all workers in one company. In commenting on the causes of disputes the commission made the amazing comment that “wage rates have remained stationary for the last 30 years. This pointed to some tacit understanding among the natives not to allow any reduction in the monopoly wage with which they started.” It added that strikes were mostly to resist reduction of wages or to seek wage increases on account of increases in food prices. In no case, however, did “the men succeed in dictating terms to their owners”.⁵

^{3b} G.P. Misra and P.N. Pande, *Child Labour in Glass Industry* 88 (1966).

⁴ *Report of the Royal Commission on Labour in India* (1931), XI Parliamentary Papers, Pt. V, 7-8.

⁵ Royal Commission on Labour, *Report on the Labour Question in India* (1892) XXXVI Parliamentary papers, Pt. V, 105-134.

As a result of industrial unrest, the government appointed the Indian Factory Commission. A member of that commission wrote in his report:^{5a}

It is true that isolated strikes take place in mills; and sometimes strikers get what they want. But employers give in only at times when the demand of labour exceeds the supply. They do not when demand slackens and once again take prompt steps to regain lost grounds. For all practical purposes the Indian mill operatives are without effective combinations With little self-confidence and less education the theoretical freedom of the Indian mill operative is very delusive. Through his weakness of will, ignorance, and his habit of submission to his social superiors, the Indian operative in his bargaining with his employer loses all the advantages of free competition, and suffers deep and permanent economic injury.

This report further stated that the system of withholding pay and of inflicting fines by employers rendered the great mass of the workmen helpless to resist the far more intelligent class which exercised authority over them.

The Royal Commission on Labour in 1931 noted that workers found it impossible to start a dialogue with the employers; the gulf between them and employers was too wide. Jobbers played a key role in employment relations. They were known in different parts of the country by different names, such as *sardar*, *mukaddam*, or *maistry*. They were chargemen, entrusted with the duty of recruiting workers, and in some cases for training them after recruiting. Jobbers privately charged a price for the jobs which they handed out to workers. They also had a hand in dismissing workers. They were, therefore, interested in providing jobs to new workers in place of the old ones so that they could get some more gratification from the newcomers.

The Payment of Wages Act was enacted in 1936 to remedy some of these maladies. In 1948 the Minimum Wages Act was enacted to ensure payment of minimum wages to the workers irrespective of the law of demand and supply inasmuch as the supply of labour had far exceeded the demand.

The object of Minimum Wages Act, 1948, is to provide for fixation of wages in employment in which the labour is vulnerable to exploitation, being not well organised and having no effective bargaining power.

The appropriate governments are charged with the responsibility to take into account the local conditions and other factors influencing the

^{5a}. "Report of the Indian Factory Labour Commission, 1908", LXXIV *Parliamentary Papers* 102 (1908).

wage rate, while deciding the minimum rate of wages to be fixed. They are also obliged to set up enforcement machinery to ensure effective implementation of the Minimum Wages Act.

The central government is supposed to keep a close watch on the implementation of the Minimum Wages Act in various states and union territories, and advise them from time to time to take various measures to improve the effectiveness of Minimum Wages Act in the states.

In the year 1993, Arunachal Pradesh Government reported that "due to inadequate machinery the Act could not be implemented." The Government of Assam pleaded that "the enforcement machinery is not adequate to cope with the ever increasing volume of work in the department." The Government of Gujarat expressed that "there is need, of more effective enforcement than before in view of the fact that employers are not realizing the need to comply with the provisions of the Minimum Wages Act." The Government of Haryana reported that "very rigid and effective implementation of the Act is not possible for want of adequate staff ... and lack of education among workers." The State of Himachal Pradesh pointed out that "the field machinery of the department is without ministerial supporting staff." The State of Maharashtra reported that "the Government labour officers do not have sufficient time for implementation of work under the said Act.... owing to prevailing economic conditions and unemployment, the employees are ready to work on less than the minimum wage.... Due to lack of education and [concern for the) security of the job, the employees are reluctant to give the correct information regarding wages. The State of Orissa reported that "the existing inspecting machinery is not well equipped."⁶

An earlier report (1960) of the Government of Bihar speaks volumes about the actual state of affairs: "Due to poverty, illiteracy, ignorance and absence of any organisation of the agricultural workers and being absolutely dependent on the employers for loans, etc., at the time of distress, illness, *shradh*, marriages and partial unemployment in certain slack seasons, the agricultural workers are very much tied up and cannot improve their living standard unless the above shortcomings are removed. Whenever an individual worker or a group of workers came forward with complaint petitions for claiming the minimum rates of wages ... the agriculturists combined together and adopted various measures like incriminating them in criminal cases, threatening them with evictions from house sites, forcible realisation of loans and produce of the *halwali* land. Sometimes, the workers were also threatened with physical violence, etc."⁷

6. *Report on the Working of Minimum Wages Act, 1948, for the year 1993.*

7. *Report on the Working of Minimum Wages Act for the Year 1960.*

K.N. Subramanian has pointed out that "the views expressed by the State Governments are particularly disturbing in one respect ... The minimum rates of wages fixed in many employments in several states are themselves very low. If then employers have found numerous ways of paying workers even less than the wages fixed, that is undoubtedly a serious blemish on the administration of the Minimum Wages Act. That State Governments seem to have reconciled themselves to such a state of affairs, as is evident from the statistics of implementation ..., is an even greater blow to the operation of the Act."⁸

We would like to conclude that "the weak bargaining strength of the workers is a factor contributing to the ineffective implementation of laws relating to minimum wages. Seven million people are added every year to the labour force in the country. The organised sector can absorb only 0.3 million, leaving 6.7 million to the mercy of the farflung unorganised sector. The pity is that the majority of them join the already under-employed sections of the agricultural sector."⁹

Implementation of Protective Labour Legislation : The Case of Bonded Labour

The history of the society since the abolition of slavery in 1843 has been such that the system of bonded labour backed by custom and law has taken such firm roots that a change in the laws to the contrary has not been successful in eradicating the system of bonded labour.¹⁰

During the nineteenth century artisans, carpenters, metal workers and other similar craftsmen were employed by merchants either to work at their premises or at the workers' own houses. The workers were completely dependent on their masters. A weaver, for example, would undertake to produce a certain quantity of cloth within a given time. He could borrow money from his employer for raw materials and for his personal expenses. The loan was to be deducted from the price of the cloth. But it was not likely to be repaid. His ignorance and poverty as also his need, under compelling customs and traditions, to spend on a daughter's marriage, a child's birth, a funeral feast, or a festival prevented repayment of the loan. Instead, he had to borrow more money. The custom compelled such indebted workers to continue working for the same employer. Under the custom, once a labourer was in debt to an employer he lost all freedom to work for anyone else, or to haggle over his wages until he could pay back what he owed. By manipulating his

8. K.N. Subramanian, *Wages in India* 283 (1977).

9. S. Sundaram, *National Wage Policy* 73 (1987).

10. For a more detailed account please see this author's paper "Sanctions for the Breaches of Contracts of Service," 25 *JILI* 259-371 (1983).

wages or payment of interest, the employer could make sure that a labourer was never able to pay the debt. If the labourer died, the debt and bondage passed to his son. Those who dared to defy this custom not only alienated themselves from their neighbours, but also invited violence from their employers who would punish them by flogging or by some other abuse.

Similar practices obtained in the indigo industry. There was a saying that if one signed an indigo contract, he would not be free for seven generations. The peasant was unable to pay off the original advance. As he sank deeper and deeper in debt, he was forced to sign new contracts for longer periods. Whether the peasant took his original advances with reluctance or cheerfulness, he was never afterwards a free man. The success of the debt system was possible only by deceit and oppression.¹¹

The system of indentured labour obtained with all its severity in the tea plantations. Workers were given advances and taken to far off plantations under false promises of a better life and good conditions of employment. When they reached the plantations they found abhorrent conditions of work and life. Many were stricken by diseases. Unaccustomed to work at a fast pace, they used to be flogged to work harder. Gorkhas were posted near the *coolie* lines to prevent them from running away. The Gorkhas would hunt down any workers who would run away and would be rewarded for catching the run-away workmen out of the future wages of such workers. Between 1863 and 1866, out of a total of 40,000 workers 9,147 died and 3,187 deserted; of these deserters the greater number died of starvation in the jungles. In plantations mortality and sickness were also due to shortage of food supplies, which were inadequate for the number of imported labourers.¹²

Workmen's Breach of Contract Act, 1859, was enacted to prevent workers' breaches of contracts where they had been given advance payments. Section 2 of the Act provided:

If it shall be proved ... that ... a workman has received money in advance from the complainant on account of any work and has wilfully and without lawful or reasonable excuse neglected or refused to perform or get performed the same according to the terms of his contract, the Magistrate shall, at the option of the complainant order ... such workman, to repay the money advanced, or such part thereof as may seem to the Magistrate just and proper, or order him to perform or get performed such work according to the terms of his contract; and if such work-

11. D.H. Buchanan, *The Development of Capitalistic Enterprise in India* 45 (1966).

12. J.W. Edgar, "Report on Tea Cultivation in Bengal", 20 *Parliamentary Papers*, Vol. XLVIII Cmnd, 982 (1874).

man ... shall fail to comply with the said order, the Magistrate will punish him with imprisonment with hard labour for a term not exceeding three months..."

In 1860, the Indian Penal Code (IPC) was enacted and made breaches of contracts of service subjects of penal enforcement. Section 492 of the IPC provided:

Whoever, being bound by lawful contract in writing to work for another person as an artificer, workman, or labourer, for a period not more than three years, at any place within British India, to which, by virtue of the contract, he has been or is to be conveyed at the expense of such other during the continuance of his contract, voluntarily deserts the service of that other during the continuance of his contract, or without reasonable cause refuses to perform the service, shall be punished ..., for a term not exceeding one month

A commission of enquiry appointed by the government in 1868 reported that the labourers have too often been deceived by unprincipled recruiters; they have come up expecting much higher wages and very different kind of life from what they found ... They have found themselves set down in swampy jungles, far from human habitation, where food was scarce and dear, where they have seen their families and fellow labourers struck down by disease and death, and where they themselves, prostrated by sickness, have been able to earn far less than they could have done in their own houses.¹³

Prosecutions under the Penal provisions of the law continued until 1925, when these penal provisions were repealed. In many cases workers were sent back to work for their masters by the courts after sentencing them to undergo imprisonment for breaches of contracts of personal service. The duration of sixty five years of these draconian laws, however, deeply entrenched in the society the system of bonded labour. Also, the abject poverty of the masses compelled people to even sell their children to labour for the employers for small sums. The Royal Commission on Labour in 1931 found evidence in widely separated areas as Amritsar, Allahabad and Madras of the taking of advance by parents or guardians of children by pledging the labour of their children to employers. Such pledging was both through written agreement as well as oral pledging. This led to the enactment of the Children (Pledging of Labour) Act, 1933, to prohibit the making of agreements to pledge the labour of children, and the employment of children whose labour had been pledged. Even though the Act provided penalties for the pledging of children for both the employer as well as the parents of such

13. *Ibid.*

children, there was no provision how the law was going to be enforced. The custom of pledging the children remained a part of the bonded labour system.

An Act was passed in 1976 to abolish the bonded labour system which had become deeply entrenched in the custom. The new Act provided punishment of three years imprisonment for the employers of the bonded labour. It empowered executive magistrates and the district magistrates to take cognizance of the offences under this Act. The district magistrates and the other executive magistrates were empowered with the jurisdiction of civil courts. The Act further provided for the constitution of vigilance and implementation committees. The law meant business since it provided for wide powers for the executive Magistrates giving them all the powers of the judicial magistrates and the advantage of executive action. It also provided for summary trials.

Even though this legislation is still on the statute book, violations of its provisions continue. A few examples of these violations are given by S.N. Tripathy in his observation: "Child labourers rescued in the famous Bilwaria incident bore visible marks of physical torture, such as branding with hot iron, bruises and lathi blows. They were severely beaten with iron rods if they were slow at work, made mistakes in weaving, asked for adequate food, or even if they went to ease themselves without the master's permission. At night they were all locked up in a small room. This happened to them daily. But once they were caught in the act of escaping, their feet were tied together and they were slung upside down from the branch of a tree and then ... they were branded with hot iron".¹⁴

Now, of course, social awareness against the bonded labour system has come to stay with social organisations such as Bandhua Mukti Morcha and Bachpan Bachao Andolan who are doing some useful work and are engaged in liberating the bonded workers and child workers.

14. S.N. Tripathy, *Migrant Child Labour in India* 9-10 (Mohil Publications, New Delhi, 1997).