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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

BUILDING JUSTICE: A COMPREHENSIVE GUIDE TO CONSTRUCTION LABOUR RIGHTS

AUTHORED BY - THIVYA. B¹ & P.S.RADHA JAYASHEELA²

Introduction

A labourer can be defined as an unskilled person employed in it, mostly manual workers. Construction labourers form a part of the unorganised sector. They lack formal job offers, gratuity and other benefits which the employees of the organized sector can avail. The Construction industry plays an important role in the Indian economy with over 100 million people expected to be employed in the industry by 2030, and 80% being unskilled labourers¹.

They contribute to 5% of the GDP and 8% of capital formation. Notwithstanding, their significant role in the formation and development of the nation, they face a lot of problems. Several reports, case- studies, first-person stories and simple observations can point out that these workers are treated inferior to the status of human beings. They are denied the basic respect and rights that human beings deserve. Most construction workers also being temporary migrants face discrimination and ill-treatment.

Objective-Basic Necessities to the Construction workers

The Right to live with Human Dignity refers to being able to obtain necessities of life like clothes, shelter, food, basic health facilities, education, liberty to move around and interact with everyone freely, freedom of expression and maternity benefits. The right to dignity can also extend to non-discriminatory treatment and receiving benefits, which the workers are entitled to. Article 1 of the Universal Declaration of Human Rights states "All human beings are born free and equal in dignity and human rights." This shows the inherent nature of dignity and its equal applicability to all human beings.

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³Construction, CAMBRIDGE ESSENTIAL ENGLISH DICTIONARY (7th edition 2011)

Rights of construction workers

Various rights are available to construction workers such as follows,

- **Right to entry:** This right is given to union officers who may, under certain circumstances, be allowed to enter worksites. These circumstances may be any of the following:
 - If there is a break in a workplace law and an inquiry has to be conducted
 - When there is a need to hold the meetings with employees
 - When union officers exercise their right to conduct a Work Health and Safety checks
- **Right against the coercion:** The employee should not be forced or threatened to do what he or she does not want to do or to execute work that he or she does not want to execute for reasons that will conflict the individual's freedom of choice.
- **Right to associate or not to associate with a union:** Also called the Freedom of Association, employees cannot be threatened, forced or pressured to join (or not to join) or leave a union by their employer or their employees.
- **Right against the discrimination:** Action taken against an employee or prospective employee for discriminatory reasons by an employer is unlawful. Some examples of such contrasting actions are rejecting to hire a prospective employee, firing an employee, changing an employee's job to his or her disadvantage, and withholding an employee's entitlements, among others. It is considered discrimination when these actions are taken against any person in the working place due to such personal attributes like gender, sex, age, religion, marital status, personal responsibilities, pregnancy, national extraction, political views, race etc.⁴

Problems faced by Construction Workers

- **Unsafe working conditions:** Construction is a dangerous industry in India, with an estimated 165 injuries per 1,000 workers. Lack of coordination between contractors, clients, and workers contributes to unsafe conditions.
- **Lack of social security:** Many construction workers in India are informal workers without formal contracts or social protection.
- **Inadequate wages:** Construction workers may experience wage discrimination and irregular pay.

- **Exploitative practices:** Construction workers may face exploitation and discrimination.
- **Lack of skill development:** Construction workers may not have opportunities to develop their skills.
- **Labour shortage:** The COVID-19 pandemic has increased labour shortages in the construction sector.

Construction labours fatality rate

More construction workers died on the job last year than in any other industry sector. In 2022, a rate of 9.6% fatalities per 100,000 full-time workers, according to a report released by the Bureau of Labor Statistics.



Although the construction industry is one of the largest sectors of employment in India, it is also the second most hazardous, with an average of around 38 fatal accidents a day. According to a 2019 study by the Indian Institute of Technology (IIT) Delhi, falls, electrocutions and collapsing walls and scaffolding at construction sites are the leading causes of work-related deaths in the construction industry. Another study published in 2016 by researchers at the National Institute of Technology Surat and IIT Delhi estimated that the construction industry accounts for around a quarter of all workplace accident fatalities in India.

Suresh Tanwar, head of audit and consultancy at British Safety Council India, said: “The construction industry remains largely unorganised in India.

"The nature of the work being undertaken at construction sites is fraught with risks – such as falling objects, falls from heights, electrocution, heavy material handling by crane and the collapse of structures. The fallout of these types of accidents can be fatal."

The 2016 study from the National Institute of Technology Surat and IIT Delhi estimated that around 48,000 people are killed in accidents at work in India every year, with construction accounting for at least 11,614 of the fatalities.

On 27th August 2022, a 28-year-old construction worker died after he slipped and fell from a height of about 7.5 metres while removing wooden planks installed to support slabs from a two-storey building undergoing construction in Pune. The police later charged the contractor in charge of the work and the building owner for allegedly causing the worker's death due to negligence under section 304(A) of the Indian Penal Code (IPC).

According to the police, an inspection of the construction site soon after the incident revealed that those in control of the work had not taken safety measures like installing security nets and had not provide helmets or safety belts to the workers.⁶ Labour laws relating to Provisions of Health, Safety and Welfare measures at construction work

There are many legislature sections and provisions providing safeguards for construction workers in India. In addition to the other safety-related acts applicable over building work (except, construction of residential houses for private purposes with a cost not exceeding INR 10 lakhs) and other construction (except, those construction projects where provisions of the Factories Act, 1948 and the Mines Act, 1952 are not applicable),

There are **two major pieces of legislation governing health and safety laws**. These areas:

- **THE BOCW ACT**– The Building and Other Construction Workers (Regulation of Employment and Condition of Services) Act, 1996.
- **The Building and Other Construction Workers (Regulation of Employment and Condition of Services) Central Rules, 1998**

BOCW Act, 1996

Specific to Construction Industrial activities which may not exactly fall within the definition of "Manufacturing" as per the provisions laid down under The Factories Act, 1948, The BOCW Act, 1996 was enacted on date 20th August 1996 for building and construction workers in India

with a purpose to safeguard them against the high risks of life that is inherent in the nature of construction, alteration, rectification, maintenance, repair and demolition work.

It is applicable to every such establishment in which 10 or more workers in any building or other construction work are employed, or had employed on any day of the preceding twelve months. It extends to the whole of India.

Entitlement of benefits under Welfare Schemes

Every such construction worker (within the age group of 18 up to 60 years) who has been engaged in any building or other construction work for not less than ninety days (90) in the preceding twelve months (12) shall be eligible for registration as a beneficiary.

Every such building worker registered as a beneficiary shall be entitled to get the benefits

- Reimbursement of medical expenses,
- Maternity benefits,
- Group insurance premium,
- Educational benefits to dependent children,
- Payment of pension,
- Free medical care and financial assistance in case of an accident

From the welfare fund under the control of BOCW's Welfare Board constituted under the provisions of this Act. This fund is collected in the form of 1-2 % welfare cess from the establishments employing 10 or more workers and having projects costing more than Rs 10 lakh with the intervention of appropriate government.⁷

Conclusion

The Supreme Court in 2018 stated "Construction labourers do not assist only in building infrastructure, they also assist in building the nation, in their own small way", reiterating the important role construction workers play in the society. It is highly alarming that due to a lack of dignity, equality, job security, and decent pay for workers, many are leaving the field creating a lacuna in unskilled labourer availability. These unskilled workers form the backbone of our country. But a worrying condition of the backbone is the biggest danger to the collapse of the human. This poor state of workers needs to change for the progress of mankind and the country.