

Analysing The Social Security Issue of Unorganised Sector in India

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Abstract

As we all aware that India is swiftly transferring or selling their ownership in public enterprise to private players to increase efficiency, foster economic growth, enable competitiveness and for other reasons. But in storm of this privatisation state should be not allow to forget its social, constitutional and international obligation which is sine qua non for democratic setup. In India total 50 crore workers are employed in organised and unorganised sector out of which 45 crore workers employed in the unorganised sectors and 50-70 lakhs of workers join labour market annually¹. Probably this digit will increase in future due to mass privatisation and overpopulation. According to National Commission for Enterprises in the Unorganised Sector (2007) unorganised workers are “those working in the unorganised enterprises or households, excluding regular workers with social security benefits, and the workers in the formal sector without any employer/social security benefits provided by the employers.” Often unorganised sector work considers as precarious work because its offer insecure, unprotected, short-term and poorly paid jobs with no social security. Protection and promotion of rights of these workers has become more unfeasible when we study that top 10% of the Indian population holds 77% of the total national wealth and only a 1 percent wealth has been increased of 67 million people in year 2017². Mostly workers employed in this sector belongs to underprivileged section of society having low level of skills and education which make situation worse. In this paper author seeks to identify the rights of unorganised workers under national as well international law and issues affecting their working and living condition and responsibility of government to maintain the minimum standard of living of these workers and save them from exploitation.

Keywords: unorganised sector, privatisation, precarious work, constitutional rights etc.

Introduction

There is no gainsaying that most of the public sector enterprises are privatised and some are in awaiting. Privatisation would be defined by the many scholars differently and there are lots of mode of privatisation but here we will not go on the technical aspect of privatisation rather than we analysis, examine issues surrounded through the privatisation whether they are social, legal or human rights issue. In lucidly it is a process in which government transfer or sell public owned enterprises to private bodies. Today privatisation is the central theme of people discussion because it directly confronts with the rights of million of people or workers whether they are human rights, workers rights, constitutional rights or other

¹ (Annual report 2020-21 v.v. Giri national labour institute).

² (Report of Oxfam India 2018)

rights embodied in different municipal or international conventions. In contractualisation i.e., another word for privatisation the liability of government is co-extensively increases with the level of privatisation they do. The objective of privatisation in democratic setup should always be to create sustainable human development³ rather than exploitation of workers in the name of economic reforms. The unorganised sector is one of the facets of privatisation.

The term unorganised sector is often used interchangeably with the informal sector. (Usually in international law). The National commission for Enterprises in the Unorganised Sector defines this sector as all unincorporated private enterprises owned by individuals or households engage in sale and production of goods and services on a proprietary or partnership basis and have less than ten workers. The major issue with unorganised sector is that mainly person employed in this sector are rarely attained the education above primary level (86% workers in unorganised sector were study up to primary level only) and from socially and economically underprivileged section of society compelled to work in pathetic conditions without social security, poor working condition etc. according to Global wage report of International Labour Organisation 2016, top 10 per cent highest paid income groups got almost 43 per cent of total wages paid to all workers. Ministry of labour and employment of Indian government divide the unorganised workers into four categories according to in terms of occupation, nature of employment, specially distressed category and service category., In first category share croppers Small and marginal farmers, landless agricultural laborers, , fishermen, , weavers, artisans has come, In second agricultural laborers, bonded laborers, migrant workers, contract and casual laborers come, in third Toddy tappers, scavengers, carriers of head loads, drivers of animal driven vehicles and in last Midwives, domestic workers, fishermen and women, barbers, vegetable and fruit vendors, newspaper etc. is come.

Contemplating Social and Legal Issues

It is contended that India's labour laws are one of the strictest laws in the world⁴. However, the report of NCEUS, NSSO, ILO show that they are poorly enforced.

India's GDP is increasing annually at the rate of 7 percent since 1993. However Indian Labour market is still choked⁵. The NCEUS report 2007 found that in urban area about 50 and 87 percent percent men and women workers respectively, 40 and 81 percent men and women workers respectively receive wages below the notional minimum wages recommended by Hanumantha Rao Commission of 1991. The minimum wages could be the core issue in privatisation which can be define as the wage limit fix by the government which legally bound the employer not to pay below it to its workmen. Lots of issues are generate from the insufficient wages paid to the workers. That's why following the next year of impendence government created the Minimum wages act 1948 to safeguard the interest of majority of

³ Privatisation, labour law and labour relations: A comparative report by Suzzane Nola and Marleen Rueda. Working paper under the ILO's. Action Programme on Privatization, Restructuring and Economic Democracy,

For further reading see: in addition to pursuing other means for achieving acceptability, transparency and accountability, the process of privatisation could usefully take into account the relevant ideas and principles contained in the following international labour standards: convention no. 87: Freedom of association and protection of the right to organise, 1948; Convention no. 98: Right to organise and collective bargaining 1981; Recommendation no. 163, collective bargaining 1981; Recommendation no.92: voluntarily conciliation and arbitration 1951; Convention no. 151: Labour relations(public services), 1978; Convention no. 168: The employment Protection and Promotion against employment convention 1988.

⁴ (OECD, 2007).

⁵ ILO report 2016

citizens working as labour. Article 43 of Indian Constitution give directives to the state to maintain decent standard of life and full enjoyment of leisure and social and cultural opportunities the state shall create legislation to secure living wages to all workers.

However, new wage code 2020 was introduced by the central government to the general public which consolidate four separate acts into it however, this new code has arisen apprehension among the scholars related to provision of minimum wages in this new code. The new code gives wide discretion to authorities to fix the minimum wages and no procedure is given which authorities will follow before fixing⁶. New wage code also left the power to fix minimum wages to states but not below the floor wages fix by the central government. However, this competitive federalism leads to the race between states to decrease more and more minimum wages to attract more and more industries in their state. Wages is the most important part of deciding standard of one's life. Insufficient wages lead to poor livelihood, illiteracy, starvation push youngsters into illegal activities. In case of Reptakos Brett & Co. Ltd. (1992)⁷ the apex court of India set the criterion which state would follow before fixing the minimum wages, that include sufficient levels of education, clothing, fuel, nutrition and healthcare. Due to insufficient wages parents rather than sending their wards to school, send them to work consequently child labour will rise.

According to report of National Sample Survey Office 2014, 32 million children up to the age of 13 have never attend any school and most of them belongs to socially disadvantage groups whose families are working in unorganised sector. Probably this digit will increase in future if strong measures would not take because in mass privatisation more people will add in unorganised sector which cause more exploitation.

Despite the constitutional mandate under Article 24 which specifically prohibit the children below the age of 14 years to work in hazardous factory and the statutory enactment Child Labour (Prohibition and Regulation) Act, 1986 which prescribe punishment and fine for child labour 49.84lakh of children are still working in hazardous factories and mines⁸.

Another issue is with persons with disabilities, at present central and state governments provide reservation to differently abled persons in Group A to Group D services. So, they come forward and become the part of mainstream life of nation and serve the nation through their capabilities and do not feel prejudice due to their bodily structure. we have seen that differently abled person from civil services to sports are conquering every field. However, in privatisation there in no such policy for the upliftment of these people, the motive of mostly private bodies is only to earning profit. They want fast and long hours work which is sometime not suitable for their physical capacity. If private bodies deny work or offer work which is inferior to their education, knowledge and skills is equal to denial of work which violate the concept of right to equality under article 14 of Indian constitution. Bhagwat J., in *Asiad case*⁹ contended that if person due to poverty and starvation or economic circumstances have no choice and compel to work with remuneration which is less than the minimum wages, the work provided by him would be call as forced labour under article 23 of Indian Constitution.

Another issue is with persons belong to socially underprivileged section of society. The report of National Commission on Enterprises in the Unorganized Sector, 2007 which state that throughout the high

⁶ Determinants Of Precarious Employment In India: An Empirical Analysis by Sundar and Sapkal. For further reading visit: https://www.researchgate.net/publication/321494694_Determinants_Of_Precarious_Employment_In_India_An_Empirical_Analysis, visited 07-09-2022 at 4:30 pm.

⁷ Workmen Represented By Secretary vs Management Of Reptakos Brett., 1992 AIR 504, 1991 SCR Supl. (2) 129

⁸ National Sample Survey Organisation (NSSO) in 2009-10.

⁹ People Union for Democratic Rights vs Union of India (*Asiad case*), AIR 1982 SC 1473.

economic rate since 90's their has not substantial change come in the livelihood of these people, 88 percent person of schedule caste and schedule tribe, 80 percent person of other backward classes from 79 percent of person compromising unorganised sector belong to poor and vulnerable group. They are continuously live in unhygienic, miserable condition¹⁰. The annual report of national commission on schedule caste 2017-18, revealed the fact that only after the intervention of commission 223 FIR were registered for the case related to atrocities against schedule cast¹¹. People belongs to underprivileged group has to face two-fold discrimination and exploitation, first in their personal life and another is in employment which they employ i.e., unorganised sector.

The Indian constitution also safeguard and oblige the state to maintain minimum level of standard of living of workers which is embodied in fundamental rights and directive principle of state policy. However, DPSP are not judicially enforceable but they are judicially cognizable and state before drawing any law take them under consideration. Article 32 clause 2 direct the state to minimise the inequalities in income and eradicate the inequalities in terms of status, facilities and status. But the fact that minimum wage worker would take 941 years to earn what top paid executive at a leading Indian garment company earns in a year and almost two people in every second drive into poverty because of healthcare cost¹². the Gujrat high court in Rohit Vasavacia vs. Gen. Man., IFFCO¹³ held that if workers compelled to work under inhuman conditions due to 'economic compulsion', without any facilities and safeguard even their manifest consent and wages paid to them will be called as forced labour under article 23 of Indian Constitution.

Conclusion

After analysing above facts and situations we conclude that it will take time for making situation better for unorganised sector. Being a democratic state government are always bound by the principle of rule of law and no authority should give to private sector whether they are organised or unorganised sector to exploit their workers by offering less than minimum wage in any condition. Privatisation doe not mean ceasing of government liability toward their citizens, nation is still run under the principles of constitution and every law, person, institution, companies are bound by the constitutional provisions. Government is still making welfare provisions, schemes for upliftment of workers despite the mass privatisation. In privatisation governments should act as a mediator between employer and employee and maintain a balance between rights and duties of them of both the parties so none of them would breach or transgress the line fixed by the statutes.

¹⁰ NCEUS (2007) Report on conditions of work and promotion of livelihoods in the unorganised sector – August 2007. For further reading visit: https://dcmsme.gov.in/Condition_of_workers_sep_2007.pdf. visited 07-09-2022 at 4:30 pm.

¹¹ Eleventh Annual Report of National Commission for Scheduled Castes for the year 2017-18 submitted to the President of India on 20.06. 2019. Laid in Parliament on 20.09.2020. For further reading visit: <http://ncsc.nic.in/pages/display/47>. visited 07-09-2022 at 4:30 pm.

¹² OXFOM India Report 2018, For further reading visit: <https://www.oxfam.org/en/india-extreme-inequality-numbers#:~:text=The%20top%2010%25%20of%20the,1%25%20increase%20in%20their%20wealth.&text=There%20are%20119%20billionaires%20in%20India>. Visited: 07-09-2022 at 4:30 pm.

¹³ AIR 1984 Guj 102.