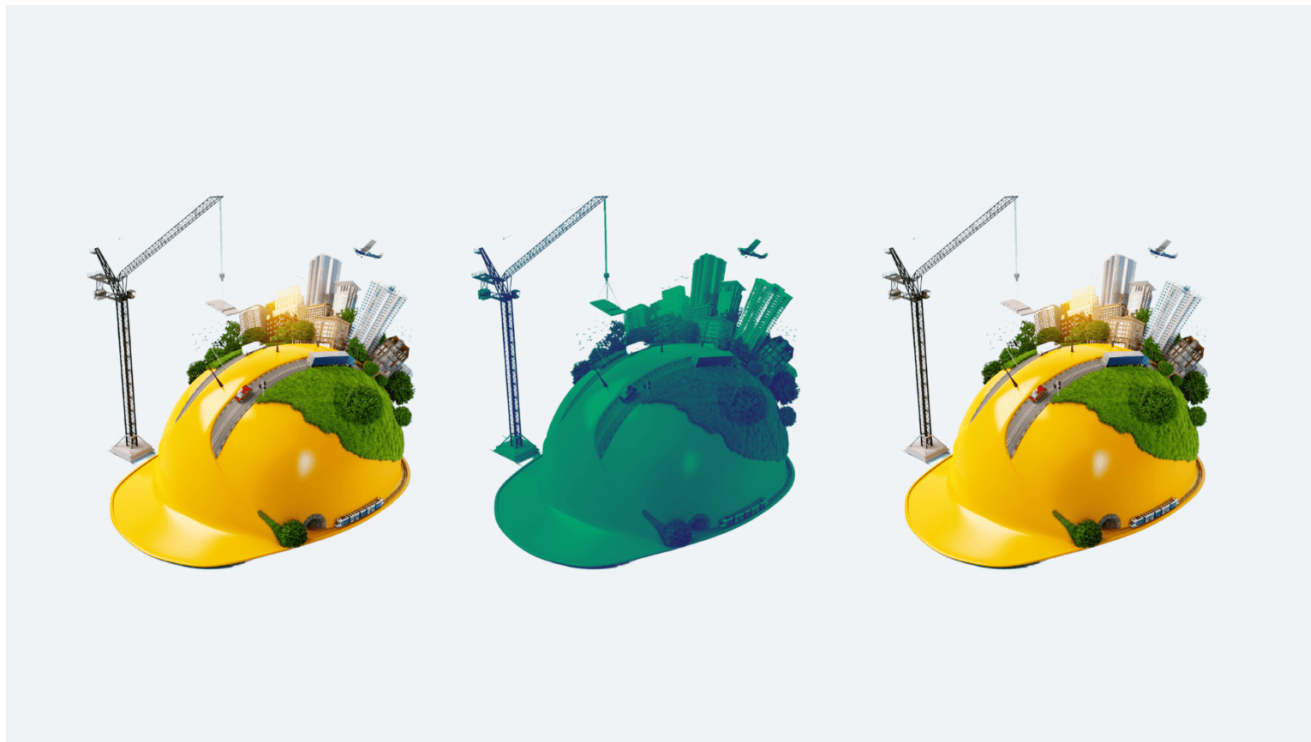


India's Construction Workers and the Law: Exploring the Policy Implications

thepolicygram.com/indias-construction-workers-and-the-law-exploring-the-policy-implications



The legal world has often debated the notion of justice by foregrounding the fundamentals of different schools of thought. These axioms have converged to render a multidimensional configuration to widely renowned ideals of justice, drawing upon both the positivist and normative frameworks of legality. The Indian Constitution stipulates the three-fold concept of justice manifesting in the social, economic and political realm; wherein we observe an inextricable relationship being forged between the aforementioned concept and the constitutional right to life.

The Symbiosis Between Justice and Social Security

This prerogative has been realised as one encompassing the fundamental entitlement to human dignity, which does not stand divorced from the basic right to livelihood, as was ruled in the landmark case law of Olga Tellis and Others v/s Bombay Municipal Corporation [1985] SCR Supl. (2) 51, by the Supreme Court of India. The final authoritative interpreter of the Indian Constitution has therefore, in a unanimous judgement, established that the right to a dignified human life exists insofar as the fundamental prerogative of livelihood is assured under Article 21 of the Constitution.

Succeeding case laws such as the Calcutta Electricity Supply Corporation (India) Ltd. v. Subhash Chandra Bose and Others [1991] SCR Supl. (2) 267 further solidified that assurance of social security in the form of pension, maternity and educational assistance along with health insurance is a potent vehicle for delivering safeguards to the constitutional provisions stipulated under Article 21. The expansion of the purview of this fundamental right through the observed case law judgements to incorporate welfarist measures such as those above bear testimony to the normative approach to justice adopted by the Indian judicial system, as the apex court thoroughly examined the ethical underpinnings of the need for social security and policy frameworks to make livelihoods secure, wholistic and sustainable.

The genesis of The Building and Other Construction Workers (Regulation of Employment And Conditions of Service) Act, 1996 (abbreviated as BOCW Act) was for the purpose of plugging the holes in the social safety net designed for the workers in any kind of construction areas earlier excluded from the coverage of The Factories Act of 1948, as the latter only applied to workspaces which could be classified as either 'factories' or 'docks,' therefore providing social security to only those workers employed in these pre-defined areas. Although basic provisions of socioeconomic justice in the form of minimum wages, workmen's compensation in the event of injury inflicted in the workspace, and equal remuneration were already instituted in the construction industry, there were, till the evolution of this Act, practically no social security guarantees to workers employed in this sector.

The constitutional ratification of the BOCW Act was executed through the avenue of positivist methodologies, wherein Article 21 was operationalised as the mainstay of legitimacy to not only the Act's statutes, but also the subsequent case laws which revolved around the concerned Act, bringing out significant changes in the quest for achieving just terms of employment for the marginalised construction workers. These judicial verdicts and review of the BOCW Act do in fact illuminate a symbiotic equation between justice and social security and how both the schools of legal thought have collectively moulded these two conceptions to mutually strengthen each other whilst establishing an absolute inalienability between them.

Policy Analysis of the BOCW Act: Understanding the Empirical Reality

An important point to centralise is that the BOCW Act has yielded overarching positive outcomes for the primary stakeholders: the construction workers. However, despite the constructive implications overall, there are several structural and executive predicaments which the Act abets; due to the existence of problematic legal mechanisms and lack of compulsive enforcement regulations to curb derelictions of duty by concerning state government authorities.

The BOCW Act envisions a vertical power sharing structure, wherein the responsibility of providing social security in different forms is carried out by a Building and Other Construction Workers Welfare Board instituted by the sub-national State Government authorities. This

board is responsible for enrolling workers as its members, only after which the workers are entitled to avail social security.

However, the number of workers actually enrolled into the State Welfare Boards vis-à-vis the total number of construction workers in the concerned state is atrociously low. Despite immense construction work being conducted mineral-rich states such as Jharkhand, Odisha and Chhattisgarh and even in economically more developed states such as Gujarat and Karnataka, the proportion of workers registered is in fact less than 10% (Soundararajan, 2013). Severely low compliance towards standard safety protocols for workers, and for proper shelter along with food-water and lavatory facilities have been observed across all states. There is also evidence of misappropriation of funds wherein the welfare cess imposed on the employers or contractors for financing the social security schemes for the workers was being collected, with nil registered member workers in the welfare boards of states such as Maharashtra and Uttarakhand, as of 2013. Therefore, this implies that the cess collected is not being utilised for providing welfare at all since there exist no beneficiaries in the first place (Soundararajan, 2013).

In Karnataka, only three out of twenty surveyed contractors had taken the responsibility of registering their workers in the welfare boards, with 62% of workers citing lack of awareness as the cause for not being enrolled as members (Prasad et al., 2011). Even in a state such as Kerala, where the worker registration ratio has been starkly impressive, of around 99%, the probability of the worker obtaining a new job opportunity through the State Welfare Board is negligible, thereby displaying administrative negligence (Nasar and Ummathur, 2013).

These executive defects have been rendered probable since the legal provisions of the Act do not mandate any penalty, or punitive action for the welfare boards in the event of the constituent members committing derelictions of duty such as low registration, low welfare cess utilisation and misappropriation of funds. The second major discrepancy in the law is that by not mandating the welfare boards, the employers or the contractors to raise awareness about the welfare schemes intended for them, the Act actually provides for an indirect escape clause where the appropriate authorities do not have to face any repercussions for illegitimately shedding their obligations towards the workers. Despite extensive studies exposing lack of awareness for enrolment, there has been no appropriate amendment to the Act's statutes to mandate monitoring and evaluation of the awareness programs or even to incorporate any punitive action against the welfare board executives.

In the case law S. N. Subrahmanyam vs State and Others [2018], the court ruled in favour of taking punitive action against the CEO and the Senior Executive Vice-President of the construction contractor companies, holding them responsible for violating safety standards for the construction process, which lead to the unfortunate death of one of the construction workers. The facts of the case reveal that despite the Project Director's crucial inspection report noted that the Personal Fall Arrest System and safety belts were installed into the worksite but not given to the workers, which was in fact the cause of death of the worker, the

concerned authorities of the construction company did not pay heed to this important requirement noted in the report, and were thus held liable for criminal negligence under the Act.

However, this case law reiterates the fact that the punitive action was only taken post-facto, as in once the unfortunate incident had already occurred; and that there were no supervisory activities conducted by the Gazetted Officer who should have been duly appointed by the State Government to inspect the construction premises. Furthermore, there is no legal mechanism to ensure transparency and accountability such that the employers or the contractors actually adhere and act upon the observations noted by the Safety Officer in his/her official report. Despite there being five previous deaths of workers in the same construction site and in spite of the report showcasing the safety deficits, there are no legal avenues to ensure that such safety instructions are actually adhered to. There is a major monitoring and evaluation lapse in the statutes which abets such criminal negligence towards the crucial Act's provisions.

Furthermore, there are nil mechanisms for the workers to actively participate in the inspection process, especially through regular and timely grievance redressal to state-authorized body, and they have been accorded no agency as stakeholders of the Act, beyond being simply classified as beneficiaries, who are also not able to register due to over-reliance on bureaucratic paperwork ([Soundararajan, 2013](#)). These are some real-time implications of the statutes which complicate the accessibility of the policy.

Furthermore, the power dynamics within the statutes are heavily skewed towards privileged sections such as bureaucrats, politicians, parliamentarians, contractors and employers, whilst marginalising any form of representation or expression of the workers' groups and perspectives respectively. Firstly, there is heavy dependence of the worker on strict, bureaucratic structures to cross the very initial step of registration. Workers have to obtain a number of documents, alongside paying a fee of Rs. 50, such as certificate of age proof, identity photographs and an employment certificate from their contractor or trade union leader or from the state labour department. Most workers are not only unaware, but also lack the time and resources to obtain these documents for the completing the procedure. Despite success stories in Kerala showcasing that it is fairly easy to obtain an employment certificate from trade unions ([Nasar and Ummathur, 2013](#)), most states still do not allow non-contractors to furnish the workers with a certificate ([Soundararajan, 2013](#)). Considering that trade union membership in India is drastically low, despite having a booming industrial sector, this legal requirement actually diminishes scope of expansion of social security coverage.

Furthermore, the membership of the State and Central Advisory committees, according to the Act, mandates the presence of legislators, nominated bureaucrats, appointed Chief Inspectors, but does not stipulate any minimum representation of workers or assertive trade union representatives into the committees, as the remaining seven members to be

nominated (apart from the five reserved candidates aforementioned) can belong to any categories such as employers, architects, engineers and even accident insurance representatives. Therefore, in such a scenario, the State Government can technically nominate either a micro-minority of workers, for instance as only one or two out of the seven nominated candidates, or can even choose to nominate absolutely no workers into the Advisory Committees. This is a gross stifling of the voices of the marginalised workers by deliberately choosing to not ensure their representation onto the key State Advisory Committees, which are invested with great power to influence the state's labour laws concerning construction workers. Even if there are one or two workers out of twelve committee members, their marginal presence skews the power of decision-making of the committee heavily towards the privileged parliamentarians, bureaucrats, employers and tertiary sector official; thereby rendering them devoid of actual agency to effectuate any change at all.

Conclusion

Although the Act has brought some positive changes overall, its aforementioned defects, which continue to seriously disempower construction workers, must be addressed and amended. In a socialist state like Kerala, the workers who have been able to get registered with the welfare boards, are not only able to access improved opportunities of inter-generational social mobility, by being better positioned to finance their children's education ([Nasar and Ummathur, 2013](#)), but are also able to register with trade unions in much greater numbers than their non-welfare board member counterparts; thereby having an enhanced collective agency to communicate grievances, access improved public goods, and escape multidimensional poverty. If the loopholes are plugged, both structurally and executively, the true vision of the Act can be realised across India.

References:

1. *Olga Tellis & Ors vs Bombay Municipal Corporation & Ors* [1986] AIR 180, 1985 SCR Supl. (2) 51
2. *C.E.S.C. Ltd. Etc vs Subhash Chandra Bose And Ors* [1992] AIR 573, 1991 SCR Supl. (2) 267
3. *Soundararajan, Vidhya. (2013): "Construction workers: Amending the law for more safety." Economic and Political Weekly, 21-25.*
4. *Prasad, R. S., K. Vittal Rao, and H. N. Nagesha. (2011): "Study on building and other construction workers welfare schemes/amenities in Karnataka." SASTech-Technical Journal of RUAS 10, no. 1. 59-66.*
5. *The Building and Other Construction Workers (Regulation of Employment And Conditions of Service) Act, 1996*
6. *S.N. Subrahmanyam vs State* [2018]

7. VP, Abdul Nasar, and Muhammed Basheer Ummathur. (2013): "The Kerala Building And Other Construction Workers Welfare Fund Board–Social Impact On Members." *Indian Journal*: 61.

About Divyanshi Sharda

Divyanshi is a final-year undergraduate student of Public Policy from O. P. Jindal Global University. She is passionate about working in the arenas of rural development and social infrastructure.

[View all posts by Divyanshi Sharda](#)