

## **NATIONAL LAW UNIVERSITY, DELHI**

### **1. The Context:**

Thinking about this Centre for Labour Research and Advocacy (CLRA) started as there is need for renewed thinking to reinvigorate the Labour Law in the context of debates on new legislations on Labour, revisit the jurisprudential understanding of Labour Law framework and its function, spell out its purpose, scope of coverage and strengthening 'livelihood' discourse through 'bottom-up' approach.

At the very outset it is necessary to clarify that when we use the expression 'labour' in the present context it means much more than the old popular connotation of workers in the 'organised sector'. In today's context when we say 'labour' we must take it to mean the entire 'work force' in our society. The National Commission for Enterprises in the Unorganised Sector (NCEUS) has produced a very valuable report which explains the true nature and magnitude of the total work force. At a national level the size of this work force is estimated to be nearly 500 million. More than half of this work force is 'wage labour' and the remaining are the 'self-employed'<sup>1</sup>. It is important to take note that while wage labour 'sells' its labour power, the self-employed 'expend' their labour power and hence it must be remembered that both these categories eke out their livelihood through the 'sweat of their brow'. Despite this major similarity the subtle, yet substantive, difference mentioned above draws a distinguishing line which compels a differentiated approach to the problems of 'wage labour' as compared to those in 'self-employment'. The Centre will therefore need a comprehensive yet differentiated approach if it must deal with the entire work force in India.

There is more and more evidence that the situation of working people is precarious across the country in terms of their livelihood and survival. Recent reports in the media also demonstrate that the political class is so far removed from the lives of the citizens that perception about the needs of daily life such as the cost of food is very far removed from the reality. These gaps are even truer about working and living conditions and unless these gaps are filled up- democratic governance will suffer from major deficits.

The question is not just an economic one but also a social and cultural one. The people in question belong primarily to the excluded communities<sup>2</sup>. Consequently while India witnesses a period of growth

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<sup>1</sup> Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector, NCEUS, August 2007

<sup>2</sup> Ibid, "What is quite significant is that 79% of the informal or unorganised workers (502 million by 2012), 88% of the scheduled castes and scheduled tribes, 80% of the OBC population and 84% of the Muslims belong to the poor and vulnerable group. They have remained poor at a bare subsistence level without any job or social security, working in the most miserable, unhygienic and unliveable conditions, throughout this period of high economic growth since the early nineties."

we also simultaneously witness a period of exclusion. Almost all the excluded people belong to one marginalised social group or the other. It is therefore important to identify them accordingly.

It is all the above circumstances and much more that has induced unprecedented migration not only from one corner of India to another but also from one district to another within the same state. Professor Jan Breeman has written elaborately about circulatory migration of labour across the country leading to almost neo-bondage<sup>3</sup>.

No state in India is an exception to these new forms of labour- whether it is at platform work, construction, or brick kiln or garments or hotels or domestic labour or street vendors, or other forms of contract and sub contract labour-including enterprises which offered regular employment in the past such as profitable private sector enterprises. The ILO has now taken note of this variety of employments/forms of relationships and seeks to address the problem by elaborating, popularising and attempting with government support to create ‘decent conditions at work’<sup>4</sup>, in addition to promoting ‘core labour standards’<sup>5</sup> universally.

## **2. The Goals for this centre:**

1. The Centre will strive to study conditions in where all working people can live with dignity. The Centre will make relentless efforts, to improve the ‘quality of life’ of all those who live by the sweat of their brow.
2. The Centre would initiative extensive and in-depth studies to understand the changes in the New Four Labour Codes and its implications on the workforce. It is important to study the legal efforts to indicate the best practices to ensure workers dignity and livelihood.
3. Livelihood options for the marginalised and the excluded is becoming more and more precarious by the day. Since there is urban led growth, such people migrate into cities and try to eke out a new life. There are laws specifically meant to address their conditions but these do not work –yet, there are examples in certain pockets where such laws do produce good results. Learning good practices, wherever they exist and making them available in India would be valuable.
4. Special efforts will be made to ensure that all working people are able to access nothing less than a ‘need based minimum wage’, along with ‘decent conditions at work’ as laid down in policy documents, legislation and the law of the land.
5. All ways and means to extend health care for the toiling family and good education for the next generation will be a matter of the highest priority.
6. There is increasing evidence that many innovative institutions like ‘welfare boards’ can raise adequate resources to provide for ‘decent conditions at work’, without increasing the burden on the state exchequer. These institutions however require re-engineering to enable efficient utilisation of resources to achieve the goals for which they are set up.

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<sup>3</sup> Jan Breman, THE GREAT TRANSFORMATION IN THE SETTING OF ASIA, Address delivered on the occasion of the award of the degree *Doctor Honoris Causa* on the 57th Anniversary of the International Institute of Social Studies, The Hague, The Netherlands, 29 October 2009

<sup>4</sup> ILO Declaration on Fundamental Principles and Rights at Work, 1998

<sup>5</sup> ILO Declaration on Social Justice for a Fair Globalization, 2008

7. There is increasing participation of women in the labour force, and also evidence to demonstrate that there is exploitation of working women in different ways, including sexual harassment at work. Three sets of legal standards are now available to tackle this menace, the task, however, is to make them work.
8. There are still many employments in which Child labour continues to be exploited. Controversies regarding who is a child in terms of the cut off age remain unresolved and we should ensure that the age laid down in the 'Convention on the Rights of the Child' will be realised in every aspect concerning the child.
9. Persons with disabilities are victims of multiple marginalisation-especially when they already belong to an excluded social group. Effective remedies can be found, especially with the agency of PWDs.
10. There are 'new employments' in gig economy and fundamental questions about the applicability of labour law to these workforce as it stands now. A comparative approach to learn about the possibilities of bringing them under the labour law framework.

### **3. Functions of the Centre:**

In order to achieve the above objectives the Centre may undertake the following among other functions:

- Documentation and Research relevant to the study of the work force in India, with special reference to those working in the informal sector;
- Inquiry and study into the particular circumstances or factors relevant to any particular segment of the said work force;
- Studying the political economy, the human rights, the quality of life and the conditions of work, of the entire work force referred to above or that of a particular segment of the said work force;
- Study of the laws, policies, regulations, case law, comparative jurisprudence and factual situations, including living and working conditions of the relevant work force;
- Study of the economics, profitability, viability, productivity and the possibility of restructuring any particular sector, including the possibility of introducing new forms of management and ownership-on the lines of innovative cooperatives-or collectives- of enterprises, especially those related to the natural resources of the State such as minor minerals, including sand, stone and quarries, brick kilns, minor forest produce, smaller public transport systems and the like;
- Study of welfare schemes like the provision of cooked mid day meals in schools, public distribution system centres, through women's self help groups and the like;
- Study of the functioning of Anganwadi centres in order to enhance the efficiency and ownership and quality of services of such centres through deeper participatory processes;
- Study of health care systems, with special reference to ESI dispensaries and hospitals and primary health and community health centres with a view to providing appropriate health care to the work force-with special attention to occupational diseases.
- Study of the labour welfare fund and labour welfare boards, including a budget analysis, utilisation and efficiency of the said funds to meet the needs of those whom it is intended for;
- Study and research for enhancing the implementation of entitlements under various laws, regulations, rules, schemes, etc applicable to the work force in the informal sector;

- Carrying out budget analysis and relevant studies in respect of schemes and entitlements meant for the work force;
- Publishing the results of the all its activities, and making recommendations for the consideration of authorities concerned;
- Carrying out consultations, workshops, conferences etc. for deeper understanding and for creating wider consensus on important issues relevant to the said work force and popularising the conclusions of such proceedings;
- Undertake advocacy, public debate, briefing and lobbying, canvassing for and popularising issues concerning human dignity, quality of life and human rights, especially for downtrodden citizens including public interest litigation, in the non-adversarial mode as laid out by the Supreme Court in order to achieve Constitutional goals within a rule of law frame work;
- Undertaking training programmes for all or any of the relevant stake holders and personal of institutions concerned with achieving the goals of the Centre.

#### **4. Strategies of work:**

- (a) The Centre will draw inspiration from the Constitution of India, particularly the Fundamental Rights and the Directive Principles of State Policy and commit itself to realise the goals set out for itself through meaningful participation of all stake holders within a 'Rule of Law' frame work. The tripartite approach will always be preferred and special efforts will be made to receive inputs from all other resources that can add value.
- (b) The Centre will begin its work during the re-invigorated phase by preparing a 'Centre Strategy Paper' through extensive consultation and adopt the same within the first six months. Each strategy paper will be in force for a period of One year. An expert body of three persons will be commissioned, well in time, to review the relevance and efficacy of the past work of the Centre, in the context of prevailing conditions and thus contribute towards preparing a 'Centre Strategy Paper'.
- (c) The Centre will adopt a multi-disciplinary approach to inform itself better about the prevalent social reality both generally and specifically in relation to particular sectors where it seeks to work. Apart from adding value to its own process, this methodology will be used for creating and building wider consensus on areas and issues for intervention and for promoting change using a range of methods such as research based publications, popular literature, public interest litigation and media support for the purpose of social change.
- (d) The Centre will rely heavily on transforming mind sets of employers, employees, parties concerned and institutions involved, in order to create consensus and pro active participation of all concerned, to usher in change, for higher productivity, greater social justice and dignity at work, for all.
- (e) The Centre will draw on the rich legacy of 'labour jurisprudence in India' evolved since independence through policy documents and standards, at both national and international level, through legislation and through the legacy of Judge made law, especially by the Supreme Court of India with the special aim of making the best available to the informal sector.

- (f) The Centre will draw on ‘best practices’, especially from different corners of India and also from international experiences.
- (g) The Centre will strive to promote the agency of trade unions, women’s organisations, labour collectives, cooperatives, civil society organisations, employer’s organisations and professional bodies to achieve its goals, especially to promote agency of the right holders and accountability of the duty bearers.
- (h) Above all the Centre will offer consultative services to right holders in order to access their entitlements, especially through all available legal remedies.

## **5. The Pedagogy of the Centre:**

The Centre will begin by using three pedagogic tools, in addition to promoting a “Rights based Approach”, with transparency and accountability as key elements:

1. The first pedagogy, will be the use of “Praxis” i.e., that is the use of “Theory’ and “Practice”, always ensuring that one informs the other. Hence there will always be special efforts to listen to problems and insights that emerge from the grass roots, and to specialised scholars from relevant social sciences with an open and critical mind and to keep on updating ones understanding and remaining dynamic to the learning and implementation process.
2. The Centre will always be open to learning and using lessons derived from International standards, comparative jurisprudence, constitutional law, statutory law, case law and experiential learning.
3. The Centre will remain particularly sensitive to derive insights from the ‘feminist movement’ in the struggle against patriarchy, the movement of ‘persons with disabilities’, the ‘child rights movement’, and especially the social movements of the excluded and marginalised people, so as to seriously internalise different perspectives and contribute substantially to the realisation of an inclusive society.

## **6. A Special Mandate:**

It will be the special mandate of the Centre to promote social change and quality of life concerning the most neglected sections of ‘working people’ in India, through the ‘Rule of Law’. Of recent there is increasing and wide spread cynicism that we in India have an excellent collection of laws but they all fail when it comes to implementation. The special mandate of this Centre will be to focus on the creation and promotion of “perfect obligations”-i.e., to revisit all labour and relevant social justice laws such that they become capable of implementation.

This may include proposing amendments for adoption by the Union Government, or proposing new laws for the state and constantly revisiting the use of delegated legislation through the use of the rule making power, and the mechanism available in the constitution of India for labour law.

We give in Annexe-A a list of 45 central labour laws, out of which 29 legislations are subsumed into new Four Labour Codes (Code on Minimum Wages, 2019, Code on Industrial Relations, 2020, Code on Social Security, 2020, Code on Occupational Safety, Health and Working Conditions, 2020) by way of new labour reforms. This will help us to understand the simplification and rationalisation

process of labour laws as it stands today and to assist in examining its utility and implementability for future purposes.

## **7. Constitution of the Centre**

The Centre will have Three Tiered Structure :

### **a. Advisory Board**

The Advisory Board would consist of members from International and Indian academia.

The following scholars are from the International academia:

- **Prof. Guy Davidov**, Professor of Law and Elias Lieberman Chair on Labour Law, The Hebrew University of Jerusalem.
- **Prof. Luisa Steur**, Associate Professor of Anthropology, University of Amsterdam.

Indian Scholars are as follows:

- **Prof. Babu Mathew**, Professor & MPP Faculty, NLSIU Bangalore
- **Prof. B.T. Kaul**, Rtd. Professor & Former Chairman, Delhi Judicial Academy, Delhi
- **Ms. Nalini Nayak**, General Secretary, SEWA-Kerala

### **b. Institutional Patrons**

Centre would function as a research unit in the University.

**Chief-Patron - Prof. (Dr.) G.S. Bajpai**, The Vice-Chancellor, NLUD

**The Patron - Prof. (Dr.) Ruhi Paul**, The Registrar, NLUD

### **c. Centre Management**

Centre Management is the core functionary of the CLLRA. Both the academic and advocacy initiatives would be designed, planned and executed by the Centre Management. The administration of the Centre (both the academic and logistics) would be run and supervised by its Director, **Dr. Sophy K. Joseph**, Associate Professor of Law, NLUD. Associate Director Prof. Roopa Madhav, and Dr. Saumya (Research Officer), Mr. Dikshant Gehlot (Research Associate) and Mr. Dev Dhar Dubey (Research Associate) along with twenty two Research interns are part of the CLLRA team.