

THE CASE OF THE PLANTATIONS LABOUR ACT, 1951: NEED FOR A RELOOK?

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Assam's tea industry is much more than a mere component of the state's economy. Over the years, the populace of the state has developed an ownership if not a sense of identity with its flagship tea industry. However, all is not well with the industry and its various stakeholders. There exists issues on several fronts ranging from production to labour, all of them inextricably interconnected. This article examines the Plantations Labour Act, 1951, the primary legislation for the purpose of 'providing for the welfare of labour and regulating the conditions of work' in the context of its delegation of social security measures in the tea gardens.

The ecosystem of the tea gardens today and its related problems, labour or otherwise is essentially the result of the Act along with certain other factors. This article argues that the delegatory provisions of the Act are not in consonance with the present conditions of the industry. The crux of the argument is that the important social security provisions which have been foisted upon the tea gardens has caused a two fold problem, both for the plantation managements and also the worker's community. Firstly, the article examines the present situation with relation to the conditions in the tea gardens. Subsequently, the article examines the manner of delegated legislation in the Act and the issues it has given rise to in the industry. Finally, the ramifications of the Act on the social security of the workers and their lives is examined.

The Workers of the Tea Industry: Its Backbone

In the nineteenth century, as the first generation of tea planters in Assam finally began settling into an industry that already seemed to be a potential goldmine, an acute labour shortage developed.¹ By ensuring the increase of land revenue in the neighbouring villages the colonial government sought to flush out the peasants into the tea gardens so as to ensure a steady flow of labour supply. Along with Jenkins's scheme of colonization this mechanism succeeded in creating a gradient of labour towards the gardens and thereby mitigating the labour shortage to an extent.² However, this flow of labour proved insufficient for the fast expanding acreage of many of these tea gardens.

To counter this deficiency, a gradient of human labour developed as labourers from thousands of miles away from the Chota Nagpur region, the Santhal Parganas and even as far away as Mirzapur and Jaunpur moved to Assam.³ Often at the insistence of arkatis (recruitment agents) who resorted to base chicanery to lure these labourers in the hope of a better life in the tea gardens, most of the labourers left the homes of their forefathers behind.⁴

However, the presence of draconian and inequitable legislations like the Workmen's Breach of Contract Act, 1859 put these labourers at the mercy of the Estate Managers, who did not have knowledge of the language, customs or the way of life of these labourers.⁵ The Assam Labour and Emigration Act, 1901 and 1915 also ensured that much of the power remained in the hands of the management.⁶ In these early days, the absence of any form of

¹Amalendu Guha, *Planter Raj to Swaraj: Freedom Struggle and Electoral Politics in Assam 1826-1947*, (People's Publishing House, 2014) 7

²Ibid

³V.B Karnik, *Strikes in India: Vol.I*, (Bombay Publishing House, 1962) at 80

⁴V.B Karnik, *Strikes in India: Vol.I*, (Bombay Publishing House, 1962) at 81; Amalendu Guha, *Planter Raj to Swaraj: Freedom Struggle and Electoral Politics in Assam 1826-1947*, (People's Publishing House, 2014) at 7

⁵Amalendu Guha, *Planter Raj to Swaraj: Freedom Struggle and Electoral Politics in Assam 1826-1947*, (People's Publishing House, 2014)

⁶Through the provisions of this Act abolished the previous 'Free Contractor' system of recruitment of labour through arkatis it brought in the system of recruitment by the sardari system which was closely controlled by the industry stakeholders.

bargaining power of the labourers due to the lack of any trade unions ensured that their resources were exploited to the hilt.⁷

The labour disturbances that are a relatively common occurrence in the modern era were not completely unheard of even during the Raj.⁸ The Browning revolvers and the deeply entrenched connections with the European magistracy did not necessarily mean that the British era planters of yore were completely immune to labour uprisings. As the distinguished politician and small tea grower, Nabin Chandra Bardoloi observed, '*...when the manager's cruelty surpasses all bounds it is then that the labourers set upon him and assault him.*'⁹ However, these events were a rarity and the British influence ensured that the labourers did not raise their voice at frequent intervals.

From 1896, when the eminent parliamentarian J.C Ghose first highlighted the deplorable conditions of the tea garden labourers in Assam in the Annual Session of the Indian National Congress to the present day when the government is still ruminating on amending the 'in kind' benefit component of labourer's wages present in the Plantation Labour Act, 1951 (hereinafter referred to as 'the Act'); social security and basic amenities for tea garden labourers (hereinafter referred to as 'TGL') have remained a game of tennis between garden management and the government.

What is notable in the present state of affairs is that the TGL community does not remain the voiceless, marginalised community it once was.¹⁰ Neither does the government remain a colonial power. In any event, most of the garden owners today are entrepreneurs or corporate entities intent on running a successful business, a long shot from the revolver wielding sahibs of yore. What has however remained constant in the tea gardens of Assam is the condition of the 'labour lines' (a garden term for worker's quarters) and the social security available to the average TGL. While there has been marginal

⁷Ibid 2

⁸Sudhendu Narayan Mukhopadhyay, Labour Unrest in Tea Plantations, (1946) IJSSW Vol.7(3), 186-196

⁹Quoted in V.B Karnik, Strikes in India: Vol.I, (Bombay Publishing House, 1962)

¹⁰For a substantiation of the argument that the TGL community inspite of remaining deprived socio-economically is playing an increasing role as a 'constituent' of politics in the state see, Udayon Mishra, India's North East: Identity Movements, State and Civil Society, The Adivasi Question, (Oxford University Press, 2006) 259

improvement in keeping with the changing times, several labour lines across Assam till today remain without proper housing, drinking water or proper crèche facilities.¹¹ In such a scenario, it is no wonder that labour disturbances are a frequent occurrence in some gardens.

Political Organisation among the Workers :

The political status of the TGL and the ex TGL community (who have moved away from the gardens and remain as independent cultivators in bastis) becomes important for this analysis. The 'tea tribes' as a whole by a conservative estimate number around 40 lakh which makes them a formidable force in electoral politics.¹² But this seeming power as a political 'votebank' has not translated into any tangible economic and social benefits. Added to this is the presence of the various trade unions who negotiate with the garden management on labour issues and also function as a pressure group for the government.

Trade Unionism in India was given a statutory form through the Trade Unions Act, 1926 in an attempt to organise labour negotiations and ensure efficiency of production.¹³ The statute ensured that with the dawn of independence some of the labour organisations in the gardens registered as trade unions to ensure bargaining power for the community. The pioneering TGL trade unions like the Assam Chah Mazdoor Sangha (ACMS) which is based on the principles of the Indian National Trade Union Congress (INTUC) and the Communist Party of India (CPI) backed Centre of Indian Trade Unions (CITU) still remain the major trade unions.¹⁴ However, several

¹¹Labour Department, Government of Assam, Tea Gardens of Assam: A Report on Plantations Labour Act, 1951 under 100 Days Plantation Plan, available at <<http://labour.assam.gov.in/sites/.../Report%20on%20Plantation%20Labour%20Pla.docx>>

¹²Mridusmita Duara, "Non Inclusive Trade Unionism in the Tea Estates of Assam", Working Paper/2017/04, Krishna Kanta Handiqui State Open University, available at <http://www.kkhsou.in/web/student_corner/workingpapers/2017/Main04.pdf>

¹³Trade Unions Act, 1926, available at <<http://www.ilo.org/dyn/natlex/docs/WEBTEXT/32075/64876/E26IND01.htm>>

¹⁴Jyotika Medok et al, "A Study of the Factors Influencing Industrial Disputes in Tea Industry of Assam: With Special Reference to Jorhat District of Assam", International Journal of Scientific Engineering and Applied Science, Vol. 1, Issue 4, July (2015)

For a detailed account of objectives and activities of ACMS and CITU see <<http://www.assamchahmazdoorsangha.org/>> and <<http://www.citucentre.org/>> respectively

student organisations have also begun playing an important role in the present negotiations and discourse, namely the Assam Tea Tribes Student's Association (ATTSA) and the Assam Adivasi Student's Association (ASSA).

But the presence of these trade unions while having reinforced the position of the TGL at the negotiation table and easing the ascent of the office bearers into electoral politics has not translated to material gains for the workers. There have been several violent incidents in the last two decades where due to the presumable failure or absence of any negotiation or dispute resolution by the trade unions, owners and executives of tea estates have been killed by angry labourers.¹⁵ Often in the aftermath of such incidents, tea estates remain closed for years thus spelling ruin for most of these workers.

The present government has taken a progressive step which may address some of the perennial issues raised by these trade unions by eliminating the 'in kind' component of worker's wages from the Union Budget 2017.¹⁶ An allocation of Rs. 767 crores has been made under the Scheduled Castes Sub Plan and an allocation Rs. 4.10 crores under the Tribal Sub Plan.¹⁷ Most of these funds would be dedicated towards providing social security measures to the plantation workers of Assam. A proposed amendment to the Act is also under the anvil.

The Plantations Labour Act, 1951

The tea industry is regarded as an organised industry. In spite of possessing seemingly progressive attributes, the conditions of the workers and the conditions in which they live remain appalling. It is an oft repeated proposition that the Plantations Labour Act has not been implemented in its entirety or in the right spirit.¹⁸ But there is no denying the fact that the Act in question determines the unique nature of the industry. Under the ambit of the Act, within the bounds of the garden, it is the duty of the management to ensure

¹⁵For an example of reportage of such incidents in international media see, Associated Press, "Assam tea estate boss and wife killed in fire started by workers", (The Guardian, 27 December, 2017) <<https://www.theguardian.com/world/2012/dec/27/assam-tea-estate-boss-fire>>

¹⁶Union Budget of India, 2017-18, available at <<http://indiabudget.nic.in/budget.asp>>

¹⁷Ibid

¹⁸Sanjay Barbor, "Struggles in the Tea Plantations of Assam: Then and Now", *Revolutionary Democracy* 5, No. 1 (April 1999), 41-46

that residential houses are provided to the labourers which is mandated by Section 15.¹⁹ Sanitation and provision of water to the labourers within the garden by the management is stipulated by Section 9 and Section 8 of the Act respectively.²⁰ In the same vein, a function as essential as provision of healthcare is mandated to the management under Section 10.²¹ Even crèches for children of the workers have to be provided by the registered tea gardens under Section 12.²² The Rules to

¹⁹Section 15 states:

"15. Housing facilities.-It shall be the duty of every employer to provide and maintain necessary housing accommodation-

(a) for every worker (including his family) residing in the plantation;

(b) for every worker (including his family) residing outside the plantation, who has put in six months of continuous service in such plantation and who has expressed a desire in writing to reside in the plantation:

Provided that the requirement of continuous service of six months under this clause shall not apply to a worker who is a member of the family of a deceased worker who, immediately before his death, was residing in the plantation."

²⁰ Section 9 states:

"9. Conservancy.-(1) There shall be provided separately for males and females in every plantation a sufficient number of latrines and urinals of prescribed types so situated as to be convenient and accessible to workers employed therein.

(2) All latrines and urinals provided under sub-section (1) shall be maintained in a clean and sanitary condition."

Section 8 states:

"8. Drinking water.-In every plantation effective arrangements shall be made by the employer to provide and maintain at convenient places in the plantation a sufficient supply of wholesome drinking water for all workers."

²¹Section 10 states:

"10. Medical facilities.-(1) In every plantation there shall be provided and maintained so as to be readily available such medical facilities for the workers 2[and their families] as may be prescribed by the State Government.

(2) If in any plantation medical facilities are not provided and maintained as required by sub-section (1) the 1[State Government upon a request by the chief inspector] may cause to be provided and maintained therein such medical facilities, and recover the cost thereof from the defaulting employer.

(3) For the purposes of such recovery the chief inspector may certify the costs to be recovered to the collector, who may recover the amount as an arrear of land-revenue."

²²Section 12 states:

"12. Crèches.-2[(1) In every plantation wherein fifty or more women workers (including women workers employed by any contractor) are employed or were employed on any day of the preceding twelve months, or where the number of children of women workers (including women workers employed by any contractor) is twenty or more, there shall be provided and maintained by the employer suitable rooms for the use of children of such women workers."

the Act provide more detailed stipulations regarding the provision of these basic amenities.

What this entails is that workers are extremely dependent on the management for the most basic facilities. Starvation deaths among workers are not unheard of in plantations which have been abandoned by the management due to one or the other reason. On the other hand, it imposes a magnanimous responsibility on the management of the gardens to provide for these amenities. While it is true that since the earliest times of tea cultivation, tea garden managements have traditionally assumed responsibility for the upkeep and welfare of the labourers, it has become difficult in the present competitive economic scenario.²³ While wages continue to be dismally low and the 'in kind' component is not adequate according to most trade unions, it still creates a burden on the tea garden management.²⁴ In fact the 102nd Report on Performance of Plantation Sector-Tea and Coffee Industry of the Parliamentary Standing Committee on Commerce highlighted the fact that prices for tea have remained constant while the cost price has steadily increased.²⁵

A large component of the increase in the cost price of tea is due to the social security responsibilities of the tea garden managements. While the bigger players in the industry who are essentially subsidiaries of large multi national companies can adjust to these responsibilities, it becomes difficult for the smaller stand-alone gardens and small tea growers.

Compliance: Throwback to the License Permit Raj?

It is important to keep in mind that the compliance of the Plantations

²³Pratim Ranjan Bose, "Why Plantations are no ones cup of tea", (The Hindu BusinessLine, February 16, 2017) <<http://www.thehindubusinessline.com/economy/agri-business/why-plantations-are-no-ones-cup-of-tea/article9547240.ece>>

²⁴Traditionally, tea gardens only pay a portion of the wage as cash while another portion is paid 'in kind' in the form of certain services. However, the government has dropped the 'in kind' component of worker's wages from the Union Budget 2017-18 and is mulling an Amendment to the Plantation Labour Act, 1951 to that effect.

²⁵102nd Report on Performance of Plantation Sector-Tea and Coffee Industry of the Parliamentary Standing Committee on Commerce, para 18, available at <<http://www.teaboard.gov.in/pdf/notice/Parliamentary%20Standing%20Committee%20Report.pdf>>

Labour Act which is enforced by the Labour Department of the State is not the only compliance requirement in the industry. A tea garden is enmeshed by multiple layers of regulation and inspection by authorities ranging from the Inspector of Factories to the Tea Board. A planter will have to generally renew a minimum of five licenses in a year and also subject himself to inspections by a bewildering gamut of departments.²⁶ In spite of such seemingly heavy regulation the rates of compliance remain abysmal according to reports of the Labour Department, Government of Assam.²⁷ To cite an example, of the 829 registered tea gardens in Assam only 644 filed returns under the Act in 2009.²⁸

For the gardens which did file returns under the Act, the statistics are nothing to write home about. According to a report of the Labour Department, Government of Assam, there is a shortfall of 42,453 houses for labourers in the tea gardens of Assam.²⁹ A shortfall of 80,231 latrines and 6521 water points also exists in the labour lines.³⁰ Similarly, there exists a shortfall of 63 hospitals across the 800 odd registered tea gardens in the state.³¹ What must be kept in mind is that these are not mere statistics. These shortfalls have a direct correlation on the day to day quality of the life of these workers.

One of the prime reasons for the lackadaisical attitude in complying with the Act is due to the paltry fines often amounting to only a few thousand rupees which are imposed on the managements violating the provisions of the Act. Secondly, the Labour Department of the Government of Assam under the ambit of which the Office of the Chief Inspector of Plantations functions is understaffed. According to some counts, it had 68 labour

²⁶Ibid 21

²⁷Report on the Working of the Plantations Labour Act, 1951 during the year 2009, Ministry of Labour and Employment, Government of India, available at <http://labourbureaunew.gov.in/UserContent/Rep_WPL_2009.pdf>

²⁸Ibid 4

²⁹Ibid 13

³⁰Labour Department, Government of Assam, Tea Gardens of Assam: A Report on Plantations Labour Act, 1951 under 100 Days Plantation Plan, available at <labour.assam.gov.in/sites/.../Report%20on%20Plantation%20Labour%20Pla.docx>

³¹Ibid

inspectors and 28 labour officers in 2016.³² Certainly, a work force of this size will not suffice to undertake compliance in such a large industry.

Exclusion

One of the most important issues with the Act from the legal standpoint is that of 'instrumental exclusion'.³³ The Act despite its rather strong mandates has not been implemented to expected levels over the years. This has been described as a form of 'illusive inclusion' by which the Act is not being applied in 'spirit' but seemingly in letter.³⁴ In addition to this the language of the Act has left several loopholes which has emerged over the years.

To cite an example, S.1(4) of the Act applies to any land which 'admeasures 5 hectares or more', thus bringing only such tea gardens within its ambit. In the present day where more than 26 per cent of tea is produced by small tea growers, it means that a large section of such gardens are excluded from within the provisions of the Act.³⁵

³²Devjyot Ghoshal, "Young mothers are dying in Assam's tea gardens-at a rate higher than anywhere in India", (Scroll.in, July 23, 2016) <<https://scroll.in/pulse/812175/young-mothers-are-dying-in-assams-tea-gardens-at-a-rate-higher-than-anywhere-in-india>>

³³J. John et al, " Plantation Labour Act, 1951 and Social Cost- The Case of Tea Industry", Discussion Paper No. 26, National Research Programme on Plantation Development, Centre for Development Studies, Thiruvananthapuram, available at <<http://cds.edu/wp-content/uploads/2014/07/NRPPD26.pdf>>

³⁴Joseph K.J , "Towards a New Paradigm for Plantation Development in India: An Analysis of the System of Production and Innovation from an Inclusive Growth Perspective," Discussion Paper No. 1, National Research Programme on Plantation Development, Centre for Development Studies, Thiruvananthapuram, available at <<http://cds.edu/wp-content/uploads/2014/07/NRPPD1.pdf>>

³⁵S. 1(4) of the Act states:

"[(4) It applies to the following plantations, that is to say,-

(a) to any land used or intended to be used for growing tea, coffee, rubber [, cinchona or cardamom] which admeasures [5 hectares] or more and in which 6[fifteen] or more persons are employed or were employed on any day of the preceding twelve months;

(b) to any land used or intended to be used for growing any other plant, which admeasures [5 hectares] or more and in which [fifteen] or more persons are employed or were employed on any day of the preceding twelve months, if, after obtaining the approval of the Central Government, the State Government, by notification in the Official Gazette, so directs.

7[Explanation.-Where any piece of land used for growing any plant referred to in clause (a) or clause (b) of this sub-section admeasures less than 5 hectares and is contiguous to any

Similarly, the definition of worker in the Act read through its definition and wage provisions effectively excludes the temporary and casual worker from within its ambit. This means that a large cross section of workers are effectively eliminated from any protection they might have had recourse to under the Act. The recent 2010 amendment has expanded its ambit to 'a person employed on contract for more than sixty days in a year'.³⁶ However, the nature of the provision is such that it cannot be easily enforced.

There exists certain other impediments in the instrumentality of the Act like daily rating of wages, conception of 'family labour' and devaluation of women workers which have contributed to several of the present issues being faced by the tea industry.³⁷ Therefore, non-compliance must sought to be seen in relation to the inherent flaws in the Act itself. The non compliance by large sections of the industry must also be seen in the light of economic constraints and attitudinal inertia. An one dimensional analysis of this situation has the potential to give rise to a explanation which may be in the nature of oversimplification

The Case of Maternal Health

The present problem is however much deeper than mere non compliance with laws. There are certain endemic issues in tea gardens which require close involvement of the state machinery. Such a scenario is not surprising considering that the tea industry is the biggest employer in the state employing a mammoth workforce of 1,89,421 male workers and

other piece of land not being so used, but capable of being so used, and both such pieces of land are under the management of the same employer, then, for the purposes of this subsection, the piece of land first mentioned shall be deemed to be a plantation, if the total area of both such pieces of land admeasures 5 hectares or more.]

³⁶Plantations Labour (Amendment) Act, 2010, available at <[http://www.prsindia.org/uploads/media/Acts/The%20Plantations%20Labour%20\(Amendment\)%20Act,%202010.pdf](http://www.prsindia.org/uploads/media/Acts/The%20Plantations%20Labour%20(Amendment)%20Act,%202010.pdf)>

³⁷For an exposition of the concept of 'family labour' and devaluation of women workers, see J. John et al, "Plantation Labour Act, 1951 and Social Cost- The Case of Tea Industry," Discussion Paper No. 26, National Research Programme on Plantation Development, Centre for Development Studies, Thiruvananthapuram, available at <<http://cds.edu/wp-content/uploads/2014/07/NRPPD26.pdf>>

1,96,191 female workers who are permanent and 1,08,360 males and 1,82,863 females workers who are temporary.³⁸

The need for more sizeable government intervention in the tea gardens has been deliberated upon for a long time. In fact the British planters had made sizeable inroads into understanding the need for specific models of healthcare delivery in the plantations. Griffith, an ICS officer who was also associated with the ITA (Indian Planter's Association) quotes Jones's Standards of Medical Care where he advocated a three tier mechanism of hospitals in the plantations and the need for these hospitals to focus on preventive health. In his words,

*'...the fact remains that the vast bulk of the mortality, and even more of the morbidity of the tea gardens...is the result of conditions arising from poor diet, inefficient sanitation, contaminated and insufficient drinking water, the ignorance of the workers, which are easy to recognise, and do not ordinarily require elaborate facilities for diagnosis, or highly specialized treatment.'*³⁹

Ironically, due to the lack of evolving policy interventions, the state of affairs remains much the same today, more than fifty years later. The unique lifestyle, working conditions and diet of the workers in the tea gardens ensure that the need for more personalized attention arises in almost all areas of welfare and social security, healthcare not being the most important. The example of maternal health is particularly powerful and it comes as no surprise that it has gained substantial traction both in academia and the international media.

It is common knowledge that one of the primary challenges in maternal healthcare atleast in the tea gardens of Assam is high incidences of traditional childbirths away from medical supervision which endangers the life of both the mother and the child. Coupled with a diet which has been traditionally rich in salt and low in essentials like iron, it is a recipe for disaster. It is conjectured that the TGL community forms a large component of Assam's

³⁸Labour Department, Government of Assam, Tea Gardens of Assam: A Report on Plantations Labour Act, 1951 under 100 Days Plantation Plan, available at <labour.assam.gov.in/sites/.../Report%20on%20Plantation%20Labour%20Pla.docx > 2

³⁹Nandini Bhattacharya, Contagion and Enclaves: Tropical Medicine in India, (Liverpool University Press, 2012)

maternal mortality rate which had the misfortune of being the highest in the country in 2013.⁴⁰

It is therefore evident that there are some fundamental deficiencies in the implementation of the Act. In the face of the delegation of healthcare functions to the management of the garden through the Act, the industry found itself working in isolation for quite a few years.⁴¹ In 2008, the National Rural Health Mission or NRHM (now rechristened as the National Health Mission) signed an Memorandum of Understanding (hereinafter MoU) with 23 gardens across the state. This partly answered a sizeable body of opinion among the planters who had been advocating a larger role for the government in healthcare. Through a Public Private Partnership arrangement the NRHM would pump funds into the tea gardens which would then be utilized through the existing infrastructure in the form of the garden hospitals.⁴² However, the outcomes were not favourable as several bottlenecks came to light. Often the funds and medicine stock would not be available on time. The other perennial problem of finding qualified medical personnel to provide services in the tea gardens reared its head. As such the delivery of the scheme was not too effective.⁴³

⁴⁰The World Health Organisation defines maternal death as,

'Maternal death is the death of a woman while pregnant or within 42 days of termination of pregnancy, irrespective of the duration and site of the pregnancy, from any cause related to or aggravated by the pregnancy or its management but not from accidental or incidental causes. To facilitate the identification of maternal deaths in circumstances in which cause of death attribution is inadequate, a new category has been introduced: Pregnancy-related death is defined as the death of a woman while pregnant or within 42 days of termination of pregnancy, irrespective of the cause of death.', available at <http://www.who.int/healthinfo/statistics/indmaternalmortality/en/>

MMR or the Maternal Mortality Rate is the number of maternal deaths per 100,000 live births. See <http://www.who.int/healthinfo/statistics/indmaternalmortality/en/>

⁴¹Devjyot Ghoshal, "Young mothers are dying in Assam's tea gardens-at a rate higher than anywhere in India", (Scroll.in, July 23, 2016) <<https://scroll.in/pulse/812175/young-mothers-are-dying-in-assams-tea-gardens-at-a-rate-higher-than-anywhere-in-india>>

⁴²For details of the arrangement, see <https://nhm.assam.gov.in/schemes/ppp-with-tea-garden-hospitals>

⁴³Sushanta Talukdar, "Move for better health care to Assam tea workers", (The Hindu, October 10, 2016) <<http://www.thehindu.com/todays-paper/tp-national/Move-for-better-health-care-to-Assam-tea-workers/article15364922.ece>>

Delegation: To what extent?

It is evident that the unique circumstances of the tea industry was what prompted the delegation in the Act in the first place. However, the flexibility afforded by such a scheme should have been reconsidered on a periodic basis. The provision of delegated legislation exists for the primary purpose that the legislature cannot afford to micromanage affairs of every sector. The executive possessing domain knowledge is in a better position to make provisions on more specific affairs. To that effect, the Assam Plantations Labour Rules, 1956 has served its purpose. However, the excessive delegation of functions has created more problems than solutions in the tea industry. Tea industry experts have gone on record to state that more government intervention is urgently required especially in cases of sick tea gardens which are on the brink of ceasing operations.⁴⁴

The position of the judiciary on the point of delegated legislation has undergone substantial evolution over the years.⁴⁵ The Supreme Court adopted the American rule of non-delegation in 1951 in *In re Delhi Laws Act*⁴⁶ case which essentially meant that the Parliament was required to regulate delegated legislation by ensuring that the limits or the policy was clearly identified for the delegate authority. But the position of the Supreme Court on delegated legislation has undergone substantial change subsequently and it has liberally interpreted the extent of delegated

⁴⁴Interviews with Mr. Raju Phukan, on 13th August, 2017, Ex-Tea Planter, Assam Tea Company Ltd., Apeejay Tea and Mr. Kalyan Phukan, Director, Paramount Tea Marketing Pvt. Ltd. on 19th August, 2017

⁴⁵The current position on delegated legislation which maintains that essential powers of legislation cannot be delegated and the legislature must declare the policy and the rules of standard which will determine any future case finds expression in re Delhi Laws Act case and Gwalior Rayon Mills v. Asst. Commissioner of Sales Tax (1974) 4 SCC 98. Judicial control over delegated legislation is generally exercised through the doctrine of ultra vires as in the case of Kunj Behari Lal v. State of Himachal Pradesh (2000) 3 SCC 40. However, it is in relatively few cases where a statutory provision has been declared invalid by the courts as in the case of Harakchand v. Union of India (1969) 2 SCC 166.

The Supreme Court has generally adopted a liberal approach when determining over delegation by the legislature. In some cases as in *Bhatnagars & Co. v. Union of India* 1957 SCR 701, where the 'policy' concern behind the impugned Act was not discernible initially, the Court has 'supplied' and interpreted the policy while examining the Act for over delegation.

⁴⁶1951 S.C.J 527

legislation.⁴⁷ The principle of delegated legislation has been succinctly referred to by Justice Mukherjea:

*'It is open to the legislature to formulate the policy as broadly and with as little or as much detail as it thinks proper and it may delegate the rest of the legislative work to a subordinate authority who will work out the details within the framework of that policy.'*⁴⁸

The parliamentary control over delegated or subordinate legislation like the Plantations Labour Act has also substantially increased over the years. Firstly, within the House, every legislation or Bill which contains some delegation related provisions can be debated upon in the House. Secondly, a MP can move a statutory motion seeking for a modification or even complete annulment of the rules, once the rules have been tabled in the House.⁴⁹

The rules of such a delegated legislation may also be discussed in Question Hour. There is also a Standing Committee of Parliament on Subordinate Legislation which is mandated with scrutinizing such legislation.⁵⁰ The Rules of Procedure of both Houses define the Committee's role as examining:

- a. Whether the rules are in accordance with the provisions of the Constitution and the parent Act under which they have been drafted;
- b. Whether there has been inordinate delay in the publication of the rules;
- c. Whether there is any retrospective application of the rules;
- d. Whether the rules purport to bar the jurisdiction of courts;
- e. Whether any expenditure from the Consolidated Fund of India is being considered.

The Committee's report has to be responded to by the Government subsequent to which the Committee prepares an Action Taken Report. The discussion of these provisions is essential here to highlight the dichotomy presented by such an elaborate mechanism of scrutiny of delegated legislation

⁴⁷Ibid

⁴⁸Ibid

⁴⁹Most Acts containing delegation provisions generally provide that the rules framed on its basis also have to be tabled in the House for a period of 30 sitting days.

⁵⁰Parliamentary Scrutiny of Executive Rule Making: Background Note for the Conference on Effective Legislatures, PRS Legislative Research, available at, <http://www.prsindia.org/administrator/uploads/general/1370586704_Parliamentary%20Scrutiny%20of%20Executive%20Rule%20Making.pdf>

on the one hand and the problems in industry being caused by over delegation of the functions of the state. The provisions of the Plantations Labour Act till today continue to escape the glare of this institutionalized mechanism of scrutiny for all effective measures.

The Neoliberal Effect

The lesser involvement of the State in social security and the increasing delegation is in fact much in tune with the neoliberal approach to the labour market.⁵¹ Thus this phenomenon need not be only seen through the legalistic approach discussed above. The State in such a approach withdraws itself from intervention in the labour market and only limits itself to the setting up of basic norms.

However, this increasing withdrawal of the state from social security in labour markets has been criticized on the economic front too. It has been argued that this measure has the potential and in some cases has already made the economic system unstable.⁵² It also defers from the conception of rights based approach to labour where such social security measures are seen as 'rights' and not state largesse. The same author goes on to point to the fact that the rights based approach to labour markets can go a long way in addressing inequalities in the economic systems. That is, only if the state plays an more active role in social security measures in the labour market can the inequalities between labour and capital be addressed.⁵³

As has been discussed before, the approach of the Act in delegating what can be termed as 'social cost' to the managements is becoming increasingly unviable for the industry on the economic front.⁵⁴ Infact the Tea Board of India in its Outcome Budget of 2012-13 submitted to the

⁵¹Guy Standing, "Labour Market Policies, Poverty and Insecurity", *International Journal of Social Welfare*, Vol. 20, Issue 3, 260-269 (2011)

⁵²Joseph Stiglitz, "The Global Crises, Social Protection and Jobs", *International Labour Review*, Vol. 148, No. 1-2, 9-30 (2009)

⁵³Ibid

⁵⁴J. John et al, "Plantation Labour Act, 1951 and Social Cost- The Case of Tea Industry", Discussion Paper No. 26, National Research Programme on Plantation Development, Department of Commerce, Ministry of Commerce and Industry, Government of India, available at <<http://cds.edu/wp-content/uploads/2014/07/NRPPD26.pdf>>

Department of Commerce has gone on record to state that it has become financially unviable for the tea gardens to continue bearing the social costs in their estates.⁵⁵ To remedy this it suggested the creation of a trust/agency under the authority of the Tea Board which would coordinate such activities as housing under the Indira Awas Yojana⁵⁶, safe drinking water, health facilities and education facilities. The trust or the agency in essence would ensure that the provision of these 'social cost' facilities would revert back to the state in more ways than one.

The argument that this form of the Act has burdened the industry thereby impeding its ability to compete in the world market is not new. Infact planter's associations across India have voiced the opinion that the statutory and non-statutory benefits that they have been traditionally mandated to fulfill has taken a toll on the health of the industry.⁵⁷

The Kailash Joshi Committee of 2003 appointed by the Government of India pointed out that Indian tea in general in the Indian market is getting 'priced out' due to the high production costs which were a natural result of the social cost burden that the gardens had to bear in the form of social security measures and amenities. As has been discussed before, the 102nd Report of the Parliamentary Standing Committee on Commerce, 2012 highlighted the fact the cost of production of tea in India was highest compared to other tea producing countries due to the delegation resulting from the provisions of the Act. The O.P Arya Committee which was constituted in March 2007 'in order to streamline, rationalize and harmonize the applicable laws with the objective of giving fillip to the faster development of the tea industry'. The Report dealt with the various facets of 'social cost' and also with the Act. It however concluded that the social security measures provided in the Act must be retained.

Conclusion

⁵⁵Tea Board of India, Outcome Budget of 2012-13, available at <<http://www.teaboard.gov.in/pdf/bulletin/Final%20Outcome%20Budget%202012-13.pdf>>

⁵⁶Now rechristened as the Pradhan Mantri Gramin Awas Yojana, it is a social welfare programme of the Government of India to provide housing to the rural poor.

⁵⁷Food and Agriculture Organisation, The State of Agricultural Commodity Markets 2006, Rome(2007)

Most field reports seem to reinforce the argument that the mechanism of delegation envisaged by the Act is crumbling slowly but surely. Most tea gardens which are not financially well off seem to struggle with wage, health and education issues.⁵⁸ The Assam Tea Planter's Association has also gone on record to state that social costs must be shared between the governments and managements of gardens if the tea industry is to survive in the international market.⁵⁹

To ensure that the deplorable living conditions and quality of life of the TGL community is alleviated, piecemeal reforms will not fit the bill. The issue concerning social security and the Act is multi dimensional and will therefore require strong political will coupled with cohesiveness between the industry bodies and the trade unions. A reconsideration of certain provisions of the Act has the scope of significantly decreasing the cost and production price too apart from decreasing labour-management conflicts. What is of relevance here is that inspite of such an institutionalized mechanism of examination and scrutiny of delegated legislation, the Act and its accompanying rules have managed to avoid any all round scrutiny.

For a researcher, it is evident after delving into some preliminary research that the issues surrounding the tea industry has already been identified and crystallized, it is only policy intervention that has been lacking. It is time the Act is reconsidered with an aim to make a paradigm shift and not mere piecemeal changes.

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