Informal Workers and Their Rights

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Abstract

The four fundamental principles and rights at work are intrinsic and with a pragmatic relevance that also find resonance in the Constitution of India through its Fundamental Rights and Directive Principles. Our interpretation through a Rawlsian prism also adds to our understanding of these four fundamental principles. An evaluation of the Indian context points out that more than 90 per cent of the workforce is informal workers and that the proportion of informal workers is also increasing in the organised sector. Further, our analysis indicates shortcomings in the four fundamental principles. Their freedom to organise is limited as most work places do not have any association or union. Forced labour gets manifested in modern forms of slavery that involves debt bondage, trafficking for sexual exploitation and even forced marriage. Children, besides being forced into work under modern forms of slavery, are also seen dotting the informal economy – a common site in many road side eateries or even as domestic help in many a households. Discrimination could get reflected through wages, but also because of lack of opportunities that would foster social mobility. This, in some sense, is also an outcome of the fact that most informal workers do not have any minimum working conditions – they work in an easy to hire and fire mode and without any social security provisions. India needs to work on these.

Keywords: Constitution, India, Informal Workers, Rawls, Rights, Unorganised Sector

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Informal Workers and their Rights

Srijit Mishra

1 Introduction

The informal or unorganised sector has an important role in the economy. The National Commission for Enterprises in the Unorganised Sector (hereafter, NCEUS) defines the unorganised (informal) sector to include “all unincorporated private enterprises owned by individuals or households engaged in the sale and production of goods and services operated on a proprietary or partnership basis and with less than ten workers” (Srija and Shirke, 2014: 40). A recent report points out that nearly 90 per cent of the workforce and 50 per cent of the national income is from this sector and that there are growing economic linkages between the unorganised and the organised sector (Government of India, 2012). An informal worker can be working in either the unorganised or in the organised sector. NCEUS defines an informal worker as follows: all those working in the unorganised sector or households (excluding regular workers with social security benefits provided by the employers) and all those working in the organised sector without any employment and social security benefits provided by the employers (Srija and Shirke, 2014: 41). Thus, the informal workers may not have security of tenure and other rights (NCEUS, 2008). These rights can be civil, political, social, and economic. We raise issues on the rights of the worker based on international agreements and some discourse in the Indian context.

2 International Rights

The International Labour Organization (ILO) adopted a declaration on four fundamental principles and rights at work in 1998. These are:

- freedom of association and the effective recognition of the right to collective bargaining,
- elimination of forced or compulsory labour,
- abolition of child labour, and
- elimination of discrimination in respect of employment and occupation.

Further, the declaration also clearly pointed out that these rights are universal in nature and that all member countries have to abide by these even if they have not ratified the relevant conventions. It applies to all workers including the unemployed, the migrants or those with special needs. What is more, the four fundamental principles and rights have important implications and are also associated with two conventions each.

The freedom to associate and collectively bargain are important tools of governance. They can facilitate negotiation in conflict situations through a democratic medium and also help guard against arbitrary decisions or unfair disadvantages that the workers’ may face. It will also foster camaraderie and make the work atmosphere congenial. It is linked with two conventions, namely, Freedom of Association and Protection of the Right to Organise Convention, 1948; and Right to Organise and Collective Bargaining Convention, 1949. It will also provide them a space to exercise their voice, a

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3 This section largely draws from the relevant declaration, ILO (2014).
voice that is not only individual, but also one that is collective and representative; a voice that will also articulate for their rights – both economic and social (Chen et al 2013).

Economic disadvantages may make people trade away their freedom and also being subjected to exploitation, but forced labour is an exacting situation. Individuals or even the State would intimidate people by abusing their power and coerce people to work against their will. The individuals could be subjected to mental and physical abuse, deprived of food, sleep, and even their mobility could be restricted. Slavery, debt bondage and serfdom all fall under this. The international articulation against this dates back to the Forced Labour Convention, 1930; and the Abolition of Forced Labour Convention, 1957. In 2012, the ILO estimated 2.1 crore forced labourers, of which 22 per cent are in sexual exploitation, 68 per cent are labour exploitation in economic activities like agriculture, construction, domestic work and manufacturing, and the remaining 10 per cent are state-imposed forced labour (ILO, 2012).

The case against child labour has been articulated through the Minimum Age Convention, 1973; and the Worst Forms of Child Labour Convention, 1999. The latter was largely on account of the work by Kailash Satyarthi, a recipient of the Nobel peace prize for 2014 with Malala Yousafzai, a child education activist. Of course, children have the same rights, as adults. However, their inability to defend themselves puts them at a greater disadvantage. Besides, certain kind of work could have adverse implications on their physical and mental health.

Discrimination in job could be because of caste, class, gender, disability or some health condition among others. Any form of discrimination acts against fair equal opportunities. These have been addressed through the Equal Remuneration Convention, 1951; and the Discrimination (Employment and Occupation) Convention, 1958.

It would be interesting to view these fundamental principles through the prism of Rawls. We take that up now.

3 Bringing in Rawls and Sen

The four fundamental principles and rights at work are intrinsic. One need not invoke Rawls or Sen to justify their relevance and that is also not our purpose here. We just show some underlying relationship that adds to our understanding of these rights.

It is argued that Rawlsian justice is abstract and transcendental whereas applications to real life situations should be drawn from pragmatic considerations (Sen, 2006, 2009) and in that sense one could argue that the four fundamental principles are pragmatic and would help in enhancing the capabilities of the workers to reach their potential and enhance human development. Without denying their pragmatic relevance, one still sees an underlying relationship between the four fundamental principles and the two principles of justice by Rawls (1971, 2001). The two Rawlsian principles are as follows:

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4 A simple articulation of rights by informal workers, as Chen et al (2013) indicate, is ‘do no harm’ and ‘provide support’. These are similar to ‘negative liberties’ and ‘positive liberties’ in political philosophy. The former is a right to be free from barriers and constraints and the latter is about legal and social protection as also about the provisioning of other facilities (skill development, financial training, leveraging with new technology, and marketing among others).

Each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all; and

Social and economic inequalities are to satisfy two conditions:

- first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and

- second, they are to be the greatest benefit of the least advantaged members of society (the difference principle).

To elaborate, the first fundamental principle of freedom to organize enables democratic participation of the workers and in that sense would fit into the scheme of equal basic liberties, the first Rawlsian principle of justice. The fourth fundamental principle of doing away with discrimination would foster fair equality of opportunity, which is identified with the first part of the second Rawlsian principle of justice. The second and third fundamental principles of abolishing forced labour and eliminating child labour, respectively, as also the other two fundamental principles can also facilitate in providing the greatest benefit to the vulnerable sections, which in essence is the second part of the second Rawlsian principle of justice. Further, asserting the intrinsic relevance of these fundamental principles and rights at work, without invoking utilitarianism or through any other means, get strengthened through the Rawlsian dictum of reasonable pluralism that is built on the premise that multiple things matter.

Keeping the four fundamental principles and rights at work in the background, we would like to discuss the prevailing scenario in the Indian context. We do this by discussing the following: provisions given in the Constitution of India through Fundamental Rights and Directive Principles, an empirical assessment of the state of informal workers, opportunities for informal workers to organise themselves, some aspects of modern day slavery, existence of child workers, and raise some issues on discrimination against workers. We begin with the constitutional provisions.

4 The Indian Scenario

4.1 Fundamental Rights and Directive Principles

The Government of India is a member state, and hence, should adhere to the four fundamental principles and rights at work. Independently, some of these are also reflected in the Constitution of India.

- Article 19 (1) (c) gives all citizens the right to form associations or unions, and read with Article 19 (1) (a) on freedom of speech, Article 19 (1) (b) on right to assemble peacefully, and Article 19 (1) (f) to practise any profession, occupation, trade or business. This comes under the Right to Freedom.
- Article 23 prohibits traffic in human beings and forced labour. This comes under the Right against Exploitation.
- Article 24 prohibits employment of children in factories and in any other hazardous occupation. This comes under the Right against Exploitation. This should be read in conjunction with Article 21A calls on the state to provide free and compulsory education to all children from six to fourteen years of age; this comes under the Right to Freedom and has come into force from April 2010.
• Article 15 prohibits discrimination on grounds of religion, race, caste, sex or place of birth, and Article 16 calls for equality of opportunity in matters of public employment. These come under Right to Equality and they do allow the State to make special previsions for certain vulnerable sections.

The directive principles, which are not enforceable in a court of law, also suggest some enabling conditions with relation to livelihood and work. We elucidate some of them that are in line or somewhat facilitate the four fundamental principles and rights at work.

• Article 43A is to secure the participation of workers in the management of the establishments that are working.
• Article 39 (e) suggests that workers (including children) should not be abused and forced into avocations that is not suitable for their age and strength
• Article 39 (f) suggests that children should be given facilities to develop in a healthy manner and they should be protected against exploitation and against moral and material abandonment.
• Article 39 (d) suggests equal pay for equal work. In addition, Article 41 suggests provisioning for unemployed, old, sick, disabled and other vulnerable; Article 42 is about just and humane conditions of work; Article 39 (a) calls for providing adequate means of livelihood; Article 43 is provisioning a living wage ensuring a decent standard of living; and Article 38 (2) suggests that the State should promote welfare of people and endeavour to reduce inequities amongst people, regions and vocations.

It is remarkable that the Constitution of India through its Fundamental Rights and Directive Principles has provisions that resonate with the four fundamental principles and rights at work. We will take up a discussion on these four aspects with regard to informal workers. Hence, we now point out the status of informal workers in India

4.2 State of Informal Workers

Using the NCEUS definitions, Srija and Shirke (2014) estimate that the total workers increased from 45.96 crore in 2004-05 to 47.42 crore in 2011-12 (Table 1). In both these years, the proportion of informal workers is more than 90 per cent. A matter of concern is that the proportion of informal workers in the organised sector increased from 6.9 per cent in 2004-05 to 10.3 per cent in 2011-12.

Some other observations for informal workers from a reading of Srija and Shirke (2014) indicate the following:

• From the 43.56 crore informal workers in 2011-12 the distribution by employment status is as follows: 56 per cent are self-employed, 11 per cent are regular wage earners or salaried, and 33 per cent are casual workers.
• The broad industry wise distribution of informal workers in 2011-12 is as follows: 53.2 per cent are in agriculture (1.7 per cent in the organised and 59.1 per cent in the unorganised), 12.0 per cent are in manufacturing (29.6 per cent in the organised and 10.0 per cent in the unorganised), 11.9 per cent are in non-manufacturing (39.9 per cent in the organised and 8.7 per cent in the unorganised), and 22.9 per cent are in services (28.8 per cent in the organised and 22.2 per cent in the unorganised).
Between 2004-05 and 2011-12 from the total workers in the organised sector, the per cent of informal workers increased from 48 per cent to 55 per cent. Further, across broad industry division this increase was as follows: agriculture (from 57 per cent to 73 per cent), manufacturing (from 63 per cent to 65 per cent), non-manufacturing (from 73 per cent to 85 per cent), and services (from 30 per cent to 33 per cent).

Between 2004-05 and 2011-12 from the total informal workers in the non-agriculture sector, the per cent of informal workers in the organised sector has increased from 15.6 per cent to 21.6 per cent. The absolute increase for the number of informal workers in non-agriculture was from 16.1 crore to 20.4 crore (from 2.5 crore to 4.4 crore in the organised sector and from 13.6 crore to 16.0 crore in the unorganised sector).

Between 2004-05 and 2011-12 from the total informal workers in the specific industry division within the non-agriculture sector, the per cent of informal workers in the organised sector has increased as follows: mining (from 50 per cent to 55 per cent), manufacturing (from 20 per cent to 25 per cent), construction (from 22 per cent to 33 per cent), hotel, trade and restaurant (from 4 per cent to 5 per cent), transportation, storage and communication (from 9 per cent to 13 per cent), real estate and other business activities (from 14 per cent to 21 per cent), education (from 47 per cent to 56 per cent), finance (from 36 per cent to 37 per cent), health (from 29 per cent to 38 per cent), public administration (from 93 per cent to 100 per cent). It decreased for the following specific industry divisions: electricity and water supply (from 67 per cent to 64 per cent), and other services (from 5 per cent to 4 per cent).

Table 1

<table>
<thead>
<tr>
<th>Workers</th>
<th>2004-05</th>
<th>2011-12</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Organised</td>
<td>Unorganised</td>
</tr>
<tr>
<td></td>
<td>(1)</td>
<td>(2)</td>
</tr>
<tr>
<td>Formal</td>
<td>3.21</td>
<td>0.13</td>
</tr>
<tr>
<td></td>
<td>(52.0)</td>
<td>(0.3)</td>
</tr>
<tr>
<td></td>
<td>[96.0]</td>
<td>[4.0]</td>
</tr>
<tr>
<td>Informal</td>
<td>2.95</td>
<td>39.67</td>
</tr>
<tr>
<td></td>
<td>(48.0)</td>
<td>(99.7)</td>
</tr>
<tr>
<td></td>
<td>[6.9]</td>
<td>[93.1]</td>
</tr>
<tr>
<td>Formal +</td>
<td>6.16</td>
<td>39.80</td>
</tr>
<tr>
<td>Informal</td>
<td>(100.0)</td>
<td>(100.0)</td>
</tr>
<tr>
<td></td>
<td>[13.4]</td>
<td>[86.6]</td>
</tr>
</tbody>
</table>

Note: The number of workers are in crore. Round parenthesis is for proportion of column totals and square parenthesis is for proportion of year-specific row totals.

Source: Srija and Shirke (2014: 41)

In an independent exercise, NSSO (2014b) restricts the analysis of informal sectors to non-agriculture and other agriculture (excluding crops grown) and only for those engaged in proprietary and partnership (P&P) enterprises only. From the usual status (principal + subsidiary) workers, 51.1 per cent of workers were informal. The activities under non-agriculture are: mining and quarrying; manufacturing; electricity, gas, steam and air conditioning supply; water supply, sewerage, waste management and remediation; construction; wholesale and retail trade including repair of motor vehicles and motorcycles; transportation and storage; accommodation and food service activities; information and communication; financial and insurance activities; real estate activities;
cent are in non-agriculture and 3.8 per cent are in other agriculture (excluding crops grown). Further, from among these workers, only 72.4 per cent (75.2 per cent rural and 69.1 per cent urban) were engaged in proprietary and partnership enterprises are informal workers. We make some further observations based for this subset of informal workers. These are the following:

- the proportion of informal workers for males is 73.4 per cent (76.2 per cent in rural and 70.4 per cent in urban), for females is 69.2 per cent (72.7 per cent in rural and 63.6 per cent in urban),
- the proportion of informal workers in other agriculture is 92.3 per cent (92.4 per cent in rural and 92 per cent in urban), and that for non-agriculture is 71 per cent (73 per cent in rural and 68.7 per cent in urban);
- across states, a cross tabulation between proportion of informal workers (restricted to non-agriculture and other agriculture engaged in proprietary and partnership enterprises) and workers without any association in work place (Table 2) indicates that most of the smaller states and union territories have a relatively lower proportion of informal workers (25-55 per cent); that some of the states with high incidence of poverty (Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, and Odisha) are in the middle zone with regard to proportion of informal workers (55-72.4 per cent); that the states with relatively higher proportion of informal workers seem to cut across different categories of states, but some of them (Punjab, Rajasthan, West Bengal, Uttarakhand and Uttar Pradesh) have a relatively higher proportion of Scheduled Caste population.

The state of informal workers point out to an increase in informality in the organised sector and this cuts across broad categories of industry divisions. An analysis across states for a subset of informal workers also points out that a relatively higher incidence of informal workers to states with relatively higher proportion of Scheduled Castes. Now, we propose to further discuss the Indian scenario with regards to the four fundamental principles and rights at work.

professional, scientific and technical activities; administrative and support service activities; public administration and defence including compulsory social security; education; human health and social work activities; and arts, entertainment and recreation. Other agriculture (excluding crops grown) comprises of: animal production, support activities to agriculture and post-harvest activities, hunting/trapping and related service activities, forestry and logging, and fishing and aquaculture. The excluded agriculture activities are: growing of crops, plant propagation, and mixed farming that combine crop and animal production without a specialised production in any of them. The enterprises excluded are government/public sector, private limited company, co-operative societies, trust, and employer households (who employ maid servant, watchman, and cook among others).
Table 2
Informal Workers in Non-agriculture and Other Agriculture restricted to P&P Enterprises and Workers without any Association in Work Place, 2011-12

<table>
<thead>
<tr>
<th>Workers without any Association in work place (per cent)</th>
<th>Informal Workers in Non-agriculture and Other Agriculture restricted to P&amp;P (per cent)</th>
<th>25.0-55.0%</th>
<th>55.0-72.4%</th>
<th>72.4%</th>
<th>72.4-80.0%</th>
</tr>
</thead>
<tbody>
<tr>
<td>25.0-60.0% Daman &amp; Diu, Goa, Lakshadweep, Mizoram, Nagaland Tripura</td>
<td>Puducherry</td>
<td>Kerala</td>
<td>25.0-55.0%</td>
<td>55.0-72.4%</td>
<td>72.4%</td>
</tr>
<tr>
<td>60.0-80.2% A&amp;N Island, Arunachal Pradesh, D&amp;N Haveli, Manipur, Meghalaya Sikkim Tripura</td>
<td>Assam, Bihar, Chandigarh, Delhi, Haryana, Jammu &amp; Kashmir Karnataka, Tamil Nadu</td>
<td>Punjab, West Bengal</td>
<td>60.0-80.2%</td>
<td>55.0-72.4%</td>
<td>72.4%</td>
</tr>
<tr>
<td>80.2% All-India average</td>
<td>All-India average</td>
<td>All-India average</td>
<td>80.2%</td>
<td>55.0-72.4%</td>
<td>72.4%</td>
</tr>
<tr>
<td>80.2-90.0% Himachal Pradesh Chhattisgarh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha Andhra Pradesh, Gujarat, Rajasthan, Uttarakhand, Uttar Pradesh</td>
<td>All-India average</td>
<td>All-India average</td>
<td>80.2-90.0%</td>
<td>55.0-72.4%</td>
<td>72.4%</td>
</tr>
</tbody>
</table>

Note: Workers are those engaged in usual status (principal + subsidiary) and of age 15 years and above. Association also refers to union. Other agriculture excludes crops grown. P&P refers to proprietary and partnership enterprises.
Source: NSSO (2014b: 102, 168)

4.2 Freedom to Organise

In 2011-12, the National Sample Survey Office (hereafter NSSO, 2014a) estimates a population of 108.8 crore for India out of which 38.6 per cent are usual status (principal + subsidiary) workers in the age of 15 years and above. From among these workers, 51.2 per cent are rural males, 22.4 per cent are rural females, 21.2 per cent are urban males and 5.2 per cent are urban females. More than four-fifth of these workers did not have an association or union in their place of work that would have given them an opportunity to organise (Table 3). What is more, the proportion of regular wage/salaried workers whose work place had no was nearly three-sixth.

Across states, the best state is Tripura where only one-fourth of the workers place of work has no association or union (Figure 1). Further, in Tripura, only 25 per cent of the self-employed, 8 per cent of those with regular wages or salaries, and 30 per cent of the casual labourers’ place of work did not have an association or union. It may be mentioned that the Left front has been in power in Tripura during 1978-1988 and again since 1993 till date.

Kerala is one of the first states to have democratically elected and Left government anywhere in the world in 1957 and since then the Left parties have either been the ruling front or the dominant opposition. The organisation of workers in Kerala can trace its origin to the left-oriented political and peoples’ movements. In fact, Heller (1996) informs that in Kerala the agricultural labourers as also construction workers and headload workers or those working in traditional industries like coir workers and services like mahouts (elephant riders) are organised and all this has been possible through state intervention. Thus Kerala does relatively better than other states. In spite of these initiatives, 41 per
cent of self-employed, 44 per cent of those with regular wages or salaries and nearly 50 per cent of
casual labours worked did not have any association or union in their work place.

<table>
<thead>
<tr>
<th>Category</th>
<th>Self-employed</th>
<th>Regular wage/salaried</th>
<th>Casual labour</th>
<th>All workers</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
<td>(4)</td>
</tr>
<tr>
<td>Male</td>
<td>81.0</td>
<td>58.5</td>
<td>85.6</td>
<td>77.9</td>
</tr>
<tr>
<td>Female</td>
<td>88.8</td>
<td>62.4</td>
<td>91.5</td>
<td>86.2</td>
</tr>
<tr>
<td>Persons</td>
<td>83.3</td>
<td>59.3</td>
<td>87.3</td>
<td>80.2</td>
</tr>
</tbody>
</table>

Note: Workers denote usual status (principal + subsidiary) of age 15 years and above. Association also refers to unions.

Unlike, Tripura and Kerala, the state of West Bengal, which also saw the rule of a Left front
government for more than three decades from 1977 to 2011, has not been that successful in providing options for workers to organise themselves. More than 80 per cent of self-employed, 84 per cent of the casual labourers, and 50 per cent of those with regular wages or salaries do not have any association or union in their place of work.

In Daman and Diu, the proportions of workers whose work place do not have any association or union are relatively high for self-employed (75 per cent) and casual labourers (100 per cent). The aggregate lower figure is because of a relatively higher share of workers with regular wages or salaries from among whom the place of work that does not have any association or union is only 8 per cent. The reasons are somewhat similar for the states/union territories of Goa, Nagaland, Lakshadweep, and Delhi.

The states of Sikkim and Assam have around 20 per cent of those with regular wages and salaries whose work place do not have an association or union. This could be because a relatively larger proportion of these workers may be working in the public sector. In fact, from those workers in regular wages or salaries, only 29 per cent in Sikkim and 53 per cent in Assam do not have a written job contract, while the figure is at 65 per cent for the all-India average.

Relatively speaking, Puducherry also seems to be doing reasonably well with regard to self-employed and casual labourers. The proportion of workers whose work place does not have any association or union is 57 per cent for self-employed and 58 per cent for casual labourers. Except for Tripura, Kerala and Mizoram, its scenario with regard to the self-employed is better than most other states. One should, however, concede that its performance is relatively worse-off with regard to regular wage earners and salaried workers.

The state of Gujarat is among the relatively poor performers in terms of work places having an association or union. It is worth mentioning that this state is home to a successful mobilisation of informal workers through the Self Employed Women’s Association (SEWA). The story of SEWA started in 1972 with a group of migrant women workers in the cloth market of Ahmedabad to negotiate against unfair treatment by the cloth merchants (Chen et al 2013; World Bank, 2013). In January 2014, SEWA has been successful in providing a voice to its 19 lakh members constituting hawkers and vendors, home-based workers, domestic workers and manual labourers among others.
that is spread out not only across Gujarat (52 per cent of its members are from this state), but is also present in other parts of the country spread across 13 states (SEWA 2014). SEWA has also been instrumental in setting up of a number of national and international networks for informal workers.

Figure 1
Proportion of Workers with no Association in their Work Place across States of India, 2011-12

Note: Workers denote usual status (principal + subsidiary) of age 15 years and above. Association also refers to union. Acronym for states are as follows: AP is Andhra Pradesh, AR is Arunachal Pradesh, AS is Assam, BI is Bihar, CT is Chhattisgarh, DE is Delhi, GO is Goa, GU is Gujarat, HA is Haryana, HP is Himachal Pradesh, JK is Jammu & Kashmir, JN is Jharkhand, KA is Karnataka, KE is Kerala, MP is Madhya Pradesh, MR is Maharashtra, MU is Manipur, MY is Meghalaya, MZ is Mizoram, NA is Nagaland, OD is Odisha, PN is Punjab, RA is Rajasthan, SI is Sikkim, TN is Tamil Nadu, TR is Tripura, UK is Uttarakhand, UP is Uttar Pradesh, WB is West Bengal, AN is Andaman & Nicobar Islands, CN is Chandigarh, DA is Dadra & Nagar Haveli, DD is Daman & Diu, LA is Lakshadweep, PD is Puducherry, AI is All-India.
Source: NSSO (2014b: 168)

The worst case scenario is Rajasthan where nearly nine-tenth of the workers place of work does not have an association or union. It is also a state amongst those with the highest proportion of workers without any written job contract or social security. However, we would like to mention about PRADAN (Professional Assistance for Development Action), a Non-Governmental Organisation, which mobilises communities in the poorer regions of India through the formation of Self-Help Groups, as it formed its first SHG in Rajasthan in 1987 (Mishra and Sengupta, 2013). In 2012-13, PRADAN worked with 18,736 SHGs spread across seven states of Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Odisha, Rajasthan and West Bengal that helped transform 2.7 lakh families in more than 5000 villages (PRADAN, 2013). What is more, today, many other NGOs as also some governmental line departments are working to mobilise poor and vulnerable communities through SHGs and other mediums to empower them.

India has a long way to go in providing a space for workers to organise. The State and other non-governmental organisations should facilitate. In its absence, the workers will have no space to
articulate their disadvantages. We will now discuss some aspects of modern day slavery in the context of India.

4.3 Modern Day Slavery

It is difficult to survey and obtain estimates of people who are forced to work under bondage or in other subtle forms of slavery. Nevertheless, a recent estimate suggests that 3.6 crore people are under modern global slavery worldwide and 40 per cent of these are in India (Walk Free Foundation, 2014). The methodology that extrapolate the numbers for India using information from surveys in Haiti, Nepal, Niger and Pakistan does raise eyebrows. Independent of those methodological misgivings, one should be concerned about the prevalence of modern slavery through bondage, human trafficking for sexual exploitation and forced marriage. It occurs in brick kiln, carpet weaving, forced prostitution, agriculture, mining, domestic servitude, bidi making, salt pan workers, fish processing, stone and gem polishing, and organised begging ring among others (also see NCEUS, 2007; Srivastava, 2005). It is in this context that the recommendations in the report on global slavery to the Government of India are important. The recommendations are as follows:

- Ratify and implement the Worst Forms of Child Labour Convention (1999) and the Domestic Workers Convention (2011). It is an irony that the Nobel peace laureate from India, Kailash Satyarthi, was instrumental in getting the former Convention passed, but till date, India is one of the six member states that has not ratified this.
- Requires all States to follow up on the Supreme Court Judgment of October 15, 2012, to identify and release those in bonded labour. It requires setting up of district vigilance committees that would carry our surveys to facilitate this.
- Update regulations and processes for the implementation of the Bonded Labour System (Abolition) Act, 1976, and report on its implementation. This will improve transparency and facilitate discussion among stakeholders.
- Implement a new National Action Plan that targets the full spectrum of modern slavery.
- Continue to strengthen protections for victims of modern slavery and ensure that they are not criminalised. Victims must be protected (including protecting their identities) throughout the duration of their court cases.

The State has to make greater efforts to address the subtle forms of slavery, particularly when much of it would be done covertly. It is a matter of concern that some of these – particularly debt bondage and trafficking for sexual exploitation – involve children. Even without being forced, it is worrisome if children are made to work. We now discuss the problem of children engaged as workers.

4.4 Child Workers

The 2011 census of India indicates that that there are 1.01 crore workers are children (age group of 5-14 years), of which one-fourth are in the age group of 5-9 years. From among these child workers, as Table 4 indicates, 16.9 per cent are scheduled tribes and this proportion is 1.7 times more than their share in the population for this age group; 17.6 per cent are scheduled castes, which is almost equal to their share in the population for this age group; the remaining 65.5 per cent of child workers are from other castes. Gender-wise share of workers indicates that, except for the scheduled tribes, the
A recent report by Bachpan Bachao Andolan (hereafter, BBA, 2013) mentions that the census figures on child labour are underestimates. Based on the non-governmental organisations working in this area, they estimate that child labourers are likely to be around 6 crores. Further, they point out that many rescued child labourers are enrolled and marked present in their village schools when they were employed and working in a different location. Another earlier study by BBA (2011) based on a survey in 251 schools of 33 districts in nine states indicates that 24 per cent of the children drop out from schools, education is not completely free-20 per cent of schools charge fees during admissions and 40 per cent charge for other study material, only textbooks are provided in 37 per cent of schools (no free notebooks, uniform and bags), 16 per cent schools do not have any drinking water facilities and 33 per cent have no separate toilets, there were no school management committees that are entrusted to prepare a school development plan and monitor its functioning (including fund utilisation) did not exist in 50 per cent of the schools.

In another study, Rustagi (2013) points that over the years, increased physical and financial inputs have improved educational attainment reducing disadvantages of socially excluded groups, the girl child or those in remote locations. However, the study also suggests that one needs to go beyond achieving targets of increasing enrolment and reducing dropouts, that the identity of schools should go beyond mid-day meals, that the emphasis should be on the quality of education and knowledge imparted, and that the opportunity cost of an economically vulnerable household also needs to be addressed.

To be consistent with the Right to Education, the Child Labour (Prohibition and Regulation) Amendment Bill, 2012 calls for banning employment of children below 14 years in any occupation

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### Table 4

Social Group wise Share of Workers and Population by Gender and Gender wise Share of Workers by Social Group in India, 2011

<table>
<thead>
<tr>
<th>Social Group</th>
<th>Gender</th>
<th>Children (5-14 years)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Social group wise</td>
<td>Gender wise</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Share of workers</td>
<td>Share of population</td>
</tr>
<tr>
<td></td>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
</tr>
<tr>
<td>Scheduled</td>
<td>Male</td>
<td>15.1</td>
<td>9.6</td>
</tr>
<tr>
<td></td>
<td>Female</td>
<td>19.2</td>
<td>10.1</td>
</tr>
<tr>
<td></td>
<td>Persons</td>
<td>16.9</td>
<td>9.8</td>
</tr>
<tr>
<td>Scheduled</td>
<td>Male</td>
<td>17.7</td>
<td>17.6</td>
</tr>
<tr>
<td></td>
<td>Female</td>
<td>17.4</td>
<td>17.8</td>
</tr>
<tr>
<td></td>
<td>Persons</td>
<td>17.6</td>
<td>17.7</td>
</tr>
<tr>
<td>Scheduled</td>
<td>Male</td>
<td>67.2</td>
<td>72.8</td>
</tr>
<tr>
<td></td>
<td>Female</td>
<td>63.4</td>
<td>72.1</td>
</tr>
<tr>
<td></td>
<td>Persons</td>
<td>65.5</td>
<td>72.5</td>
</tr>
<tr>
<td>Total</td>
<td>Male</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td></td>
<td>Female</td>
<td>100.0</td>
<td>100.0</td>
</tr>
<tr>
<td></td>
<td>Persons</td>
<td>100.0</td>
<td>100.0</td>
</tr>
</tbody>
</table>

Source: Census of India 2011, Table B1, Table B1-ST and Table B1-SC
and prohibit employment of those aged 14-18 years in hazardous occupations. With a child rights activist from India receiving the Nobel peace prize in 2014, it will be a fitting tribute that this Bill is soon made into law.

Almost everyone would have come across children being employed as domestic help or in roadside eateries. Many a times the arguments in favour of such arguments point out to a philanthropy motive of the employer because in its absence the child might not have got enough access to foods and would have probably remained malnourished. Or, because the arrangement is mutually beneficial because a relatively poorer entrepreneur employs a disadvantaged child and the consumer gets a cheaper meal. Hidden in the philanthropy or the social win-win arguments are the subtle forms of exploitation that take advantage of someone’s vulnerabilities and the greater social evil that everyone is a part of. There are no two arguments that such a society is worse-off than a society that does not have any child labour. In some sense, a society where a child ends of working and not going to school is also because the adults who should be taking care of them do not earn enough and face disadvantages in their work. We now raise some issues on discrimination against workers.

4.4 Discrimination against Workers

Discrimination against workers can be manifested through gender, caste, and religion among others. They can take myriad forms: working without a proper contract, not being eligible for paid leave, having no social security benefits, and the nature of employment being temporary among others. NSSO (2014b) elucidates some of these facets of for those informal workers engaged in non-agriculture and other agriculture (excluding crops grown). One observes the following:

- the proportion of workers without a written job contract is 78.9 per cent (64.7 per cent for regular wage earners or salaried and 96.6 per cent for casual workers);
- the proportion of employees not eligible for paid leave is 71.2 per cent (50 per cent for regular wage earners or salaried and 97.7 per cent for casual workers);
- the proportion of employees not eligible for any social security benefit is 72.2 per cent (55.5 per cent for regular wage earners or salaried and 93.3 per cent for casual workers); and
- the proportion of temporary employees is 42.1 per cent (27.7 per cent for regular wage earners or salaried and 60.2 per cent for casual workers).

Looking into the period of booming economy (1999-200 to 2009-10) Ramaswamy and Agrawal (2013) show that in urban India the services-led growth benefitted skilled workers, particularly women. However, the services sector also showed greater duality in terms of informality as also in wage inequality. What is more, the social security conditions neither improved over time nor were they relatively superior in the services sector when compared to the manufacturing sector. While looking into job contracts that were for three years or more the situation seems to have worsened.

In 2011-12, one also observes gender-wise differences in average earnings in rural and urban regions for regular wage earners when one controls for educational category and also for casual labourers after controlling for work types (Table 5). For regular wage earners, the average female earnings as a proportion of female earnings are 69 per cent in rural India and 78 per cent in urban India. The difference is the least for Diploma/Certificate and if one excludes this category then the differences decrease with increase in educational attainment.
These differences persist for the regular wage earners even after bringing in additional controls of age and industry division or type of occupation (NSSO, 2014a: 520-531). Similarly, the differences also persist for casual labourers when one brings in additional controls for age, industry division, and sub-round of survey (NSS), 2014a: 532-543).

Table 5
Gender-wise Average wage earnings in Rupees for Regular Wage Earners of age 15-59 years by Different Educational Categories and for Casual Labourers by Different Work Types, 2011-12

<table>
<thead>
<tr>
<th>Category</th>
<th>Rural</th>
<th></th>
<th>Urban</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Male</td>
<td>Female</td>
<td>(%)</td>
<td>Male</td>
</tr>
<tr>
<td></td>
<td>(1)</td>
<td>(2)</td>
<td>(3)</td>
<td>(4)</td>
</tr>
<tr>
<td>Regular Wage Earner</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Not literate</td>
<td>174.4</td>
<td>89.3</td>
<td>51.2</td>
<td>207.7</td>
</tr>
<tr>
<td>Literate &amp; upto Middle</td>
<td>202.5</td>
<td>104.3</td>
<td>51.5</td>
<td>237.2</td>
</tr>
<tr>
<td>Secondary/H. Secondary</td>
<td>319.5</td>
<td>180.0</td>
<td>56.3</td>
<td>358.5</td>
</tr>
<tr>
<td>Diploma/Certificate</td>
<td>450.3</td>
<td>428.7</td>
<td>95.2</td>
<td>524.3</td>
</tr>
<tr>
<td>Graduate &amp; Above</td>
<td>550.2</td>
<td>377.9</td>
<td>68.7</td>
<td>805.5</td>
</tr>
<tr>
<td>All</td>
<td>322.3</td>
<td>201.6</td>
<td>62.5</td>
<td>469.9</td>
</tr>
<tr>
<td>Casual Labourers</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Public Works (NREGA)</td>
<td>127.4</td>
<td>110.6</td>
<td>86.8</td>
<td>NA</td>
</tr>
<tr>
<td>Public Works (Others)</td>
<td>112.5</td>
<td>102.0</td>
<td>90.7</td>
<td>NA</td>
</tr>
<tr>
<td>Other Works</td>
<td>149.3</td>
<td>103.3</td>
<td>69.2</td>
<td>182.0</td>
</tr>
</tbody>
</table>

Source: NSSO (2014a: 118, 121)

A study of recent entrants to engineering colleges, business schools and higher civil services by Krishna (2013) points out that the factors that act as an hinder social mobility are: rural upbringing, parents employed in agriculture or as homemakers, relative poverty, and parents’ (especially mothers’) lack of high school or college education. Over the years, there is improvement in the number of students who are women, scheduled social groups, or whose parents are agriculturalist. However, they are most likely to be from an urban setting or at least studied in schools and colleges located in urban areas, and hence, are likely to be from relatively better-off households.

The large majority of informal workers do not have minimum working conditions. They work in an easy to hire and fire mode and without any social security provisions. The job growth linked to the economic growth does not necessarily reduce informalisation or improve social security conditions. Further, there are wage differential because of gender and other considerations and social mobility is limited.

4 Concluding Remarks

An informal worker makes substantial contributions towards the economy. Further, there are important productivity linkages not only within the unorganised sector, but also between unorganised and organised sector (Bhalla, 2003). There is an increasing incidence of informalisation of the

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7 The crisis in Indian agriculture is discussed in Mishra and Reddy (2011) and Reddy and Mishra (2009) among others. On farmers’ suicides see Mishra (2014).
workforce even in the organised sector. In this context, the rights of the informal worker are important. The four fundamental principles and rights are work provide an important starting point. These principles are not only pragmatic, but could also be interpreted from a Rawlsian perspective that adds to our understanding of their underlying relationship, and they are also echoed in the Constitution of India through different Rights and Directive Principles. However, we need to go beyond them.

For instance, our evaluation of existing data shows that about 80 per cent of the workers place of work does not have any association or union. This limits their opportunities to organise among themselves. The existence of modern day slavery through debt bondage and trafficking for sexual exploitation is a matter of concern. Children are particularly vulnerable, but what is appalling is the hypocrisy of justifying everyday forms of child labour as do-good to mask the greater social evil.

Providing for minimum working conditions and provisioning for social security is as important as are specific requirements for each category of workers – agricultural labourers, farmers, or for the broad spectrum of non-agricultural workers including hawkers and street vendors, and domestic workers among others (NCEUS, 2007). Equally important is strengthening the data base for this sector (Government of India, 2012), in all its facets, as it will help our understanding and help take informed and reasoned decisions.

References


Postscript to

Informal Workers and their Rights

Srijit Mishra

Postscript added: 31 January 2015

After the paper was submitted, I received comments from a colleague (Ramaswamy, 2014), which raise important questions on the need to address issues of policy implications that was missing in the paper. This would need further work, but I thought of sharing the concerns raised. For instance, what ought to be the modalities to organise the self-employed and casual workers who constitute 89 per cent of the informal workers. Further, self-employed is a wide spectrum that includes among others the medical practitioners who are well organised and this diversity should be taken into consideration while coming up with strategies to organise these workers. SEWA’s role in organising some of the informal workers needs to be applauded (also see Chatterjee, 2014), but one ought to come up with schemes and conditions that would facilitate replicating and scaling-up of such initiatives. It is equally important to articulate the role of the state and political parties in making this effective. Similar issues can also be raised to prevent modern day slavery, do away with child labour (Satyarthi, 2014), and stop discrimination against workers. A related concern that has been beyond the scope of the current exercise, but one that needs to be borne in mind, is the intertwining of the vulnerabilities of the informal workers with that of their gender, caste, class and other identities.

References


Ramaswamy, K. V. (2014) Personal communication commenting on an earlier draft.