**COMMENTS OF NHRC, INDIA**

Sub :   **Call for inputs: A/HRC/43/7 “the Right to Work”**

The National Human Rights Commission since its inception has been dealing with the issues related to civil, political, economic, social and cultural rights and making all out efforts for realization of these  rights to the maximum. The role of NHRI India on the issue of bonded labour is an example to it. The Supreme Court of India has delegated  the task of observing and implementing the mandate of the Bonded Labour System (Abolition) Act, 1976 to the NHRI India which has resulted in rescue and release of millions of bonded labourers including women and children and their rehabilitation by the State authorities. As per the National Human Rights Act, 1993, human rights are defined as follows:

*2. Definitions. —(1) In this Act, unless the context otherwise requires,- (d) “Human Rights” means the rights relating to life, liberty, equality, and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.*

This is the defining premise of Human Rights in India. The submission in this regard is that the Right to Work is covered by the premise – ie, within a premise wherein *“life”, “liberty”, “equality”* and *“dignity”* are non-negotiable and essential to an imagination of labour in India.

The Human Rights Council Resolution 43/7, adopted on 19 June 2020 has several important portions that highlight a fundamental challenge to our understanding of *“work”*, labour, and its distribution.  For instance, in the initial paragraphs, it has been detailed that,

*”Recognizing also that, on the one hand, the development of automation enabled by advanced technologies, including robotics and artificial intelligence, brings the promise of higher productivity, job creation, better services and improved well-being, while on the other, it entails challenges that may have a broader impact on*

*jobs, skills, wages and the nature of work itself that may vary widely across different regions and within countries,..”*

The aforesaid paragraph is helpful in understanding the Council’s concerns on Right to Work. The Council’s concern with automation and industrialization hampering the ability of people to work is directly commensurate to their ability to exercise control over capital that they would accumulate if they laboured; however, digitization and industrialization have impacted the ability of people to labour for wages. However, this conception of labour necessarily looks upon *“wages”* as a means for persons to have productive and enjoyable lives, rather than an equitable distribution of the gains made by automation. Such a conception is difficult to translate in action with a neo liberal understanding of the distribution of wealth and labour; wherein automation is seen to be an impediment to access resources for some, rather than the private ownership of the means of such ownership.

It has to be understood that the private ownership of automation and production has direct consequences on the life and liberty of those who indulge in wage labour. The dilemma surrounding automation and industrialization is one that is not new; the 19thLuddite movement,  where the automation of the spinning wheel in mills led to wide spread rioting in England is indicative of the inherent dissonance between capitalism and technological advancement. The issues related to Right to development, gender equality, empowerment of  women,  social justice have become more important in the era of globalisation and further more during the pandemic COVID-19 where millions of people have lost their jobs and are on the verge of starvation. There is  imminent threat on the front of human trafficking and the most  vulnerable groups of the society including the women and children are made to suffer in silence. The private entities and the corporations are rigorously indulged in the tactics of hire, hang and fire. Under such a situation, if proper safeguards are not taken, it will be very difficult to realise the goals as set out in 2030 agenda for sustainable  development. The Govt. of India has taken several initiatives to ensure that the workforce is able to enjoy just and favourable conditions at their workplace and that they get fair wages and equal remuneration for work without any distinction. The Governments at the national level and at the State level have launched several social welfare legislations to address the issues of unemployment, social security, Right to Education and also encouraging the Pvt. sector with the policies of ease of doing business.

Skill development programmes have been launched across the country to empower the unemployed youths. The sexual harassment  committees are in place at the workplaces to instill sense of security among the women workforce and the NHRI India has taken various initiatives as well on this behalf. The Govt. has given serious consideration on the following labour laws in order to safeguard the interests of the labour force:-

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| LegislativeAuthority | Legislation |
|        Central Law | The Factories Act, 1948 |
| Industrial      Employment       (StandingOrders) Act, 1946 |
| The Minimum Wages Act, 1948 |
| Payment of Wages Act, 1936 |
| The Industrial Disputes Act, 1947 |
| Employees Provident Funds andMiscellaneous Provisions Act, 1952 |
| Payment of Gratuity Act, 1972 |
| The Payment of Bonus Act, 1965 |
| Maternity Benefit Act, 1961 |
| Workmen Compensation Act, 1923. |
| Equal Remuneration Act, 1976 |
| State Law | Shop & Establishments Act |

It is pertinent to mention that the Indian Courts have co-opted the understanding of wage labour. Accordingly, in *Olga Tellis & Ors. v Bombay Municipal Corporation & Ors. (AIR 1986 SC 18)* it was held by the Supreme Court of India, which addressed the issue related to Right to Work to be an integral component of the right to life. For if a person is deprived of his right to livelihood he shall be consequently deprived of his right to life, for life- as enshrined under Article 21 of the Indian Constitution, means more than mere animal existence. Therefore, by judicial interpretation, the Apex Court of India has categorised Right to Work as the integral part of Right to Life making it justiciable.

Further, with the leaping advances in artificial intelligence, such   an understanding of labour and the gains made by humanity collectively in advancements of technology needs to be altered. A life that is *“equal”* in *“dignity”* for all human beings is impossible if their access to  resources is not; the access to common resources cannot be premised upon an ability to participate in the process of production at a time when technological advancement has rendered human labour expensive and undesirable for large part and the problem is visible during the  pandemic COVID-19.

Now moving to the understanding of labour, equality and dignity which is reflected in Resolution 43/7 of 2020 is very much relevant. For instance, paragraph 13 of the Resolution –

*“13.   Notes with concern that, according to the most recent report of the International Labour Organization, Global Employment Trends for Youth 2020, although there has been a modest economic recovery, youth unemployment remains high and employment quality a concern, and young people are three times as likely as adults to be unemployed, which constitutes a serious global problem;”*

This paragraph has several concerning portions. They are detailed as follows:

1. Firstly, the distinction between *‘youth’* and *‘adult’* employment is indicative of the Council’s acceptance that children ought to engage in wage labour. This has serious implications towards the global advancements made towards eradicating child labour that can often work to detriment children’s physical and mental development in addition to hampering their access to education.
2. Secondly, the concern with the discrepancy in *“employment quality”* between children and adults indicates a linear  concern that is uninformed of the skill set that adults often bring with themselves by means of experience, technical training, education and complete physical and mental development. Consequently, the work allocated to adults is reflective of these skills.  It  is difficult for children to meet those parameters simply by virtue of the time required for these parameters to be met; noting the

discrepancy between the quality of labour adults and children are entrusted with only seeks to widen the expectations from child labourers. The procedures and strategies in place for identification, rescue, release and rehabilitation the victims of forced labour in particular the women and children needs to be revisited.

The focus on the Council should be on proper rehabilitation of the victims instead of focussed on the element of wages or compensation alone provided for their labour. If the tenets of *“equality”* and *“dignity”* are to be realized effectively, the labour performed by children should  be compensated fairly and adequately. The focus should be on the overall development of the child victims. Therefore, children and also women ought to be treated equal to adults in terms of their wages and entitlements. They should also be treated with dignity and respect at their place of employment This is essential in light of numerous reports of forced child labour, exploitation of labour including sexual abuse in labour intensive industries such as fast fashion, agriculture, real estate sector, construction industries etc all across the developing and the developed world. The tendency of this Resolution to overlook unequal distribution of wealth as a cause of concern and instead focus on its effects is indicated throughout the Resolution. In paragraph 14, for instance, the Council notes that:

*“14.    Expresses deep concern that inequalities are widening and there are not enough jobs, including quality jobs, and emphasizes that full and productive employment and decent work for young people play an important role in their empowerment and can contribute to, inter alia, the prevention of extremism, terrorism and social, economic and political instability, thus contributing to sustainable development and peace;”*

Firstly, “quality jobs” is an undefined term. Assuming that “quality jobs” refers to a form of labour that provides intellectual stimulation, the Council’s focus is woefully uniformed about the global and collective divestment from research and development in technology and social development over the past few years in favour of increasing production capacity to generate wealth. An indication of the same is the planned divestment from public universities in nations like India in favour of technical training institutions.

Secondly, *“full and productive employment* “is again an undefined term. If the “young people” referred to in Paragraph 14 are the same as the ones referred to in Paragraph 13, then they definitively refer to non- adults, i.e., children. The Resolution’s concern for children not receiving *“full and productive employment* “is alarming. Child slavery and child employment are noted to negatively impact people’s physical and  mental development, in addition to adversely impacting their ability to access education and training. This can further detriment their lives as well-adjusted members of society.

Thirdly, the Resolution refers to extremism, terrorism, and social, economic, and political instability with a lack of jobs is neoliberal and counterproductive. With the automation of even industries that were traditionally associated with human labour such as the service industry, it has become imperative to embrace and celebrate technology that reduces human labour and effort. Extremism, terrorism, and social and political instability could be products of deprivation or resources or radicalisation, rather than unemployment, which serves only as an intermediary to the distribution of resources and wealth. Therefore, it is essential to distribute the gains made from technological advancement equitably to prevent extremism, terrorism, and social and political instability, rather than forcing people to participate in exhaustive and laborious processes of production. This is likely to better affect  the larger goals of liberty equality and dignity as enshrined in the Human Rights Act of 1993 in addition to making *“work”* and *“labour”* more rewarding for those who perform it. The NHRI India is dealing with various issues as discussed above on continuous and regular basis by dealing with the individual complaints and efforts are being made to redress grievances of the victims to their large satisfaction. In addition  to the above, the NHRI India is also conducting various awareness programmes including the training programmes for the stakeholders connected to the issue.

            Further, the makers of Indian Constitution were very much aware of the issue of work force having the history of colonial era, when Indians were subjected to draconian laws and arbitrary executive actions causing exploitation, discrimination, gender inequality and unhealthy working atmosphere and accordingly, in the Directive Principles of State Policy, two important Articles have been inserted to ensure Right to work as well as just and humane condition of work.

          Article 41, inter-alia, states, the State shall within its limit of its economic capacity and development, make effective provision for     securing the right to work and to public assistance in cases of unemployment.

          Article 42 provides, the State shall make provision for securing just     and humane conditions for work.

          NHRC's inputs to concept note of right to work must be elaborated with the constitutional provisions so as to establish the fact that governance in the country, which is based on the Directive Principles of State Policy, is cognizant of the very basic fundamentals of Right to Work.

          Lastly, it is added that Article 23 of the Constitution of India, which is a Fundamental Right, clearly prohibits any kind of forced labour to any human being, any contravention of it shall have penal consequences under the domestic law.  Similarly, Article 24 prohibits employment of children below the age of 14 years in factories or mines or any other hazardous employment.

          Domestic law has been enacted in this context viz. The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986.

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