

Labour Law & Social Security in Nepal

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Background

Since Nepal is one of the least developed countries of the world, the process of socio-economic development is far behind in comparison to others. Agriculture is the major occupation in a dominating position, which alone contributes 40.2 per cent of the GDP and provides employment to 81 per cent of the labour force, while industry & services engage 2.7 & 16.3 per cent of the labour force in Nepal. But agriculture is based on traditional technology and the nature of the employment in it is mainly self-employment. Actually, the labour force in wage employment in Nepal is 21 per cent, whereas self-employed labour force is 79 per cent. This dominance of self-employment and informal sector was much more significant in the past. Therefore, the development of labour legislation in Nepal had been very slow. It is only after 1990, particularly after the reinstatement of multiparty democracy in Nepal that the fast growth of trade union organizations and other types of organizations could become possible in the new open environment. As a result, the collective voice for the rejection of the old outdated labour law Factory & Factory Workers' Act 1959 was recognized and has been replaced by the new one, i.e. Labour Act 1992. Similarly, in order to ease and rationalize the organizational activities, Trade Union Act 1992 has also been enacted. Consequently, Labour Regulations 1993 & Trade Union Regulations 1993 have also been brought out to implement the objectives and provisions of the two Acts. Others are Bonus Act 1973 and Foreign Employment Act 1985 in this regard.

Labour law in new perspectives

Although the labour laws in Nepal have been formulated and enacted recently, our socio-economic backwardness is reflected in it in the sense that various essential & progressive provisions are still not included therein. Effort has been cantered to formulate a labour law to include workers of all sectors, but, in reality, it is incomplete for every sector.

The Labour Act 1992 is formulated keeping in view only the formal sector workers and hence the huge workforce of the country in unorganized informal sector has been excluded & neglected. Moreover, the weak labour administration & government mechanism has been found ineffective in the implementation and enforcement of a number of provisions of the law. Even the minimum wages determined by the tripartite Minimum Wage Fixation Committee have not been enforced widely & effectively. Clear & complete provisions are still lacking in connection with methods & mechanism for the enforcement of decisions and of collective agreements reached under the law. In the absence of systematic, concrete and dynamic labour policy, labour legislation in Nepal has not been able to address the problems and issues in this regard. Therefore urgent need is to formulate, amend and extend the coverage of the labour laws in a simple, adequate and comprehensive manner.

Because of the increasing speed of liberalization in our country, threat to the interests of the working masses has increased manifold. The job-security & employment-security are heavily endangered. Formal sector, too, is being formalized through the subcontracting of work and subcontracting of labour. In the name of gaining competitiveness, cost minimization and comparative advantage in international trade, the responsibility of sacrifice and the entire burden is hastily being shifted to the workers. Unfortunately, the government is facilitating the employers and the market instead of shouldering its social responsibility for the working masses. This tendency is mainly visualized in carpet and garment industries, the major export sector in Nepal. But legal provisions do not protect workers in this condition.

With the blind and haphazard privatization of Public Enterprises, both the production and employment have been adversely affected. Though there is no mass retrenchment, slow group retrenchments have been observed. From Privatized public enterprises, 19.8 per cent of the workers have already lost their job and many others are waiting for the same. The extent of permanent workers is gradually going down and the number in contract & casualization is sharply increasing. The vast majority of workers is in informal sector which is unprotected and neglected by the labour laws. Only 10 per cent of the work force under the wage employment is in formal while 90 per cent is in unorganized sectors of the economy. With offensive policies of globalization, this low proportion of the formal sector is endangered to further deterioration

pushing new entrants of the labour market to informal sector. The conditions in informal sector are miserable and danger is of further & additional misery. The long working hours, low payment, the widespread use of child labour, existence of bonded labour in the form of Kamaiya system, gender discrimination in wages & terms of employment, no minimum wages in unorganized sectors and non existence of any social security measures are the basic characteristics existing at present in informal sector.

Therefore, the need is to protect formal sector workers from being informalized and to minimize the adversities of the informal sector workers to the possible extent. This requires strong national resistance movement against the adversities of globalization in favour of the entire working population of the country. The building up of the movement is not possible without proper mobilization of informal sector workers, mainly the vast majority of the rural and agricultural workers. Thus, unionization of informal sector with more emphasis to rural and agricultural wage earners simultaneously with the policy intervention by trade union confederation for labour law revision may give favourable result in this regard.

Social security: existing scenario

In countries like Nepal, where mass poverty has become a common phenomenon, active state intervention is necessary. Without strong, well-determined and committed state intervention, returns of the economic growth & increased productivity never go to the weaker sections of the society. State protection of workers both in formal & informal sectors through labour law, strict enforcement and other socio economic measures is inevitable in Nepal. The most important is the social security system in this connection. Through social security measures and wide network & coverage, government can play vital role in this regard. But the scenario in this respect in Nepal is quite frustrating and while over viewing the situation, we may encounter a gloomy picture.

In Nepal, wage structure is very weak and limited. Incentive earnings are very few and limited to a few enterprises. Fringe benefits like residence facility or allowance, Medicare, educational facilities for the children, transportation, ration, child care centres, entertainment, life insurance, credit facilities etc. are limited to a few establishments and are far from the access of the workers of most of the industries and services. In short, additional to the basic wage/salary are negligible. Wage indexation is also

a dream like element in our realities. Therefore, social security system has become more relevant and urgent in our case. A combination of social welfare and social security covering the whole working population can combat the problems created by acute poverty in our country. While reviewing the statistics from 1977 to 1996, we find that poverty is increasing. It was 36.2 per cent in 1977, 42.5 in 1984-85, 40 in 1990 and 45 per cent in 1996. Comparing the situation with our south Asian neighbours, the percentage of poverty is in a declining trend in Bangladesh, India and Pakistan, but not in our case.

A few provisions of social security have been included in the Labour Act 1992. Among them are sick leave, maternity leave of 45 days, workmen's compensation, provident fund & gratuity as the old age benefit, and some OSH provisions. Besides, Childcare centres, canteen and welfare officer in every enterprise are other provisions. But this Act covers the establishments with more than 10 workers & the industrial estates and hence too limited in its coverage. Moreover, the responsibility of these provisions is solely left to the employers. The schemes of social insurance or security based on funds created by the tripartite contributions of workers, employers and the government are non-existent. Thus, we are in a phase of infancy with regard to social security.

An initiative was taken by UNDP/ILO in Nepal to establish and extend social security system under a project 'Social Security Planning & Administrative Reform'. It was a good research producing fair recommendations. As a result, the Ministry of Women & Social Welfare is trying to develop 'National Pension Scheme'.

The present labour law has not visualised the high positive effect of social security in productivity improvement. Outside the organised sector, nothing mentionable can be found in relation with social security or welfare. The single provision through annual budget is the provision of Rs.100 (USD 1.5) per month as the old-age allowance for the senior citizens above the age of 75 years and widows above 65. The Non Government Organisations are active to extend social welfare measures among the disabled persons, but organisations active for the social security of working population are not in existence. Trade unions have raised voices strongly for social security, but most of them have not launched any scheme on their own. General Federation of Nepalese Trade Unions has started an emergency fund scheme which might be considered a milestone in this respect. The scheme has become highly

popular among its members. Similarly, Independent Transport Workers' Union of Nepal (one of the GEFONT affiliate) has been able to operate Accident Fund successfully for its members.

Anyway, revision of labour law in order to establish a system of contributory social security fund and to launch various diverse schemes is extremely necessary. It is important also for the effective alleviation of poverty. The existing labour law has not tried to establish any system for social security. There are no provisions on occupational diseases. The provisions are specified in accordance with the degree of disablement and the injury in connection with workmen's compensation, but these provisions are salary-based, not based on age factor. Loss of earning capacity must not be tied only and strictly with wage/salary, which is a serious lacuna in the existing provisions of Labour Act. Similarly, the present legal provisions treat gratuity and retrenchment compensation as alternatives to one another. It is a wrong understanding and needs to be corrected.

Thus well-organised social security system for us is inevitably important in order to enter 21st Century. For the purpose, a sound labour law structure in combination with labour-friendly socio-economic policies & measures are essential at present.

Finally, it is to be noted that the policies of liberalisation have caused deductions in social expenditures. Even the state expenditure in education and public health is being curtailed, at the same time the burden of the foreign debt has constantly increased. Hence, the hardships and difficulties of the working population have increased tremendously. The major consequences have been observed in the deteriorating living standard. Since the market deregulation has removed restrictions on prices, cost of living has increased. On the contrary, real wages and hence the real incomes have declined. Thus, one-way emphasis to productivity is practically insufficient to solve our problems and redistribution through sound labour legislation & comprehensive social security system is the requirement at present.

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