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**Workers in the Organised Sector of Construction Industry:
Working Conditions of Women Workers and the
Effectiveness of Legal Aid**

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Abstract: The article aims to review literature on construction industry and status of women workers within the industry. This literature on construction industry in India is disintegrated along regions and issues concerned. For instance, a group of scholars focuses on working conditions of women construction workers, another group of scholars highlights living conditions of migrant workers in construction industry. Some have studied health and occupational hazards related to construction working sites. It is to be noted that major section of the primary researches done is at the construction site in the urban sphere, also known as place of destination for migrant labour. These sites are located in big or metro cities or at the outskirts of these cities. This paper brings out some common characteristics of women's work and their working conditions cutting across all the regions in which construction sites are studied in the existing literature. The paper also aims to review legal framework in India that directly or indirectly covers construction workers and adhere to their rights as workers. In the following article, section I describes the profile of the construction Industry; section II lays down characteristics/ issues and challenges faced by women workers at construction sites in detail wages and working conditions, living conditions of the women workers, occupational hazards; and section III discusses various laws covering construction workers and its effectiveness in rendering benefits to the workers till date. The articles ends with a conclusion.

Section I: A Profile of Construction Industry in India:

In the last few decades, the biggest increase in non-agricultural employment has been in construction, both rural and urban, from a total of 17 million in 2000 to 50 million in 2011-12. In 2011-12, 51 million workers were employed in construction. 26 per cent of them are employed in urban areas; 11 per cent are women; 7 per cent children (aged 18 years or less) (Mahajan & Nagraj, 2017). A recent study of structural changes in the Indian economy has shown that while the share of manufacturing in the country's GDP peaked in the mid 1990s, between 2002-03 and 2007-08 (i.e., the most distinctive phase of India's growth) it was construction that was the driving force behind the increased share of industry as a whole in India's GDP with 2007-08 marking its highest

ever point (Mazumdar 2010).¹ The size of the construction industry is growing at a high rate so much so that for every 1 million rupees spent on construction activities, it was estimated that 3,000 man-days of skilled and semi-skilled labour and 1,300 man-days of managerial and technical employment would be generated (Raftery, Anson & Chiang, 2005, pg. 138).

A striking feature of this phase of growth in construction activity is the increasing weight and importance of more mechanized and scale activities by the organized sector, and particularly the private organized segment, that is apparent to even a casual observer². But what is most remarkable is the substantial jump in the profits of organized sector construction relative to the earnings of the unorganized that has characterized this particular phase of growth. Where the organized sector accounted for 48.7 per cent of the total operating surplus/mixed income (OS/MI) from construction in 2003-04, its share jumped to 71 per cent by 2007-08, dipped to 60 per cent in 2008-09, but again moved up to 66.4 per cent the following year.³ Since the public sector showed negative figures for operating surplus throughout the same period, it is clear that the entire organized sector surplus was concentrated in the private sector. In contrast, when it comes to compensation for employees (CE), the private organized sector's contribution is only marginally more than that of the public sector, while the contribution of unorganized sector outstripped the entire organized sector by a large margin.⁴ The unorganized sector's share of the total compensation for employees in construction in this period ranged from a lowest point of 62.6 per cent in 2005-06 to a high point of 74.79 per cent in 2008-09.⁵ Such a large share is of course based not on higher wages, but only because of the much larger and increasing numbers of workers that are concentrated in unorganized sector construction (Majumdar, 2012).

The Study by Raj and Kapoor (2003, NA) on 'Relocating Space for Women Workers in the construction Industry' notes that "many world leaders in construction have already arrived staking claim on projects for building of petrochemical plants, refineries, factories, roads, bridges and metro rail projects. Highly technology smart and equipped with huge paraphernalia of latest machinery and construction methods, the entry of these companies is going to have far reaching implications for the domestic construction industry as well as the labour". Due to technological change in favour of capital and skilled labour and increasing mechanization of work, women workers are severely affected. It was estimated in 2002 by Jhabvala & Kanbur that the mechanization of the Indian construction industry would lead to a reduction in employment of 1.5 million- mostly unskilled- workers every year. At the public hearings on Impact of Globalisation

¹ Although services have been the prime driver of growth, since 2002-03 industry also moved into the high growth trajectory, particularly till 2007-08.

² The organized sector in construction activity is defined as construction works in the public sector and private corporate sector (Joint Stock Companies) as per the Central Statistics Office (CSO).

³ Operating surplus refers to a company's earnings/income before the deduction of interest expenses, taxes, depreciation, i.e., pre-tax profit income. Mixed income is used when operating surplus cannot be distinguished from wage income, for example, in the case of sole proprietorship/self-employed.

⁴ CE refers to the total remuneration, in cash or in kind, payable by an enterprise to an employee in return for work done by the latter during the accounting period.

⁵ Data source: National Accounts Statistics, 2011. See figures in Appendix for details.

on Women conducted by the National Commission on Women in Tamil Nadu in 2002, workers gave ample evidence of loss of jobs due to the introduction of Ready Mix Concrete and Poklain machines which has replaced women workers mainly from large construction projects (Madhok, 2005).

However, at the same time, the strength of skilled workforce in construction has dwindled substantially from 15.34% in 1995 to 10.57% in 2005, whereas relative proportions of unskilled workers have gone up from 73.08% in 1995 to 82.45% in 2005 (GOI, 2008). Simultaneously, the proportions of all other tiers of workers/employees/occupations in construction (engineers, technicians and foremen, clerks and skilled workers) declined across the same period. It is critical to note that in the repeated survey by Self Employed Women's Association (SEWA) in 2003, one of the major key findings was that the number of workers looking for work at construction sites in Ahmedabad had drastically increased in last five years. The major reason for large number of women workers to enter into paid work, as estimated by SEWA, could be loss of employment of male bread winners of the families in other sectors. Wages for skilled workers increased a bit in the span of five years however wages of unskilled women workers either remained same or decreased slightly. Irregularity of work seasonally increased and overall decline in employment opportunities were observed (Baruah, 2010). While construction workers as a whole are known to be an exploited category of workers, women workers within this category are subjected to more intense form of job insecurity, and absorb the major brunt of fluctuations in labour demand (Mitra & Mukhopadhyay, 1989).

Who makes the labour of construction sites at urban cities? There are few theories of how and why women migrate to cities for work in construction industry. Most of the migrant workers who come to cities for work in construction sites are landless labourers from rural areas or own the least land. Social networks play important role in the migration process from rural to urban areas. Due to the change in demographic picture and increasing unemployment, poor economic conditions of the family and distress in agriculture, more number of workers from 'forward' castes are also coming to work in these sites, however, the number of workers from Scheduled Caste and Tribes in the workforce remain significant (Manohar, Shobha & Rao, 1981; Madhok, 2005; Acharya & Reddy, 2016). Women are mostly of the age group 18-40 years, however, at some places women up to the age of 60 are also seen working.

In a study by Mosse, Gupta and Shah (2005), they have referred to migration for work at construction sites as a 'defensive survival strategy' in the context of Bhil migrants. The authors mention two conditions in which labour migrates to the cities. In the cases of relatively better off households with some minimum food security, young men migrate in turns as individuals to maximize cash earnings either to repay loan or to meet the need for investment in house, wells or marriages. They often migrate to manage inter-year fluctuations in farming. In the cases of poor households the whole family migrates for long periods who are tied into the relationships of dependence. Here, a good proportion of migrants are poorer, older and married women.

It is well established that the construction industry, whether public sector, private corporate, or unorganized, relies on a process of contracting and subcontracting, entailing a proliferation of intermediaries (Van der Loop, 1992). These include labour contractors who are the prime mobilisers of construction labour for both construction companies as well as individuals/households.⁶ In fact, the migrant labour depends mostly on their agents, brokers and contractors for work and their welfare, who are most of the time their 'intimate exploiters' (Mosse, Gupta & Shah, 2005) as labour departments, unions and the law have largely failed in protecting the vulnerable informal workers. Conventionally, construction workers used to come in groups through an acquaintance or a relative from the same village as of the workers, the acquaintance or the thekedar/labour contractor leads the group of workers to construction sites. Usually, men come first and then wife and the children follow. If the worker and his family is bound to the thekedar either through debt or remain attached then they also move from one construction site to another as the contractor moves. The contractor gets a cut from the daily wages of all the workers he has offered work to. In many cases, the contractor remains the only point of contact for the workers and their families even after many years of migration to the cities. If the worker is bound to the contractor, then the female worker is bound to her husband and also to the contractor through her husband. This category of construction workers consists two types- cyclical and permanent. Cyclical migrants are also known as seasonal migrants, who work in the city for few months and return either at the time of harvest or when they are needed at home. Permanent are those who came once and remained in the city ever after for years. Another category of workers who are not attached to the contractor and seek work by collecting at labour chowks or *nakas* where contractor takes them for work on daily basis (Dalmia, 2012).

According to the study of Acharya & Reddy (2016), primary reason for migration of women is marriage. Spatial movement of women mostly occurs to join their spouse so as to ensure timely and proper house-keeping, most of them migrate following the spouse who is already working as construction worker. In their study, they have found that both push and pull factors are responsible for migration of women workers. Main push factors are unemployment and poor economic conditions of the family which made 59% of workers to migrate. Most of them were landless agricultural labourers. 33% women migrated because their husbands were already working in construction industry in Delhi.

Section II: Women Workers in construction industry:

Women are employed in almost all the work related to the construction process, from foundation work to masonry and beyond. They help in removing over-ground materials once excavated, carry water, sand, jelly, cement mixture for foundation laying and concrete pouring etc., carry stones, bricks and tools required at the premises. Women also help in the erection of scaffolding by

⁶ The category of labour contractors should be seen as distinct from the sub-contractors involved in materials procurement, although they may coincide or be related in some manner, particularly in more small scale and unorganized segments of construction.

carrying centering materials, do the smoothening of surfaces with available local materials before concrete mixture is poured for roofings and once a structure is laid, do the curing operations etc (Joseph & Prasad, 1993; Anvekar & Manjunatha, 2015). It is to be noted that in all the studies, women are found in unskilled jobs; never get training in developing any skill. It is observed by the author that this is a big obstacle ahead of women workers in upward mobility. Only 1.4% of 8.5 million women in construction are in the top hierarchy (Mahanta, 2017). Construction jobs are considered male oriented, however, a large number of women work at the construction sites. SEWA found in its 1998 survey among construction workers of Ahmedabad that a large number of women never had any kind of training in construction work and were largely engaged in load carrying activities and other kinds of unskilled work (Baruah, 2010). There are certain common features of working and living conditions of women workers cutting across all the construction sites. They are discussed below.

Wages and working conditions of women workers

Women are taken as a reserve army, recruited when there is excess demand and retrenched when the work slows down. This is quite suggestive from the structure of the construction industry where women are never seen in skilled or semi-skilled tasks (Shramshakti, 1988; Mitra & Mukhopadhyay, 1989; Jhabvala & Kanbur, 2002; Baruah, 2010; Devi & Kiran, 2013; Anvekar & Manjunatha, 2015). However, when they work, it is observed that there are wage differentials on the basis of type of workers-(permanent or casual; local or migrant), gender and age within the group of workers who are doing unskilled job at a same construction site. Not only the wages are lesser than the minimum wages applicable in that area, they are lower than what the male unskilled worker doing the same task as the female does, gets at the same site. Several studies as discussed below note the difference.

Solanki & Zhankaria (2014) conducted a study in 2013 among 200 unskilled migrant construction workers in Surat, Ahmedabad where they have found that out of the total female workforce about 43% got the wages less than Rs. 200 on a daily basis. However, this figure was only 19% for male workers in the sample studied. Also, in the wage bracket of Rs 251 to Rs 300, 34% male workers and 12% female workers fall from the sample. It should be noted that women workers mostly comes in the lowest bracket of salary given to the workers. In another survey in Bengaluru, difference in wages of around Rs 100 to Rs 150 was found between unskilled male and female workers (Anvekar & Manjunatha, 2015). SEWA also found out that the wages women workers used to get were almost half of what male workers were getting. Lack of job security, want of more regular work and low wages are crucial features of kind of job done by women workers in construction sector (Baruah, 2010).

“In addition to problems like relatively lower wages, there are several other issues such as women are not given maternity leave; breastfeeding breaks; crèche or day care facilities at worksites” (Acharya & Reddy, 2015, pg. 9). Kids of the women workers either remain uncared for or they are

left in the custody of elder siblings who themselves are of the age not more than 10 or 11 years. Elder children are taken into the workforce as they provide unpaid or cheap labour, if paid at all. Contractors, who are supposed to provide these basic facilities at worksite for women workers, rather exploit them by delaying the payments (Rai & Sarkar, 2012), or in some cases where the worker is attached to the contractor from the village eats up a part of payment from the worker's share. The major force of workers at construction sites is from distant rural areas who become completely dependent on the contractor because they do not speak the local language and consequently are cut off from the local populace (Madhok, 2005).

Another form in which wage differentials are found is between the local and the migrant workers. Since, labour force in construction industry largely comprises of migrant labourers who work at lower wages than the local workers, contradictions among the working force benefits mainly the contractor. Child labour, contract labour, migrant labour, local labour are all pitted against each other at the construction site (Manohar, Shobha & Rao, 1981). In many states, migrant workers face the antipathy of locals as they are perceived as taking over local jobs at lower wages. In Kerala, migrant workers are being excluded from registration with the state welfare board. In Goa, the state government is actively discouraging the entry of migrant workers (Madhok, 2005, pg. 4). Aleyamma (2017) notes in her ethnographic study of construction workers of Kochi that there is a stark difference in wages of union workers and migrant workers (pg. 179). To her, viewing wages as a cultural relation and as a process provides insights into the political economy of work and the geography of migration that undergirds it.

Contractors and companies easily get away from paying equal remuneration and minimum wages as the process in which workers are taken into the workforce is highly informal (NCEUS, 2007). It is to be noticed that even in large government undertakings, huge numbers of workers are kept temporary for years together. No paper work exist when it comes to recruiting workers, while extremely detailed contracts are being signed between the principal employer and the various contractors spelling out the details and specifications of the work to be done and the materials to be employed. Workers are treated as invisible in the whole process, and therefore no set procedures are noted down for wages and working conditions (ibid). Highly informal way of recruiting workers on contractual or casual basis has also led to underestimated data of actual workers, payment of wages below minimum wage rate, and inadequacy of proper working conditions for workers working in the construction industry. Counting the number of women employed in construction sector is more complex, since the women do not receive wages directly from their employers. Their husbands or their fathers receive money on their behalf. Hence, the contractor's muster rolls and wage books do not have accurate information on them. Since women do not receive their wages directly, there is no consensus at one construction site about their daily wage rate (Dalmia, 2012).

This informalisation and casualisation of workforce further increases the insecurities and precariousness of work, more so in the case of women workers. Study in Kolkata construction sites

says that about 42 per cents and 22 per cents of respondents are working at site for more than 15 to 20 years respectively. However, the opportunity of work to these old labourers decreases overtime as employer prefer younger women as they are more agile and able to work harder” (Rai & Sarkar, 2012). Given the abysmal working conditions and low wages in the sector, as far back as the 1960s the study group on construction of the First National Commission on Labour had recommended de-casualisation of construction employment. The recommendation went unheeded. The Second National Commission on Labour, in 2002, observed that in quarries and brick kilns as well as big construction sites, a system of bondage exists and gets extended from one generation to the next through child labour. (Mahanta, 2017).

Women admit that they face harassment but are scared of admitting what type is prevalent in the workplace. More men (54.5%) than women (34.5%) agree that women face harassment at work and 45.7% of women construction workers are verbally abused (Kumar, 2013). It is substantiated by another study that reveals insecure nature of employment, particularly for women, creates a vicious trap in which women are forced to please a subcontractor in order to get work. “An extremity of demands of thekedars (contractors) can be estimated from the statement of the “Debi Sardar” (a 45 year old labour surveyed at Dhakuriya), in which she accepted that to get employment, she forced some another poor young girls to please contractors; as in turn contractors has promised her to provide regular employment opportunity and 20 per cents of extra commission on her wage for next whole year. Some report that they are exploited by thekedars both sexually as well as economically, many time such situation force them to leave the job. They are also reluctant to report about such safety problems, lest they can be tagged as a complainer, straining further their workplace relationship and destroying their employment situation” (Rai & Sarkar, 2012, pg. 48).

Women who could not cope up with the pressures, fell constantly ill or felt that they could not continue with the construction work, switched to other work. Most of them started working as domestic worker (Acharya & Reddy, 2015, pg.11) or shift to petty manufacturing or sewing (Mahanta, 2017). These home based occupations usually fetch lower wages than construction work.

Living Conditions

Women workers in construction industry are usually migrants coming from neighbouring or far-fetched places, mostly alienated to the culture and society they have come in and remain captured in the ghettos of their own. Unlike other workers residing in a permanent location, basic amenities of separate toilets for women and drinking water, proper housing is not a one-time task to ensure for migrant workers. For most of them, it is to be availed everytime the construction site changes. With this, centres for education and health facilities also change. Most of the children of migrant construction workers who live at the site rarely go to school. Workers usually do not have ration card or voter id at the place of destination that can facilitate other benefits or government schemes

(Rai & Sarkar, 2012). Therefore, highlighting these conditions is an important part while talking about challenges faced by women workers in construction industry.

Dalmia (2012) notices among the construction women workers of Gurgaon and Dwarka that women workers ‘live between the city and the village’ as they do not have any permanent place to live in, they change their accommodation from one working site to another as per the job available. Once the migrant workers reach their destination led by the contractor, they are settled in camps. “The camps consist of enclosed groups of 40-50 houses (jhuggis) sometimes with a common water connection for the whole camp. Facilities for health and education are by and large non-existent, and the contractors assume no responsibility for these although they are bound to by the Act” (Madhok, 2005, pg. 4). Anvekar & Manjunatha (2015) found that most of the women in their survey in Bengaluru reported that they felt culturally deprived to participate in the customs, rituals and festivals of their sects.

The empirical evidences in Acharya & Reddy’s (2016) study shows that ownership of assets improved after migrating, other aspects like space and housing deteriorated drastically. For “59.7% of respondents, there is a sharp decline in ownership of housing and space from the place of origin to the place of destination from 97.4% to 37.7% respectively. 45.30% women respondents live at the construction sites, in a tent or dilapidated temporary shelters” (pg. 8). It is substantiated by another study where it is found that most workers perceive their housing and living conditions as generally worse in the destination areas, however, working conditions, remuneration and availability of employment being better at the place of destination (Srivastava & Sutradhar, 2016). Only 5% have access to toilets, rest use open space. Further, temporary facilities are usually unisex, often without privacy. Sometime there is no sanitary facility available for women to use. In such cases, they either use open space or avoid drinking water on the job, risking heat stress and other health problems (Rai & Sarkar, 2012).

There are no education facilities on sites and access to schooling is a problem. Even if a child is admitted to a government school, retention in school is a problem if the parents are migrant workers. Those workers who have settled in a *busti* or *jhuggi* area in a city and commute to work daily are more likely to have school-going children. However, settlement does not guarantee an education, as the parents’ low wages and irregular employment frequently makes schooling unaffordable. Consequently, children start work on the sites as early as age ten, contributing substantially to the country’s pool of child labour (Madhok, 2005).

Occupational health hazards

According to the ILO report (2002), for every 1000 worker injured on construction site, 165 are injured in India. These injuries are largely due to carelessness and irresponsibility on the part of the contractor. Occupational hazards are specific to a particular sector where work is done in a certain manner and workers are not taken care of from the risks occurred during the working. In the case of construction sector, many physical and health problems arise specifically to women

workers due to their working conditions where they are not provided with safety wears and proper basic amenities.

In a study of eight construction sites in Ludhiana, Punjab, it was found that abrasions of skin, cuts, bleeds, eye injury, boils and numbness in the hands and feet of the women workers upto the age of 40 were rampant due to non coverage of head, hands and feet with safety wears (Bharara, Sandhu & Sidhu, 2012). Cough, regular chest pain, asthma, dehydration, cervical pain, sore throat and heat stroke are common to female construction workers (ibid, pg. 4). Besides, women were severely affected by urinary tract infections followed by weakness and generalized fatigue due to non availability of proper toilet facilities and thereby skipping drinking enough water throughout the day; miscarriage has also become usual in women who are carrying loads on heads during pregnancy (pg. 4). Similarly, Madhok (2005) notes that the majority of women construction workers fall into the reproductive age group and it is common for women to work right through a pregnancy if work is available. The hard work, poor living conditions and the demands of childbearing leave them in poor health (pg. 25).

Women workers are not provided with any safety accessories except helmet like safety belts, shoes, which make their jobs riskier. 93% of the 200 women respondents revealed that they have developed health problems after joining work in construction industry in a survey conducted in Benagaluru (Anvekar & Manjunatha, 2015). Besides, there is no provision for medical insurance.

Section III: Legal framework:

To ensure that workers are not being exploited and harassed at the hands of contractors and principal employers, there have been several statutory provisions to protect the workers within the Indian legal framework.

The Workmen's Compensation Act 1923, was set up to provide for the compensation during injuries/disablement etc., caused during work in the premises. However, the compensation never reached the victim on time because of long procedures and obstacles that delay the process. Employees State Insurance Act, 1948 formed to provide employee's medical benefits, sickness benefits, accident benefits, etc. on a contributory basis. Similarly, the Minimum Wages Act, 1948 was established to provide for minimum statutory wages in scheduled employments with a view to obviate the chances of exploitation of labour. Employees Provident Fund Act, 1952 was set up to provide the institution a fund where employer and employee contribute an equal amount. It extends to all establishments employing ten or more persons and covers all employees under the purview of the act. But this kind of fund is hardly instituted for the benefit of construction workers. Contract Labour (Regulation & Abolition) Act, 1970 was framed to provide just and humane conditions of work for contract labourer and to put them at par with regular employees. Payment of Gratuity Act, 1972 is a financial incentive in token of recognition of long years of service rendered by an employee, but this is not in practice in the case of construction industry.

No agency, however, has made any efforts in these directions. Then, in 1996, Building & Other Construction Workers (Regulation of Employment and Conditions of Services) Act, 1996 and Building and Other Construction Workers Welfare and Cess Act, 1996 were introduced. But the passing of an act alone does not take care of everything. Once an act is passed, it has to be notified. Subsequently, as per the procedure laid down in the two central Acts, an experts committee has to be set up to frame rules under the Act, the rules have then to be adopted, followed by translation into Hindi and local languages. The next step is to set up a Tripartite Board with representatives of the industry, the workers and the Government. A Cess Commissioner has to be appointed to collect the levy as per the Cess Act. Finally, employers and workers have to be registered with the Board. It is only when this infrastructure is in place that the workers registered with the Board become entitled to social security and welfare benefits. After the enactment of the two laws, initially, only six states moved towards implementation namely, Delhi, Tamil Nadu, Kerala, Gujarat, Pondicherry and Madhya Pradesh. Now, the board is formed in many States including Haryana, Uttar Pradesh, Andhra Pradesh, Karnatak and Bihar among many others. However, in most of the states, the implementation did not take place successfully. In some states, though the board has been formed but there is no registration of workers taking place. In other states the formation of the board is in its preliminary stage. The Supreme Court in its judgment on March 19, 2018 found out that in the year 2015, there were many schemes launched by the various States, such as 22 by Haryana Government, 17 by Himachal Pradesh and Maharashtra, 14 in Meghalaya and various other schemes in Rajasthan, Jharkhand, Delhi and Tamil Nadu. The judgment says that the State Governments are only interested in announcing the schemes, and not in the formulation, efficacy and supervising the schemes.

Under the Centre the responsibility of the enforcement of BOCW Act has been given to the Labour Commissioner. However, unlike the Chief Inspectorate of Factories, who shares similar responsibility to ensure safety standards in the manufacturing sector and has the necessary technical background & experience. The Labour Commissioner has a non-technical background. “Construction safety, on the other hand being a clearly technical subject, the office of the Labour Commissioner may not be equipped with the adequate know how to carry out the inspection of the construction sites. Unfortunately, neither the central nor the state governments wish to increase their manpower or create a new department for the enforcement of this new legislation. Besides, the sheer number of construction sites spread all over the country, will not be adequate for the effective implementation of the Act” (Construction Industry Development Cell (CIDC), Safety of the Construction workforce, NA).⁷

⁷ <http://www.cidc.in/new/articles1.html>

On the collection and utilization of cess fund in various states, the Supreme Court of India in its judgment on 19 March 2018 takes notice that in the year 2012-13, cess collected in Maharashtra was Rs 777.69 crores, of which only Rs 3.99 crores were spent on 17 schemes for the benefit of the workers. In the next year, Rs. 788.60 crores were collected, however, only Rs 53.34 crores were spent, as shown in the following table 1.

Table 1: State of Maharashtra

Year	Cess collected in crores	Expenditure incurred in crores for 17 schemes
2011-12	Rs.425.97	No figure supplied
2012-13	Rs.777.69	Rs.3.99
2013-14	Rs.788.60	Rs.53.34

Source: Judgment, Supreme Court of India, 2018

Similarly, in the state of Rajasthan, Rs 173.83 crores were collected, of which only Rs 11.95 crores were spent on various schemes in the year 2012-13. In the next year, 2013-14, Rs 251.95 crores were collected however, only Rs 25.93 crores were used for spending on various schemes (ibid, pg. 27) (See Table 2).

Table 2: State of Rajasthan

Year	Cess collected in crores	Expenditure incurred in crores for various schemes
2011-12	Rs.154.01	No figure supplied
2012-13	Rs.173.83	Rs.11.95
2013-14	Rs.251.95	Rs.25.93

Source: Judgment, Supreme Court of India, 2018

The SC notes the non-utilisation of the large amounts collected and that this was a trend in State after State such as Haryana, Uttar Pradesh and the National Capital Territory of Delhi. That is why the Supreme Court asked these States to file affidavits with regard to the collection and utilisation of the amounts under the Cess Act. However, the filed affidavits did not take the matter of utilization of funds and the matter subsided for a while in 2015. Later, in 2017, the office of the CAG filed affidavits. Together with the report of the Standing Committee, affidavits filed by the CAG and the Information provided by the Ministry of Labour and Employment, (a table attached with this report as an Annexure 1) provided the details of the amount collected and spent. The details are mentioned in a tabular form which states all the States and Union Territories with their

funds collected and spent under the Cess Act. It was further noticed that hardly 10% of the collected fund was utilized for the worker's benefit, rather was used for advertisements etc. The judgment also notes that even the constitutional body CAG authorized under Article 148 of the Constitution does not have the required and accurate information about the funds collected and utilized, which signifies that there is a financial mess in this area since 1996 (ibid, pg. 42) so much so that the amount spent is more than the amount collected, obvious discrepancy in the statistics. However, the data collected by the Standing Committee on Labour (2016-17) of the 16th Lok Sabha might have the required data which is presented in its 28th report. The financial mess is presented in a tabular form as follows:

Table 3: Financial mess during the year 2017 in the collection of the Cess fund and the amount spent

Cess collected as per the report of the Standing Committee as on 31.03.2017 (Provisional) (in crores of rupees)	Amount spent as per the report of the Standing Committee as on 31.03.2017 (Provisional) (in crores of rupees)	Cess collected as per the affidavit of the CAG dated 06.10.2017 (in crores of rupees)	Amount transferred to the Welfare Board as per the affidavit of the CAG dated 6.10.2017 (in crores of rupees)	Cess collected as per the statement of the Secretary, Ministry of Labour and Employment as on 30.6.2017 (in crores of rupees)	Amount spent as per the statement of the Secretary, Ministry of Labour and Employment as on 30.6.2017 (in crores of rupees)
32632.96	7516.52	37060.90	37255.45 (not necessarily utilized)	37482	9491

Source: Judgment, Supreme Court of India, 2018.

One of the recent developments regarding utilization of cess fund is the introduction of a Universal Access Number to construction workers, though not all the workers have been beneficiaries of the same. According to the Secretary in the Ministry of Labour and Employment of the Government of India, a Universal Access Number (UAN) is introduced which would be applicable throughout the country, even if the worker migrates from one state to another, the benefit of registration would not be lost (ibid, pg. 29). However, according to the SC, this would require some legislative changes and a huge campaign and effort by the State machineries. The judgment doubts whether any of the Union of India, the State Government or Union Territory Administrations would be willing to ensure that through the UAN, the construction workers are given their due benefits (ibid, pg. 38).

On one hand, construction companies and the state are ineffective and reluctant in enforcing the law and form a welfare board, on the other hand “it has been seen that the workers are not aware of such schemes and the cumbersome procedures to fill the forms and getting the passbooks becomes an ordeal. The clause that they should work for a minimum of three months at one construction site to be eligible for registration is difficult to fulfill and hinders them to enroll. They are hired for less than three months at a stretch by the employer to remain outside the purview of this norm. The contractors are not willing to get them enrolled. The annual renewal of the passbook is another hurdle for keeping the passbooks alive. A large number of workers are uneducated and end up doing unskilled jobs, specifically women” (Srivastava, 2013, pg.16). Getting registered as a construction worker is important as it facilitates the implementation of other laws like Maternity Benefit Act, 1961 and Minimum Wages Act, 1948 and also entitlements to any provision of the BOCW Act. This is why the recent judgment by the Supreme Court of India in the month of March, 2018 also emphasized on the lack of implementation of BOCW and Cess Act.

Due to the continuous flow of workers in and out of the construction industry and shifting and impermanent nature of the work, activists who tried to organize construction workers realized that unionization is extremely difficult. The construction industry is practically the only industry where the workplace changes from day to day and so does the workforce. “Activists are puzzled over the problem and have realized that the absence of a stable employer-employee relationship is the real reason for the failure of implementation of existing laws. These laws were designed for more conventional industries” (Madhok, 2005, pg. 24).

Conclusion:

Workers are treated as invisible throughout the process of ‘tenders’ and ‘contracts’. It is strange that there is never any reference to the number and types of workers to be employed for executing the work. Naturally then no minimum standards are set down for the employment of labour and the conditions in which they must work. Work on construction sites is invariably divided along gender lines (Mahanta, 2017). The literature on women workers working in construction industry discusses that the lack of security, want of regularity of work make the female workers job precarious. Lesser wages than the male counterparts, no social security, no opportunity for growth or upward mobility in the sector, no alternative skill development plans and programs for the female workers render them even more insecure in the older ages. Inefficiency of the state in regulating and checking the contractors who need to provide basic amenities and social securities to the workers, to their children in terms of schooling, day care facilities and health checkups worsen the condition of workers. Nevertheless, the overall increasing unemployment and distress in the native places of the workers compel them to migrate and earn their livelihood in poor conditions. The review on the laws related to construction workers, their welfare board and cess fund indicates the intention of the State Governments to implement the law which is almost more than two decades old. The latest updates on the cess fund raises the questions about the disposal of the fund collected, non-utilisation of the fund and purpose of the act itself.

However, there is a need to further investigate the ways in which wages are given to women workers at various sites. At most, it is discussed here that family owner, that is the husband or the father of the female worker takes the wages at household level. But, there are also cases where women are directly employed at the site. Besides, there is less study available on the debt bondage of the construction workers through which they are bound to the contractor. It is also important to look at the land and other asset holdings of the workers in the native places in detail to map out their links to the villages, their specific reasons to migrate, specifically in the case of seasonal migration.

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Annexure 1: Amount Collected and Spent Under the Cess Act by Various States and Union Territories (Amounts are recorded by Standing Committee Report and CAG Report)

Standing Committee Report				CAG Report	
S. No.	Name of the States/UTs	Amount of Cess collected (Rs. in Crore) as on 31.03.2017 [Provisional]	Amount spent (Rs. in Crore) as on 31.03.2017 [Provisional]	Amount of Cess collected (Rs. In Crore) from 1996 till 31.03.2017	Amount of Cess transferred (Rs. In Crore) to the Building and Other Construction Workers Welfare Board
1	Andhra Pradesh	1153.61	205.46	667.50	667.53
2	Arunachal Pradesh	65.36	51.60	98.31	20.00
3	Assam	512.24	12.57	530.46	611.82
4	Bihar	921.92	75.23	NA	972.93
5	Chhattisgarh	699.61	514.14	755.80	NA
6	Goa	85.68	0.83	94.78	95.78
7	Gujarat	1564.64	35.00	1524.36	863.04
8	Haryana	1847.05	172.07	1847.05	1847.05
9	Himachal Pradesh	335.39	44.49	353.25	360.62
10	Jammu & Kashmir	566.00	221.00	625.99	653.03
11	Jharkhand	291.28	143.46	330.95	NA
12	Karnataka	3861.00	240.00	4106.43	4106.03
13	Kerala	1474.73	1455.88	1483.81	439.47
14	Madhya Pradesh	1575.62	552.04	207.10	NA
15	Maharashtra	5074.16	255.50	5074.16	5074.16
16	Manipur	21.00	10.99	63.61	NA
17	Meghalaya	94.83	1.09	99.84	99.84
18	Mizoram	40.37	21.95	49.64	49.64
19	Nagaland	20.06	3.34	1.65	1.65
20	Odisha	1100.00	361.00	1118.35	1118.35
21	Punjab	921.55	391.61	973.78	973.78
22	Rajasthan	1600.00	620.00	1069.19	1266.52
23	Sikkim	64.67	20.68	76.00	76.00
24	Tamil Nadu	1706.00	600.00	1870.60	1870.60
25	Telangana	443.12	98.69	667.53	667.53

26	Tripura	129.28	12.36	140.18	140.18
27	Uttar Pradesh	2943.80	598.90	220.78	184.25
28	Uttarakhand	170.41	31.21	189.39	186.58
29	West Bengal	1149.12	531.42	NA	1713.18
30	Delhi	1930.00	174.71	1793.67	1846.68
31	A & N Islands	46.42	3.91	NA	NA
32	Chandigarh	96.09	3.72	NA	NA
33	Dadra & Nagar Haveli	3.08	0.00	NA	NA
34	Daman & Diu	37.17	0.54	NA	NA
35	Lakshwadeep	5.66	0.00	6.15	6.15
36	Punducherry	82.04	51.13	96.44	96.44
	Total	32632.96	7516.52	26136.75	26008.83

Source: Judgment, Supreme Court of India, 2018.