

REPORT: PILOT SOCIAL AUDIT OF BOCW ACT IN DELHI

I. Mandate

The Supreme Court in an ongoing PIL (WP Civil No. 318 of 2006) ordered social audits to be conducted in the implementation of the Building and other Construction Workers (BOCW) Act. It stated that,

"Our fourth direction is to the Ministry of Labour and Employment, the State Governments and the UTAs to conduct a social audit on the implementation of the BOCW Act so that in future there is better and more effective and meaningful implementation of the BOCW Act. If a mistake has occurred, it is more appropriate to admit the mistake for a better future rather than to justify it or continue to repeat the mistake. This is more so in the case of the BOCW Act where crores of men, women and children are involved on a day-to-day basis and Parliament has thought it appropriate to legislate for their benefit. State Governments and the Welfare Boards in every State and UTA to conduct a social audit. The CAG has prepared detailed guidelines for conducting a social audit in respect of some other schemes (for example, the Report of the Working Group on Developing Social Audit Standards with reference to the Mahatma Gandhi National Rural Employment Guarantee Act, 2005) and these guidelines can be adapted mutatis mutandis for carrying out a social audit in respect of the implementation of the BOCW Act."

A Sub-Committee was constituted by the Ministry of Labour to deliberate and advise the Government on the social audit framework to be developed for complying with the Hon'ble Court's orders. The Sub-Committee developed a Draft Framework for Social Audit in line with the Auditing Standards of Social Audit (as developed by the O/o the C&AG) for the consideration of the Ministry of Labour. The same was discussed by the Ministry with its counterparts in States, and also released in the public domain for inviting comments from the public. (It can be accessed here- <https://labour.gov.in/whatsnew/draft-framework-social-audit-implementation-bocw-act>.)

The Sub-Committee suggested to the Ministry that a pilot social audit take place in one urban and one rural area to test the draft framework and revise it based on the practical lessons that emerge from the pilot. Subsequently, orders were issued by the Ministry of Labour for conducting two pilot social audits- one in Shalimar Bagh Constituency, New Delhi and one in Salumbar Block, Udaipur District, Rajasthan.

Individual members of the Sub-Committee had multiple meetings with the Government to conceptualize and discuss the draft social audit framework and the mechanism for its pilot.

Meetings took place with the O/o Director General Labour Welfare (16.05.2018, 30.07.2018, 08.08.2018), O/o the Delhi Board (11.09.2018, 13.09.2018) and O/o the District Labour Commissioner (13.09.2018, 20.09.2018). Subsequently, an order was issued by the Ministry of Labour ordering the pilot social audits in Delhi and Rajasthan and the timeline within

which they had to be completed. The order is attached as Annexure I.

Resource Persons were identified from CSOs and families of construction workers to facilitate the pilot social audits in Delhi. Resource Persons were then trained on the Auditing Standards of Social Audit and implementation norms of BOCW. List of organizations that took part in the pilot social audit is attached as Annexure II.

II. Key Preliminary Findings

The pilot social audit took place in Shalimar Bagh Constituency, North West District, New Delhi from 17th-24th September. The bastis that were covered through the social audit are : Nirman Camp, Sanjay Camp, Nehru Camp, Ambedkar Camp, Lohiya Camp, Bahujan Camp U & V Block, CA Block, Wazirpur Industrial Area, Udham Singh JJ Colony, AO Block, Shalimar Bagh, Singhalpur Gaon, JJ Colony, Ekta Camp, Haiderpur Camp, Ambedkar Nagar Ayurvedic Hospital, Shalimar Gaon, BV Block, Shalimar Gaon, BG Block, Kela Godam, A Block, Kela Godam AA Block, Sahipur Gaon, Beriwalla Bagh Jhuggi Basti

A total of 2439 live registered beneficiaries as on date were identified from Shalimar Bagh from the records provided by the Board. Out of these 109 claimants (other than education incentive scheme) for the year 2016 – to date, and 823 beneficiaries (of education incentive scheme) for the year 2016-17 were identified. Since there was lot of discrepancies, the team decided to examine the whole district data on disbursement to reach the required improvements.

A Social Audit Panel was constituted for the conduct of Public Hearing on 24 Sep 2018 as follows:-

- Mr Lallan Singh - JLC, (North West)
- Mr KM Singh - ALC (North West)
- Mr Parthasarthy - Labour Officer (North West)
- Mr Dharendra Rana – Secretary, DALSA (North)
- Ms Ruchika Singla – Secretary, DALSA (North West)
- Mr Pawan - Zonal Organizing Secretary, Bharatiya Mazdoor Sangh (BMS) *Also, Member of Committee constituted by DGLW for drafting Action Plan and Model Welfare Scheme as directed by Supreme Court in NCC-CL Petition*
- Mr R Sridhar – Environics Trust
- Mr Nikhil Dey - Mazdoor Kisan Shakti Sangathan (MKSS)

As per the Auditing Standards of Social Audit, the findings that emerged from the social audit are preliminary contentions raised by beneficiaries and workers. They are required to be publicly discussed in the public hearing in the presence of both workers and implementing agencies. Each contention is required to be publicly examined while assessing the evidence documented, and while giving both parties an opportunity to be heard. This public examination of grievances, contentions raised and evidence raised is essential to corroborate,

drop, or refer the matter for further investigations.

Based on the evidence that emerged from the social audits, the following types of serious grievance have been identified in the implementation of BOCW:

1. Contention 1: Alleged payment of bribes to private individuals for accessing entitlements

138 instances were recorded where workers allegedly paid amounts ranging from Rs 500-Rs 2000 to private individuals for registration and renewal of labour identity cards and for applying for benefits under the same (Annexure 1). Most of the workers who made payments claimed that they were not given receipts, and/or were charged an amount that exceeded the amount mentioned in the receipt. Alleged payments were made to nearly 10 Trade Unions to the tune of Rs 47,125 for getting registered. Some of the Trade Unions or persons to whom money was allegedly given to by workers, as per the workers themselves, are listed below:

- a. Uttam Singh (c/o Nirman Shramik Kalyankari Sangathan)
- b. J. P Singh (c/o Nirman Mazdoor Sangh Delhi)
- c. Jawahar Singh
- d. Sandhya
- e. Pehal Drishti Delhi
- f. Bhartiya Bhawan Nirman Mazdoor Union
- g. Building Nirman Mazdoor Union
- h. Nirman Karamkar Sangathan Union
- i. National Construction Workers & Labour Welfare Union
- j. Bhawan Nirman Asthai Mazdoor Union
- k. Shramik Vikas Sangathan

Decision announced by the Panel: The Labour Commissioner transferred the onus of filing a police complaints (FIR) against the unscrupulous unions and private agents, on the construction workers who had submitted written complaints. The Labour Commissioner said that they will issue a legal notice to the trade unions allegedly taking money for registration and renewal of labour identity cards and for applying for benefits under the same within a week and request their comments on it. He said they will take action on all complaints following “due process of law” within **four months**.

2. Contention 2: Corruption

Cases were identified where commission was allegedly charged by agents/representatives of trade unions once the financial benefit was disbursed to applicants. It was extremely distressing and shocking to note that commissions to the tune of Rs 25000 were allegedly charged by agents from workers for promising to disburse benefits of Marriage Assistance, Scholarship Assistance, Maternity benefit.

A serious case of corruption was alleged against a certain Shri. Uttam Singh who charged a “commission” ranging from Rs 5000-Rs 35000 for processing of claims. Evidence that corroborates this complaint made by workers is attached with the Report. Cases have also been made where Uttam Singh allegedly took a post- dated cheque from the beneficiary and withdrew a commission once the claim was credited to the bank account of the beneficiary. (Annexure 2A)

Another serious case of corruption is made was alleged against a certain Shri J. P Singh/Shri Jawahar who charged a commission for processing of claims. Evidence that corroborates this complaint made by workers is attached with the Report. (Annexure 2A)

One instance was identified where the official record provided by Government stated that Rs 44700 was disbursed to the beneficiary, but in fact only Rs 36000 was credited to the beneficiary’s bank account. (Annexure 2B)

Decision announced by the Panel: Representative of the Delhi Legal Service Authority (DALSA), assured the workers that, in case they are not satisfied with the Labour Department’s decision or actions on the complaints raised at the public hearing, they can seek free legal help from the Delhi legal service board for the same. Based on the pilot social audit’s findings, the Labour Commissioner assured that a preliminary inquiry will be initiated in this regard within the next 15 days. He also announced that on 27th September 2018 a special team of officials will look into these matters of corruption and discrepancy in the records, at the Labour office in Ashok Vihar.

3. Contention 3: Selective renewal of beneficiaries

Instances were identified where the registration of selective beneficiaries were allegedly renewed whereas those of hundreds of workers were not. It was noticed that the renewal on the identity card was not counter-signed by a Labour Department official but contained an incomprehensible stamp sign. (Annexure 3)

Decision taken by the Panel: An inquiry will be initiated within fifteen days by the Labour Department. The labour commissioner informed that the renewals that happened were with a fake stamp, and these will be investigated.

4. Contention 4: Renewal/Registration pending at the Labour Court Office

339 instances were noted of workers having submitted their application forms for registration and/or renewal, which have not been processed since the past 5 months (Annexure 4). Workers were also allegedly told that the Labour Department is “closed” and is “not accepting applications till November”. The workers have been provided no information on the reason for the delay. This has led to widespread distress amongst workers and opening of potential avenues of corruption by private individuals promising prompt renewals. It was felt that delay in renewal of registration purely on account of the Labour Department has left

workers vulnerable to non- eligibility of benefits owing to interruptions in renewal.

Decision taken by the Panel: The Labour Commissioner shared that they stopped the process owing to the ongoing Anti-Corruption Branch’s investigation against the DBCWWB and also due to the delay in finalising “Standard Operating Procedure (SOP)” at their end. They also expressed that they had no official order/circular which was permitting them to do so. However, the social audit team insisted on starting the process at the earliest and the Labour Commissioner agreed on restarting the registration/ renewal and the processing of claims with immediate effect, beginning with the day after the public hearing, i.e. 25th September 2018.

5. Contention 5: Non-updation of identity card by employer and the Board

In all instances of interaction with workers it was observed that identity cards (or Pass Book) of workers did not contain the description of work involved in, which is to be filled by the employer in Part III of construction workers Pass Book as per BOCW Act. Similarly, details of benefits that have been distributed to individual workers has not been entered into individual pass books of workers in Part IV which is the responsibility of the Board.

Decision taken by the Panel: Labour Commissioner announced that one hour each day will be allotted for updating the cards at the labour board’s office, starting from 25th September 2018.

6. Contention 6: Non- construction workers enrolled as beneficiaries of the Board

162 non-construction workers have been allegedly enrolled as beneficiaries under the Act. At least 40 instances were identified where non construction workers were allegedly disbursed claims amounting to nearly Rs. 2,54,800. However, it is pertinent to point out that this is not a fault of the workers. Many Trade Unions and authorised registrants have not pointed out to non-construction workers that they are not eligible for registration or benefits. Therefore, registration of non-construction workers was seen to have been probably actively encouraged by middlemen and vested interest while knowing that the same violates the Law (Annexure 6).

Decision taken by the Panel: On the basis of pilot social audit’s findings, a preliminary inquiry will be initiated into all those unions and private agents involved in registering non-construction workers.

7. Contention 7: Non registration of construction establishments

The social audit team identified 57 construction activities that were not registered establishments and therefore not paying cess. (Annexure 7).

Decision taken by the Panel: An inquiry will be done on the non-registration of construction

establishments within 15 days.

8. Contention 8: Poor access to benefits

Most of the workers interacted with had no information about the details of benefits that they are entitled to from the Board on account of being registered. The Board seems to have no initiated any IEC campaign to educate and inform workers about benefits they are entitled to, the eligibility criteria, the process of application and relevant time-lines. Due to this, workers are allegedly exploited by private agents and/or unscrupulous unions who promise benefits in exchange of bribes. 297 workers were identified who were eligible but not registered as beneficiaries under the Board (Annexure 8)

Decision taken by the Panel: A special team will conduct verification of the all files on pending requests of personal claims and benefits and will clear the backlog on 27th September 2018.

9. Contention 9: No platform for registering and tracking grievances

There is no provision for workers to register their grievances and track the status of its redress as per the Law. Most often the workers are forced to make complaints related to violation of their entitlements to the very same offices/functionaries who are the alleged cause of the violation. Workers have no means of registering their grievances to an independent entity and have no recourse for a time bound redressal of the same.

Decision taken by the Panel: The list of beneficiaries with the status of their application forms will be publicly displayed outside the labour office within five days.

10. Contention 10: Complicated process of filing claims

It was observed that all forms for availing benefits are only in English. This seems to have prevented a vast number of workers from accessing these forms and applying through them to the Board directly. In addition, it was observed that the forms were unnecessarily long and complicated and asked applicants to fill information that are already available with the Board through its registration forms. Many benefits such as medical assistance, maternity benefit, funeral benefit, death benefit are required to be disbursed immediately as they pertain to providing assistance at the time of distress. Asking for unnecessary information and information that is already in the records of the Board seems to be unjustified and leads to delay in applying for benefits. The unnecessary complications introduced by the forms, leads to the dependence of workers' on agents and middlemen as they pay the latter bribes for completing forms.

Decision taken by the Panel: The SA team will draft a model form with simple and lucid content in Hindi, and will send this to the Department.

11. Contention 11: Stopped claim

27 instances were identified where claims of pension and scholarship were paid to the registered beneficiary only once, and were then allegedly subsequently stopped (Annexure 11). No reasons were given by the Department for the same.

Decision taken by the Panel: Labour Commissioner assured that the list will be reviewed and he will ensure that inclusions happen. This will be sent to the Education Department to ensure that scholarships are not delayed. With proper documentation, pensions will be disbursed or reasons for stoppage will be provided. On the 27th September 2018, a team of officials from the Labour department and the Social Audit team will jointly verify these cases.

12. Contention 12: Information pertaining to reasons for rejection of registration and/or claims not provided to applicants

In all the cases observed by the social audit team workers were not provided any reasons (orally or in writing) for rejecting their claims for registration, renewal and benefits. This information has not been provided by the Board in spite of the fact that such a record is maintained by them. This lack of information has led to a situation where workers have filed repeated applications to the board, paying bribes each time in anticipation of the same being cleared (Annexure 12).

Decision taken by the Panel: Information will be provided at the earliest, and the SA team will verify these records with the Department on 27th September 2018, after which these will be publicly disclosed.

13. Contention 13: Non authorized personnel of Trade Unions certifying applications for registration

Instances were identified where worker registration application forms certified by the Trade Unions were signed by persons apart from those authorized to sign the same.

Decision taken by the Panel: Labour commissioner shared that legal notice will be issued to the unions and the non-authorized personnel who are involved in this activity.

14. Contention 14: Cards lost

3 cases were identified where the Board/Union has allegedly lost the Labour Identity Cards of workers. The same has not been replaced (Annexure 14).

15. Contention 15: Difference between records and reality

Instances have been identified wherein there was allegedly a discrepancy between official record and actual reality. There were people identified who had Labour Identity Cards but whose names were not on the registration list provided to us by the Government. Actual addresses of beneficiaries were different from those recorded by the Government (Annexure 15).

Decision taken by the Panel: Labour Commissioner announced that these registrations will be investigated in next 7 days.

All the above grievances have been identified on the basis of interactions with workers and evidence and testimonies collected through the same. All grievances identified have been substantiated by complaints and testimonies signed on by complainants and photograph evidence.

III. Key Recommendations

The BOCW Act was enacted to “regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures and for other matters connected” as per its Preamble. The pilot social audit of BOCW in Delhi unfortunately exposed the multiple ways in which the letter and spirit of the Act is being violated.

The pilot social audits threw up the challenges faced by workers in accessing their legal entitlements under the BOCW Act that were to secure them a life of dignity and welfare. It also brought to surface systematic lacunae in the implementation machinery that is not restricted to the two physical areas where the pilots took place. In the spirit of seeing social audits as a means of identifying procedural lapses and correct them, the report concludes by enumerating measures that the Government and Board must put in place for course correction and taking corrective action.

1. The Board must process applications for registration, renewal and claims within the next 30 days. Applications must be disposed in the serial order they were submitted in i.e. as per the ‘First In First Out’ policy
2. An FIR must be registered on all those Trade Unions and private individuals who have falsely registered non-construction workers as beneficiaries under the Act, those who have charged amounts greater than what receipts have been issued for and those who took bribes to process claims of workers. The list has been enumerated under Point 1.
3. Penalties must be imposed on concerned Labour Department Officials for non-disbursal of claims within 60 days of the same being filed as mandated under the Delhi Right to Public Service Delivery Act.
4. The Board must simplify applications forms for seeking claims. All application forms must be made available in Hindi and at multiple points to facilitate ease of access to the same by workers. Information that is already collected by the Board under a registration ID must not be asked for by the Board again. And only those parameters of information and those documents that are absolutely needed to prove the need for the claim must be required for submission.
5. The Board needs to initiate a campaign to facilitate registration of establishments involved in construction activities in order to collect the appropriate cess from them. The Board may

adopt the following suggestions to ensure registration of establishments involved in construction activities:

- a. For any construction activity taking place in the area under the jurisdiction of the Resident Welfare Association (RWA), it should be the responsibility of the RWA to report the same. It should be the responsibility of the RWA to ensure that no construction work or worker operating in its jurisdiction goes unregistered
- b. The reporting of construction activity must be binding. Therefore, any Department that has to issue a sanction or permission to operate (for example, consent to establish, consent for water supply, use of land change etc) should be able to give a certificate or sanction only once the construction is reported and cess is generated
- c. Construction workers must be provided with an opportunity to report construction either to the Board or to the Trade Union they are registered with

6. The Board must identify “labour chowks” in the Delhi region and ensure the following facilities at each labour chowk:

- a. Site board which discloses the rights of workers under the Law
- b. Shade
- c. Facility for drinking water
- d. First Aid Box
- e. Lockers where possible
- f. Telephone and Attendants
- e. The Board can refer to the list of labour chowks enumerated in the study commissioned by DBOCWVB titled ‘Mapping of Construction Workers in National Capital of Delhi’ conducted by Delhi School of Social Work Society in 2009.

7. The Board must ensure that employers update the identity card of workers failing which penalties must be imposed on them under Section 50, BOCW Act. This should be the basis of unions certifying 90 days worked, board disbursing benefits and accepting annual deposit with employment certificate.

8. The Board must consider the removal of the process of verification at the time of registration of workers. Once worker registration forms are certified and forwarded by the Trade Union, the same be accepted and duly registered. The Board must verify applicants at the time of disbursement of claims alone from Part II of the construction worker pass book.

9. Certain benefits such as education incentive or scholarship are not one time and require yearly renewal. Instead of the worker having to submit an application for claims for education incentive/scholarship on an annual basis, the same should be renewed by the Board once a year upon renewal. It is therefore recommended that all benefits pertaining to education and scholarships be disbursed by the Board alone.

10. The Board must ensure that all information pertaining to the implementation of the BOCW Act and Cess Act be mandatorily disclosed in compliance with Section 4 of the RTI Act, 2005. Specialized performa may be developed to disclose this information at labour chowks, colonies, local community centers and through real time, transaction based Management Information Systems.

11. To prevent corruption at the time of disbursal of benefits or sanction of renewal/registration applications, the Board should ensure distribution of sanction orders (of claims, registration and renewal) are physically distributed to workers at a public place, in the presence of workers and residents. This exercise must be undertaken on one fixed day every month.

12. It was observed that social audits played a significant role in educating workers and providing a platform for registering their grievances. Social Audits must therefore be rolled out across the country through independent social audit units in compliance with the Auditing Standards of Social Audit.

13. Identity Card is commonly known as 'Labour Card' which hides the difference between a Construction Worker and a non-construction worker. In view of the description and use of the card it should be called the **Construction Workers Pass Book**.

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GOVERNMENT OF INDIA
MINISTRY OF LABOUR AND EMPLOYMENT

Jaisalmer House, Mansingh Road
New Delhi - 110011,

Dated the, 27th August, 2018

To
The Principal Secretary (Labour)
State of Rajasthan/GNCT Delhi

Subject: Conducting Social Audit of State BOCW Welfare Boards on pilot basis in pursuant to the directions of Hon'ble Supreme Court in W.P. (C) No. 318 of 2006 in (NCC - CL) Vs UOI & Others - reg.

Ref: (i) Judgement of the Hon'ble Supreme Court dated 19-03-2018 in WP(C) No.318 of 2006 in (NCC - CL) Vs UOI & Others.
(ii) This Ministry's e-mail dated 09.08.2018 on the subject "Draft report on Social Audit in respect of BOCW Act".

Sir/Madam,

Kind reference is drawn to the above.

2. It is to bring to your notice that the Draft Social Audit Framework along with the Audit Principles and Standards (copy enclosed) have been framed by the Sub-Committee on Social Audit constituted in pursuant to the directions of the Hon'ble Supreme Court dated 19-03-2018 in WP(C) No.318 of 2006.

3. It is proposed that a social audit on pilot basis may be carried out in the States of Rajasthan and Delhi. The National Campaign Committee, which is the petitioner in the above mentioned case has suggested a time frame, location, allocation of funds and names of agencies for conducting aforesaid social audit. A copy of e-mail dated 08.08.2018 received in this regard is enclosed.

4. It is requested to kindly advise the State BOCW Welfare Boards to facilitate the pilot social audit in a definite time frame in co-ordination with the agencies involved in conducting social audit on pilot basis. Issues regarding the time frame, location and fund allocation, etc. for the pilot social audit may be finalized in consultation with the National Campaign Committee.

Yours faithfully,


(J.S. Sidhu)

Deputy Secretary to the Govt. of India

Annexure II - List of Organisations That Participated in the Pilot Social Audit

- Centre for Equity Studies
- Centre for Policy Research
- Delhi Nirmana Mazdoor Sangathan
- Environics Trust
- IGSSS
- Nirman Mazdoor Panchayat Sangam
- Satark Nagrik Sangathan
- Members from Local Community at Haiderpur, Shahbad Dairy, Bawana, Pansali and Dwarka.