

CRITICAL ANALYSIS OF THE RIGHTS OF TEA PLANTATION
LABOURERS IN ASSAM : A CONSTITUTIONAL PERSPECTIVE



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DECLARATION

I, MEDHA BASUMATARY, pursuing Master of Laws (LL.M) from National Law University and Judicial Academy, Assam do hereby declare that the present dissertation titled “CRITICAL ANALYSIS OF THE RIGHTS OF TEA PLANTATION LABOURERS IN ASSAM : A CONSTITUTIONAL PERSPECTIVE” is an original research work and has not been submitted, either in part or full anywhere else for any purpose, academic or otherwise, to the best of my knowledge.

Date: August 24, 2020



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PREFACE

Tea is considered as the “Green Gold” and “Pride of Assam.” The Tea Industry in Assam contributes significantly to the State Economy as well as the National Economy. Though, the Tea Industry is developing by leaps and bounds in Assam, the conditions of the tea plantation labourers is deplorable. Despite, various constitutional provisions as well as regulatory mechanisms both at the Central as well as State levels, these labourers lack access to basic amenities such as healthcare, education, drinking water, housing, child care, maternal care and accident cover. The first chapter deals with the ‘Introduction’. The second chapter discusses the historical background regarding the establishment of the tea industry in Assam, and the circumstances under which these plantation labourers were brought from different parts of India during the Colonial Regime. The third chapter deals with interpretation of the various international conventions regarding labour rights such as ILO, UDHR, ICCPR, ICESCR, CEDAW, CRC, etc. The fourth chapter deals with the analysis and assessment of the various constitutional provisions regarding the rights of labour, pertinent provisions of the regulatory mechanism at the Central Level i.e., Plantation Labour Act of 1951, the establishment of the Tea Board under the Tea Act of 1953 and its objectives, functions, composition, organizational structure, administrative structure, the tea fund, etc. This chapter also deals with formation of Indian Tea Association and the Tea Research Association. The fifth chapter deals with a detailed discussion on the present condition of the tea plantation labourers in Assam vis-a-vis the Oxfam Report, how the Assam Plantations Labour Rules of 1956 has given an actual shape to the Plantation Labour Act, 1951 and the initiatives taken by Assam Government for welfare of the tea plantation labourers in Assam. The sixth chapter deals with the judicial pronouncements with regard to the rights of the tea plantation labourers in India.

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2. *B. Shah v. Presiding Officer*
3. *Bandhua Mukti Morcha v. Union of India and others*
4. *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*
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8. *Maneka Gandhi v. Union of India*
9. *Minerva Mills Ltd. v. Union of India*
10. *Mohini Jain v. State of Karnatataka*
11. *N. Krishnan & Another v. The Inspector of Plantation, O/o Inspector of Plantation, Kanyakumari*
12. *People's Union for Civil Liberties v. Union of India*
13. *Planters' Association of Tamil Nadu & Another v. The Secretary to Government, Labour & Employment Department & Others*
14. *Prabhakar Dev v. State of Kerala*
15. *R.L. Rikhye v. State of Assam*
16. *Randhir Singh v. Union of India*
17. *Tata Tea Limited v. The State of Tamil Nadu*
18. *The Manager v. The Secretary*

LIST OF STATUTES

1906- The Workmen's Compensation Act

1947- The Industrial Disputes Act

1948- The Minimum Wages Act

1948- The Factories Act

1950- The Constitution of India

1951- The Plantation Labour Act

1956- The Assam Plantation Labour Rules

1961- The Maternity Benefit Act

1976- The Equal Remuneration Act

1985- The Child Labour (Amendment) Act

TABLE OF ABBREVIATIONS

1.	AIR	All India Reporter
2.	Anr	Another
3.	Art	Article
4.	IJMRBS	International Journal of Management Research and Business Strategy
5.	Int. J. Appl. Res.	International Journal of Applied Research
6.	Kar	Karnataka
7.	Ker	Kerala
8.	PBRI	Pacific Business Review International
9.	SCC	Supreme Court Cases
10.	UOI	Union of India

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Abstract

Tea was discovered in the 19th century in Assam by the Britishers. It is an important cash crop of the State. The tea industry of Assam which is largely labour-intensive is expanding in terms of its area under cultivation and production but, the condition of the tea garden workers in Assam is appalling. The Plantation Labour Act, 1951 is the Central Act which sets a bench-mark for the facilities which are to be provided to the tea plantation labourers with regard to housing, sanitation, drinking water, working conditions, medical facilities, etc by the employers. The Act has failed to yield the desired results due to certain lacunas and, there is a need to repeal the same. In compliance with the Plantation Labour Act, 1951 the Assam Plantation Labour Rules, 1956 has been framed.

Keywords: Tea Industry, Assam, Labour-intensive, Plantation Labour Act of 1951, Assam Plantation Labour Rules of 1956.

CHAPTER-I

1.1. Introduction

The tea industry of Assam is the oldest and most organised industry of the state¹. The industry has its special set of problems and prospects. The history of the industry can be traced back to the Colonial Regime in the State². At present, the Assam tea industry contributes majorly towards the national economy³ even though, the conditions of the tea plantation labourers are pitiable⁴. The existence of constitutional provisions and social security legislations cannot be denied in this regard but, there is lack of proper implementation. There is a pressing need of intervention from the side of the Government in terms of protection of the interests and rights of the tea plantation labourers.

After the Independence, the Plantation Labour Act, 1951 was introduced by the Government under which the employers were obliged to provide decent housing, healthcare, education and

¹ Pradip Baruah, THE TEA INDUSTRY OF ASSAM ORIGIN AND DEVELOPMENT, EBH Publishers (India), 2008, Panbazar, Guwahati at p. 227.

²*Ibid.*

³ About Tea Industries, Available at <https://industries.assam.gov.in> (Accessed on October 20, 2019 at 12:00 pm).

⁴ Dipali Baishya, "History of tea industry and status of tea garden workers of Assam", Int. J. of Appl. Res. 2016; 2(9): 552-556.

working conditions to the plantation labourers but, they have failed to do so⁵. In reality, the employers have, time and again, failed to comply with the requirements of the Act and there is often compromise in the quality of facilities provided to the plantation labourers by them. Most workers do not have access to safe drinking water, there is lack of proper housing and sanitation facilities⁶.

There are two major drawbacks of the Plantation Labour Act, 1951. The first one is that, it does not encompass casual labourers within its ambit⁷. It makes these casual workers more vulnerable and prone to exploitation by the employers. The second one is the absence of legal provisions relating to child labour and safety measures for workers⁸. It is the only industry where employment of children is legally permitted. There is an urgent need to ban the employment of children in the plantations.

Under the Plantation Labour Act of 1951, the Government of Assam has framed Assam Plantation Labour Rules, 1965, which specifies welfare measures as well as employment conditions⁹. Besides these, there are a number of tripartite and bipartite agreements amongst producers, labours and the Government. The three major issues that are peculiar to the Assam Tea Industry are as follows:- status of women in the industry, employment of child labour and denial of ‘Scheduled Tribe’ status to the tea community in Assam.

Additionally, there are also many judicial decisions interpreting the rights of the plantation labourers in India.

1.2. Statement of the Problem

The Assam Tea Industry contributes largely to the total tea production of India. But, the tea plantation labourers who are the backbone of the industry, remain in a pitiable state. There are various international agreements/conventions, constitutional provisions and legislations at place in order to protect the rights of the tea plantation labourers but, there is a gap in the proper implementation of these provisions. Though, the Plantation Labour Act of 1951 sets a

⁵ Labour Rights & Tea Estates of Assam, Available at <https://www.drishtiiias.com> (Accessed on August 20, 2020 at 12:30 pm).

⁶ *Ibid.*

⁷ S K Bhowmik, “Productivity and Labour Standards in Tea Plantation Sector in India”, Labour and Social Issues in Plantations in South Asia, pp. 133-166.

⁸ *Ibid.*

⁹ Assam Plantation Labour Rules – AltExploit, Available at <https://altexploit.wordpress.com> (Accessed on August 20, 2020 at 11:00 am).

bench-mark for housing, health-care and education, working conditions including maximum working hours, over-time payments, child labour, paid leave, sickness and maternity benefits, it has failed to reach the targeted class of people in the tea plantations. There is a need to repeal the Plantation Labour Act of 1951 as it does not encompass the temporary workers within its ambit and puts the obligation upon the employer to provide for the non-cash benefits to the tea plantation labourers.

1.3. Aim and Objectives of the study

The aim of the study is to critically analyse and assess the rights of the tea plantation labourers in Assam in relation to the provisions of the Constitution of India as well as the Central Act i.e., The Plantation Labour Act of 1951.

The objectives of the study are as follows:-

- To give a brief background regarding the establishment of the Tea Industry in Assam and the conditions that led to the migration of the labourers from other parts of India during the British regime.
- To enumerate the various international conventions/agreements that India is a part of, in relation to labour welfare such as ILO, UDHR, ICCPR, ICESCR, CEDAW, CRC, etc
- To analyse the various provisions of the Constitution of India related to the rights of the labourers in the light of decided landmark case laws.
- To critically analyse and assess the provisions of the Central Act i.e., The Plantation Labour Act of 1951 regarding the rights of the plantation labourers.
- To analyse the present conditions of the tea plantation labourers in Assam in relation to the Oxfam India Report.
- To give a brief summary of the provision of the Assam Plantation Labour Rules, 1956 that has been formulated in compliance with the Plantation Labour Act of 1951.
- To interpret the judicial decisions of the Court vis-a-vis the rights of the plantation labourers in India.

1.4. Scope and Limitations

The scope of the study is limited to tracing the history of the establishment of the tea industry in Assam, to elaborate on the various issues faced by the tea garden workers. Although, there are various international agreements/standards, constitutional provisions and legislations at place concerning the rights of the tea plantation labourers in India as well as Assam i.e., Plantation Labour Act of 1951 and The Assam Plantation Labour Rules of 1956 respectively, there is lack of proper implementation. Due to time constraints and the ongoing COVID – 19 Pandemic, it was not possible for the researcher to conduct a field study and gather first-hand information concerning the issues faced by the tea plantation labourers regarding their living as well as working conditions .

1.5. Detailed Review of Literature

1. In this book, the author¹⁰ tries to give a broad idea about the origin and development of the tea industry in Assam. Tea is an important cash crop of Assam and its discovery can be attributed to the British Colonial Rule in India. The labourers were brought by the Britishers previously from various other states such as Bihar, Orissa, Bengal, Madhya Pradesh, etc. as the native population had very less believe in the industry. Though, the tea industry in Assam contributes to half of the total tea production in India, it has its own peculiar problems. The production of tea has increased over the years after the Independence of India and the introduction of the five year plans.

2. This book¹¹ is a classic in the field of Constitutional Law. The book was of great help to the researcher while discussing the various landmark and constitutional provisions with regard to the rights of the labourers. The author discussed about how labour welfare can be studied within the wide ambit of Article 21 of the Constitution of India with reference to various case laws. Article 21 of the Constitution of India deals with the ‘Right to Life and Personal Liberty.’

3. The author¹² in this article stated that the tea industry is expanding in terms of its area under cultivation and output. But, the tea garden workers responsible for the growth of the industry are the worst sufferers. There are various issues regarding health care, education,

¹⁰ Pradip Baruah, THE TEA INDUSTRY OF ASSAM ORIGIN AND DEVELOPMENT, EBH Publishers (India), Panbazar, Guwahati, 2008.

¹¹ M.P. Jain, INDIAN CONSTITUTIONAL LAW, 7th Edition, 2014, Lexis Nexis, New Delhi, India.

¹² Dipali Baishya, “History of tea industry and status of tea garden workers of Assam”, Int. J. Appl. Res. 2016; 2(9): 552-556.

maternal mortality, low wages, non-payment of wages, non-access to clean water, sanitation facilities and housing facilities, etc. The author has mentioned about how the tea garden owners, management try to avoid employing permanent worker, the women labour force is the most exploited in comparison to their male counter-parts and how the children are forced to join as labourers along with their parents. The author states that the Government of Assam has taken steps to help the deprived tea garden workers but, a very concentrated effort is required to bring them at par with the mainstream population.

4. In this article, the authors¹³ stated that the tea industry occupies an important place in the plantation sector in India and women workers are an integral part of the labour force engaged in the tea industry. Traditionally, the women labourers were engaged in plucking tea leaves but, today they are engaged in the production activities also. The reflection of economic justice as enshrined in the Constitution of India in the actual sense, can be seen in the empowerment of these women labourers. However, it is a pity that although women labourers play a significant role in the tea industry they are working in the same atmosphere since generations without any skill development or improvement in working conditions which makes them most vulnerable to exploitation by their employers. However, there are certain issues that are peculiar to the tea industry in Assam. They are - child marriage, early pregnancy, higher mortality rate, lack of proper medical facilities, low wages, absence of crèche, playschool and natal care. Other common and serious health infections that the women suffer from are tuberculosis, leprosy, chronic malaria, fever, strain on neck and cervical spine from carrying baskets, abrasions to the hands and lack of protection to the toes, etc. They also suffer from vector borne diseases such as tuberculosis, gastrointestinal diseases, diarrhoea owing to the lack of hygiene, water stagnation, poor drainage and overflowing sewers.

5. In this article, the author¹⁴ has examined the conditions of the Indian tea plantation industry in terms of its productivity and labour standards. The tea industry is the oldest industry in India in the organised manufacturing sector and has retained its position as the single largest employer in the sector. The tea plantation labourers are employed in large

¹³ Ms. Nijumoni Das & Ms. Parveen Islam, "Status of Women in Tea Sector of Assam: A Critical Analysis", Mr. Kishor Kumar Mishra, Mr. Shailender Kumar, Mr. Aditya Mishra, Ms. Akansha Jain, Mr Nivesh Sharma (ed.), WOMEN, LAW AND TECHNOLOGY, Victorious Publishers (India), November, 2018, Delhi, pp. 174-187.

¹⁴ S K Bhowmik, "Productivity and Labour Standards in Tea Plantation Sector in India", Labour and Social Issues in Plantations in South Asia, pp. 133-166.

numbers but, their problems are often over-looked by those interested in labour or policy studies. The plantation labourers are marginalised in many ways.

It focused on the issues that are peculiar to the Tea Industry in Assam such as – working conditions of the women labourers, low wages, employment of child labour and denial of ‘Scheduled Tribe’ status to the tea community in Assam. The article has also pointed out the importance of Trade Unions in negotiating the rights of the tea plantation labourers with the Government as well as the employers. While discussing the issue of social dialogue, the employers must try and understand the vulnerable position of the plantation workers. They should try and analyse why despite several decades of progress of the industry and a steady increase in the prices of tea, plantation workers have remained less developed and isolated.

6. The author¹⁵ in this article states that the Tea Board was established in the year 1949 through different Acts. The article discusses in detail about the functions, objectives, composition and the organization structure of the Tea Board in India. The growth of the tea industry in India can be attributed to the role played by the Board. It has also boosted co-operation amongst the growers and the manufacturers of tea. In India, the Board has its headquarter in Kolkata. There are three overseas offices located at London, Dubai and Moscow, designed to undertake the various promotional measures to boost up export of India tea.

1.6. Research Questions/Hypothesis

Q. Whether there is proper implementation of the constitutional provisions, international agreements/conventions and legislations with regard to the rights of the tea plantation labourers ?

Q. Whether there is a need to repeal the Plantation Labour Act of 1951?

1.7. Research Methodology

This study is basically a doctrinal, analytical and descriptive work. Primary sources of data such as statutes/bare acts, judgments, etc. and secondary sources of data such as books, articles, internet sources have been used for the completion of the study. In this endeavour,

¹⁵ R Sivanesan, “Functions of Tea Board in India : A Study”, IJMRBS, Oct, 2013, ISSN 2319-345X, Vol. 2, No. 4.

the internet has played a pivotal role as it provided the researcher with a plethora of most relevant and latest information regarding the topic.

CHAPTER-II

HISTORY OF THE ESTABLISHMENT OF THE TEA INDUSTRY IN ASSAM

Tea is the backbone of Assam's economy¹⁶. Tea is not only the oldest industry of Assam; but also the most important one along with oil and is a major source of revenue and employment for the state¹⁷. The development of tea industry led to the development of coal and oil industries in Assam, and it was also the cause of development of railways and roadways in Assam creating the way for infrastructural development¹⁸.

In the year 1823, tea was discovered in Assam when Major Robert Bruce came to know about the existence of tea in the state¹⁹. There is a controversy regarding the real discoverer of Assam tea plant²⁰. Some of the sources opined that, the tea plant of Assam was discovered by a Maniram Dewan, who was an Assamese²¹. Hannangan corroborated this view, stating that it is almost certain that Maniram Dewan introduced Bruce to the indigenous tea plant as he was acquainted with the plant for many years before 1823, and he should be regarded as the true discoverer of '*Thea Assamica*'²².

The tea industry's unique feature is employment of a huge labour force in all spheres of work in the estates²³. The labours were brought to Assam by the British planters in the early part of the nineteenth century in the newly established tea gardens of the state²⁴. The labours were brought originally from various parts of Bihar, Orissa, Madhya Pradesh, Bengal, Tamil Nadu and Andhra Pradesh, etc. and they have become very much part of the Assamese society²⁵. However, they are now an integral part of the greater Assamese community. As such, the history of Assam Tea can be associated with the colonial British regime.

¹⁶ Supra at 1.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ Sir Percival Griffiths, "The History of the Indian Tea Industry", Weidenfeld and Nicolson, London, 1967, p. 33-58.

²⁰ Supra at 1.

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*

²⁵ *Ibid.*

The tea production in India and Assam began to flourish ever after the Independence²⁶. The five years plans also aimed towards the welfare of the tea plantation labourers²⁷. In the year 2018, Assam tea production accounted for nearly 49 per cent of the country's total production²⁸.

The Guwahati Tea Auction Centre was established in the year 1970²⁹. Previously, bulk of Assam tea was sold through Calcutta and London Auction centres. Out of the various modes, sale through auctions constitute the major part³⁰.

During the long tenure of British Colonial Rule, the workers were exploited in all respects³¹. The workers were underpaid, most neglected and were left nothing at their disposal for future³². As such, the Government started intervening for the upliftment of their socio-economic status thereby, framing social security legislations.

CHAPTER-III

INTERNATIONAL PERSPECTIVE

3.1.Rights of the Tea Plantation Labourers : International Agreements and Conventions

India is one of the founding members of the International Labour Organization³³. The ILO came into existence in 1919³⁴. The four objectives of ILO are as follows :- to promote and realize standards and fundamental principles and rights at work; to create gender opportunities for women and men to secure decent employment; to enhance the coverage and effectiveness of social protection for all; to strengthen tripartism and social dialogue³⁵. India has ratified six out of eight core conventions of the ILO. These are the Forced Labour Convention, 1930 (No. 29), Abolition of Forced Labour Convention, 1957 (No. 105), Equal Remuneration Convention, 1951 (No. 100), Discrimination (Employment and Occupation)

²⁶ Tea Coffee Spice of India, Available at <https://www.teacoffeespiceofindia.com> (Accessed on October 22, 2019 at 11:30 pm).

²⁷ Ms. Onam Jindal, Dr Ranjit Singh, Ms. Bhatrihari Pandiya, Mr. Chandrakant Upadhyaya, "Nature of Labour Welfare Laws in India with special reference to Tea industry of Assam", PBRI, ISSN: 0974-438X.

²⁸ Sutanuka Ghoshal, Assam tea producers heaves a sigh of relief as intensity of rain lessens, Available at <https://economictimes.indiatimes.com> (Accessed on October 23, 2019 at 8:00 pm).

²⁹ Supra at 1.

³⁰ *Ibid.*

³¹ Supra at 4.

³² *Ibid.*

³³ ILO and India, Available at <http://www.ilo.org> (Accessed on October 29, 2019 at 4:00 pm).

³⁴ *Ibid.*

³⁵ Mission and impact of the ILO, Available at <https://www.ilo.org> (Accessed on October 29, 2019 at 4:00 pm).

Convention, 1958 (No. 111), Minimum Age Convention, 1973 (No. 138) and Worst Forms of Child Labour Convention, 1999 (No. 182)³⁶.

Article 23 of the UDHR sets out the right to work, the right to equal pay for equal work, and just and favourable remuneration³⁷. Article 24 provides that everyone has the right to rest and leisure, reasonable limitations of working hours as well as periodic holidays with pay³⁸. India has also ratified one of the optional protocols of UDHR i.e., International Covenant on Economic, Social and Cultural Rights (ICESCR)³⁹. However, Articles 6 and 7 ICESCR develop these rights further with regard to the right to work and its essential corollary, just and favourable conditions of work⁴⁰.

Article 25 (1) of the Universal Declaration of Human Rights asserts that everyone should have the right to a standard of living including food, clothing and housing⁴¹.

India has signed and ratified the International Covenant on Civil and Political Rights (ICCPR)⁴². Article 2 of the International Covenant on Civil and Political Rights deals with right to non-discrimination and the right to an effective remedy, Article 3 of the International Covenant on Civil and Political Rights deals with equal right of both men and women to the enjoyment of civil and political rights in the ICCPR, Article 8 of the International Covenant on Civil and Political Liberties deals with right not to be subjected to slavery or forced labour, Article 24 deals with the right of children to special measures of protection and Article 26 deals with right to equality before the law and equal protection of the law⁴³

In 1994, India has ratified the Convention of the Elimination of all forms of Discrimination against Women (CEDAW) treaty⁴⁴. Article 11 CEDAW provides that states shall take all

³⁶ ILO Fundamental Conventions India ratified six out of the eight core/fundamental International Labour Organisations (ILO) Conventions, Available at <https://www.business-standard.com> (Accessed on October 29, 2019 at 4:00 pm).

³⁷ The Rights Related to Labour, Available at www.humanrights.is (Accessed on October 29, 2019 at 4:00 pm).

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ Anju Anna John. Critical Analysis: PUCL vs Union of India - Academike - Lawoctopus, Available at <https://www.lawoctopus.com> (Accessed on November 3, 2019 at 6:00 pm).

⁴² Gender Justice and India's Obligations Under International Conventions, Available at <https://clpr.org.in> (Accessed on October 29, 2019 at 4:00 pm).

⁴³ International Covenant on Civil and Political Rights, Available at <https://blogs.lse.ac.uk> (Accessed on October 29, 2019 at 4:00 pm).

⁴⁴ CEDAW and India - Notes for UPSC, Available at notesforupsc2013.blogspot.com (Accessed on October 29, 2019 at 4:00 pm).

appropriate measures to eliminate discrimination against women in the field of employment⁴⁵.

In the year 1992, India has ratified the United Nations Convention on the Rights of the Children⁴⁶. Article 32 CRC sets out work conditions for children in order to protect them from economic exploitation and from work that would interfere with their education, health and development⁴⁷.

CHAPTER-IV

NATIONAL PERSPECTIVE

4.1. Rights of the Tea Plantation Labourers vis-a-vis Constitutional Provisions

Both the Union and the State Governments are competent to frame legislations on the matters pertaining to labour welfare and its administration in congruence with the political and economic circumstances of the nation⁴⁸. There are various labour rights given to the workers through the various articles of the Constitution of India⁴⁹. These articles protect the labour rights, directly or indirectly. Chapter III and Chapter IV of the Indian Constitution i.e., Fundamental Rights and Directive Principles of State Policy respectively protects the interests and rights of the workers and labourers⁵⁰.

Article 14 of the Constitution of India protects labour rights by ensuring right to equality⁵¹. In the case of *Randhir Singh v. Union of India*⁵², the Hon'ble Supreme Court held that it is the goal of the constitution to ensure equality before law and therefore, the principle of 'equal pay for equal work', though not expressly declared by our constitution as a fundamental right, was declared as one of the fundamental right as given under Article 14, 16 and 39 (c). Thus, if there is any unequal scale of pay based on irrational classification, this right is enforceable.

⁴⁵ *Ibid.*

⁴⁶ Twenty Years of The Convention on the Rights of the Child, Available at unicef.in (Accessed on October 29, 2019 at 4:00 pm).

⁴⁷ *Ibid.*

⁴⁸ *Supra* at 27.

⁴⁹ *Ibid.*

⁵⁰ Oxfam plea to buy from labour-act followers, Available at telegraphindia.com (Accessed on October 22, 2019 at 2:30 pm).

⁵¹ INDIA CONST. Art. 14.

⁵² AIR 1982 SC 879.

Articles 21, 21-A, 23, 24, 38, 39, 39-A, 41, 42, 43, 43-A and 47 of Indian Constitution provides an idea of the various conditions under which a labourer can be put for work⁵³.

Article 21 deals with right to life and personal liberty⁵⁴. In *Maneka Gandhi v. Union of India*⁵⁵, the Supreme Court has enlarged the ambit of right to life by including right to life with human dignity. In *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*⁵⁶, the Hon'ble Supreme Court stated that, "the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing, and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings." In the case of *Bandhua Mukti Morcha v. Union of India and others*⁵⁷, the Supreme Court held that, "Article 21 assures the right to live with human dignity, free from exploitation. The state is under a constitutional obligation to see that there is no violation of the fundamental right of any person, particularly when he belongs to the weaker section of the community and is unable to wage a legal battle against a strong and powerful opponent who is exploiting him. Both the Central Government and State Government are therefore bound to ensure observance of the various social welfare and labour laws enacted by Parliament for the purpose of securing to the workmen a life of basic human dignity in compliance with the directive principles of the state policy."

Article 21-A mandates that the State shall provide free and compulsory education to all children between the age group of 6-14 years⁵⁸. This particular article was inserted by the Constitution (Eighty-sixth Amendment) Act, 2002. In *Mohini Jain v. State of Karnataka*⁵⁹, the Supreme Court held that every citizen has a 'right to education' under the Constitution."

Article 23 prohibits human trafficking, begging and other types of forced labour. Article 24 prohibits employment of children below 14 years of age in factory, mine or in any other hazardous employment⁶⁰.

⁵³ Supra at 50.

⁵⁴ INDIA CONST. Art. 21. No person shall be deprived of his life or personal liberty except according to procedure established by law.

⁵⁵ AIR 1978 SC 597.

⁵⁶ AIR 1981 SC 746.

⁵⁷ AIR 1984 SC 804.

⁵⁸ INDIA CONST. Art. 21 A.

⁵⁹ AIR 1992 SC 1858.

⁶⁰ INDIA CONST. Art. 23.

In the Directive Principles of State Policy, it is given that the State is under a duty to encourage social welfare⁶¹. It puts emphasis on securing social, economic as well as political justice and it includes all types of institutions⁶².

Article 38 provides that the State shall strive to secure a social order for the promotion of welfare of the people⁶³. Article 39 (a) states that the citizens, irrespective of their gender equally, have the right to an adequate means of livelihood⁶⁴. Article 39 (d) states that there should be equal pay for equal work⁶⁵. Article 39(e) states that the State shall secure the health and strength of workers, ensuring that the tender age of children are not abused and that citizens are not forced by economic necessity to enter occupations unsuitable to their age or strength⁶⁶. Article 39(f) states that the State shall secure that children are given opportunities and facilities to develop in a healthy manner and ensure that childhood and adulthood are protected against exploitation, moral and material abandonment⁶⁷. Article 41 deals with the right to work, to education and to public assistance in certain cases⁶⁸. Under Article 42 of the Constitution of India, there is an imposition upon the State to make provision for just conditions of work and maternity relief⁶⁹. The Maternity Benefit Act of 1961 was enacted under this direction enshrined under Article 42 by which women are granted maternity leave with wages⁷⁰. Article 43 deals with living wage, etc. for workers and promotion of cottage industries⁷¹. Article 43 A deals with participation of workers in management of industries⁷².

⁶¹ Supra at 50.

⁶² *Ibid.*

⁶³ INDIA CONST. Art. 38.

⁶⁴ INDIA CONST. Art. 39 Cl. a. The citizens, men and women equally, have the right to an adequate means of livelihood.

⁶⁵ INDIA CONST. Art. 39 Cl. d.

⁶⁶ INDIA CONST. Art. 39 Cl. e. The State shall secure the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter occupations unsuited to their age or strength.

⁶⁷ INDIA CONST. Art. 39 Cl.f. The State shall secure that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment

⁶⁸ INDIA CONST. Art. 41. The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want

⁶⁹ INDIA CONST. Art. 42. The State shall make provision securing just and humane conditions of work and maternity relief.

⁷⁰ Supra at 13.

⁷¹ INDIA CONST. Art. 43. The State shall endeavour to secure a living wage, decent standard of life to all workers, and to promote cottage industries.

⁷² INDIA CONST. Art 43 A. The State shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments, or other organisations engaged in any industry.

Under Article 47 deals with right to food⁷³. In *People's Union for Civil Liberties v. Union of India*⁷⁴, the Supreme Court asserted right to food as a fundamental right under Article 21 of the Constitution of India.”

In *Minerva Mills Ltd. v. Union of India*⁷⁵, it was held that “harmony and balance between fundamental rights and directive principles is an essential feature of the basic structure of the Constitution”.

Various Acts were enacted over the years for the protection of rights of the labourers. In this regard, the Plantation Labour Act of 1951 provides for the welfare of the labourers engaged in tea plantation and regulates their conditions of work⁷⁶. Under this main Act, the Government of Assam has made the Assam Plantation Labour Rules, 1965, which specifies welfare measures as well as employment conditions⁷⁷. Besides these, there are a number of tripartite and bipartite agreements amongst producers, labours and the Government⁷⁸.

Apart from the Plantation Labour Act, 1951, the service conditions of workers in the tea industry are enumerated in various industrial and social security legislations such as Workmen's Compensation Act, Payment of Gratuity Act, Provident Fund & Miscellaneous Provisions Act, Assam Tea Plantation Provident Fund, Pension Fund and Deposit Link Insurance Fund Scheme Act, 1955 - only for Assam, Payment of Bonus Act, Maternity Benefit Act, Payment of Wages Act, Equal Remuneration Act, Industrial Disputes Act, Factories Act and the Industrial Employment (Standing Order) Act, 1946⁷⁹. A Modified Personal Accident Insurance Scheme has been notified in December, 2008 for the benefit of the plantation workers, including tea⁸⁰.

4.2. The Plantation Labour Act, 1951: An Analysis

In the year 1951, the Plantation Labour Act was enacted to provide for the welfare of plantation labour by regulating the conditions of work in plantations⁸¹. It applies to all Tea, Coffee, Rubber, Cinchona, Cocoa, Oil Palm and Cardamom Plantations, which admeasures

⁷³ INDIA CONST. Art 47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.

⁷⁴ (2001) 7 SC 484.

⁷⁵ (1980) 2 SCC 591.

⁷⁶ Supra at 1.

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ Condition of Tea Plantation Workers, Available at <https://pib.gov.in> (Accessed on October 28, 2019 at 3:00 pm).

⁸⁰ *Ibid.*

⁸¹ Supra at 13.

five hectares or more and in which fifteen or more persons are employed or were employed on any day of the preceding twelve months⁸². The Act also covers workers employed in offices, hospitals, dispensaries, schools/balwadis and crèches, etc., in the plantations but it does not apply to those factory premises to which the provisions of the Factories Act, 1948 apply⁸³.

There are two major drawbacks of the Plantation Labour Act, 1951. The first one is that, it does not encompass casual labourers within its ambit⁸⁴. This makes these casual workers more vulnerable and prone to exploitation by the employers. The second one is the absence of legal provisions relating to child labour and safety measures for workers⁸⁵. It is the only industry where employment of children is legally permitted. There is an urgent need to ban the employment of children in the plantations.

The Plantation Labour Act, 1951 which was introduced after the Independence in India focused on social justice. It regulates the tea sector thereby, placing the onus on the plantation owners/management/employers to provide key benefits to the workers, with the role of the Government being one of enforcer (through the Ministry of Labour). Though, many plantations and gardens are adhering to the requirements of the Plantation Labour Act, the workers continue to experience challenging living and working conditions as the provision and quality of these services differ. It can be seen that there are variances in the implementation of the provisions of the Plantation Labour Act, 1951 due to limited enforcement by the Government, increasing production costs and reduced productivity, placing financial pressure on plantations.

Many of the key industry actors opined that the Plantation Labour Act, 1951 is an outdated one and needs to be replaced. There is also lack of research on how the Plantation Labour Act affects workers, and on worker perspectives on the Act. There is an urgent need to focus on the worker experiences while, discussing about reformation to be brought to the Plantation Labour Act, 1951.

⁸² Report on the working of the Plantations Labour Act, 1951 for the year 2013, Available at labourbureaunew.gov.in (Accessed on August 19, 2020 at 11:20 pm).

⁸³ *Ibid.*

⁸⁴ *Supra* at 13.

⁸⁵ *Supra* at 13.

The Central Government is planning to repeal the provisions of the Plantation Labour Act, 1951 besides bringing in a new code on wages⁸⁶. The Plantation Labour Act made it mandatory for planters to provide workers non-cash benefits such as housing and drinking water. The Indian Tea Association said that the industry had been demanding that the obligation of the employers to provide welfare amenities to workers other than wages be either entirely taken over by the Government or a reasonable value be assigned to the non-cash benefits and be treated as a part of the wages⁸⁷.

4.2.1. Deliberating Some Important Provisions of the Act

The main provisions of the Act pertain to :

- (i) Health and Welfare,
- (ii) Hours of Work, Rest Intervals, etc.,
- (iii) Employment of Children/Adolescents and
- (iv) Annual leave with wages⁸⁸.

A brief descriptions of these provisions is given below:

(I) Health and Welfare⁸⁹

(a) Medical – Section 10 of the Plantation Labour Act, 1951 states that every plantation is mandatorily required to provide and maintain, readily available, medical facilities for the workers and their families as may be prescribed by the State Governments.

(b) Housing – Section 15 of the Act makes it obligatory for the employers to provide and maintain necessary housing accommodation for every worker and his family residing in the plantation. The Act also requires every employer to provide and maintain necessary housing accommodation for those desiring workers, who have put in six months of continuous service, but are residing outside the plantation. The State Governments are, however, empowered to frame rules to decide the standard and specification of the accommodation.

⁸⁶Govt to repeal Plantation Labour Act; tea industry concerned, Available at <https://economictimes.indiatimes.com> (Accessed on August 20, 2020 at 11:25 pm).

⁸⁷ *Ibid.*

⁸⁸ *Supra* at 82.

⁸⁹ *Ibid.*

(c) **Recreation** – Section 13 of the Plantation Labour Act, 1951 lays down that the State Governments may frame rules for providing such recreational facilities for the workers and children employed in the plantations as are prescribed.

(d) **Education** – Section 14 of the Plantation Labour Act, 1951 states that the State Governments are also empowered to make rules requiring every employer to provide educational facilities of such standard as may be prescribed in his/her plantation, where the number of workers' children in the age group of six and twelve years exceeds twenty five.

(e) **Canteens** - In plantations employing 150 or more workers, the employers are required to provide and maintain one or more canteens of the standard prescribed by the State Governments for use of the workers. Section 11 of the Plantation Labour Act, 1951 provides for the same.

(f) **Creches** – Section 12 of the Plantation Labour Act, 1951 provides that in every plantation wherein 50 or more women workers are employed or were employed on any day of the preceding twelve months or where the number of children (below the age of six years) is 20 or more, crèche facility for the use of children of such women workers is required to be provided and maintained by the employer.

(g) **Other basic amenities** – Adequate supply of drinking water; maintenance of sufficient number of latrines and urinals in clean and sanitary conditions separately for men and women; supply of prescribed number and type of umbrellas, blankets, raincoats or similar amenities for the protection of workers from rain or cold; and appointment of welfare officers in the plantations, wherein 300 or more workers are ordinarily employed, are some of the other facilities required to be made available under the Act, for plantation workers by the employer.

(II) Hours of Work. Rest Intervals, etc⁹⁰.

Chapter V of the Plantation Labour Act, 1951 deals with the hours and limitation of employment. The Act provides that no adult worker is required or allowed to work in any plantation in excess of 48 hours a week and no adolescent for more than 27 hours a week, under Section 19. Nonetheless, when an adult worker works on any day in excess of the number of hours constituting a normal working day or for more than 48 hours in any week,

⁹⁰ Supra at 82.

he shall, in respect of such overtime work, be entitled to twice the rates of ordinary wages, provided that no such worker shall be allowed to work for more than nine hours on any day and more than 54 hours in any week.

It is obligatory under the Act that for any work done on any closed holiday in the plantation or any day of rest, a worker shall be entitled to twice the rates of ordinary wages as in the case of over time. Though, the Act does not fix daily hours of work, yet Section 22 of the same Act lays down that the period of work of an adult worker shall be so arranged that it does not exceed beyond 12 hours a day including rest intervals and the time spent in waiting for work. Section 24 and 25 of the Act provides that no woman or child worker be employed in any plantation except between 6 a.m. and 7 p.m. without the permission of the State Government. However, this restriction does not apply to mid-wives and nurses employed in any plantation.

As per Section 21 of the Act, workers are required to be given a rest interval of at least half an hour each day after 5 hours of work. The hours of work for a normal working day for the purpose of wages and overtime are to be fixed under the rules framed by the State Governments. The Act under sub-section (3) of Section 23 empowers an employer to refuse to employ a worker on any day when he turns up more than half an hour after the scheduled time for the commencement of the work. Under Section 20 of the Plantation Labour Act, the State Governments under the Rules, have to provide for (a) weekly day of rest and (b) payment for work done on the weekly day of rest at a rate not less than the overtime rate prevailing in a particular area and where there is no such rate, the State Governments may fix such rate as they may consider proper. The workers are not allowed to work for more than 10 days at a stretch without a day's rest. However, they have the option to work on any day which is not a closed holiday under sub-section 2 of Section 20 of the Plantation Labour Act, 1951. The Act further facilitates that where, on any day, a worker has been prevented from working by reasons of tempest, fire, rain or other natural causes, if he so desires, that day may be treated as his weekly day of rest for the week concerned. However, persons whose total period of employment in any week is less than 6 days are, however, not entitled to a weekly day of rest.

(III) Annual Leave with Wages⁹¹

⁹¹ Supra at 82.

Chapter VI of the Plantation Labour Act, 1951 deals with leave with wages. As per Sub-section (1) of Section 30 of the Plantations Labour Act, 1951, every worker is allowed annual leave with wages, calculated at the rate of one day for every 20 days of work for adult worker and in case of young person, one day for every 15 days of work. Every worker is entitled to accumulate leave upto a maximum of 30 days, under sub-section (3) of Section 30 of the Plantation Labour Act, 1951. The wages of an employee, if employed wholly on a time-rate basis, will be paid at a rate equal to the daily wages payable to him immediately before the commencement of the leave, and in all cases, at the average daily wage rate calculated over the preceding twelve calendar months, under Sub-section (1) of Section 31 of the Plantation Labour Act, 1951. If the employment of a worker is terminated before he has taken the entire leave to which he is entitled, the employer shall pay him the amount payable in respect of leave not taken and such payment shall have to be made before the expiry of the second working day after such termination, under Sub-section (4) of the Plantation Labour Act, 1951

4.2.2. Registration of Plantations

Chapter I A of the Plantation Labour Act, 1951 deals with the registration of plantations.

Section 3A of the Act deals with the Appointment of registering officers⁹². It states that the State Government may, by notification in the Official Gazette-

- (a) appoint such persons, being Gazetted Officers of Government, as it thinks fit, to be registering officers for the purposes of this Chapter, and
- (b) define the limits within which a registering officer shall exercise the powers and discharge the functions conferred or imposed on him under this Chapter.

Section 3B of the Act deals with the Registration of plantations⁹³.

Sub-section (1) of Section 3B of the Act, states that every employer of a plantation, existing at the commencement of the Plantation Labour (Amendment) Act, 1981 shall, within a period of sixty days of such commencement, and every employer of any other plantation established after such commencement shall, within a period of sixty days of the coming into existence of such plantation, make an application to the registering officer for the registration of such plantation.

⁹² Section 3A of The Plantation Labour Act, 1951.

⁹³ Section 3B of The Plantation Labour Act, 1951.

It further provides that the registering officer may entertain any such application after the expiry of the aforesaid period if he is satisfied that the applicant was prevented by sufficient cause from making the application within such period.

Sub-section (2) of Section 3B states that every application made under sub-section (1) shall be in such form and shall contain such particulars and shall be accompanied by such fees as may be prescribed.

Sub-section (3) of Section 3B states that the registering officer shall mandatorily register the plantation, following the receipt of an application under sub-section (1).

Sub-section (4) of Section 3B states that where a plantation is registered under this section, the registering officer shall issue a certificate of registration to the employer.

Sub-section (5) of Section 3B states that where, any change occurs in the ownership or management or in the extent of the area or other prescribed particulars in respect of such plantation, after the registration of a plantation under this section, the particulars regarding such change shall be intimated by the employer to the registering officer within thirty days of such change in such form as may be prescribed.

Sub-section (6) of Section 3B states that where as a result of any intimation received under sub-section (5), the registering officer is satisfied that the plantation is no longer required to be registered under this section, he shall, by order in writing, cancel the registration thereof and shall, as soon as practicable, cause such order to be published in any one newspaper in the language of, and having circulation in, the area where the plantation is situated.

Section 3C of the Plantation Labour Act, 1951 deals with Appeals against orders of registering officer⁹⁴-

Sub-section 1 of Section 3C of the Act, states that any person aggrieved by the order of a registering officer under sub-section (6) of section 3B may, within thirty days of the publication of such order in the newspaper under that sub-section, prefer an appeal to such authority as may be prescribed.

⁹⁴ Section 3C of The Plantation Labour Act, 1951.

It further provides that the appellate authority may entertain an appeal under this sub-section after the expiry of the aforesaid period if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal within such period.

Under sub-section 2 of Section 3C, after the receipt of an appeal under sub-section (1), the appellate authority may, after giving the appellant, the employer referred to in sub-section (5) of section 3B and the registering officer an opportunity of being heard in the matter, dispose of the appeal as expeditiously as possible.

4.2.3. Inspecting Staff

Chapter – II of the Plantation of the Plantation Labour Act, 1951 deals with Inspecting Staff.

Section 4 of the Act provides for the Chief Inspector and inspectors⁹⁵ -

Sub-section 1 of Section 4 of the Plantation Labour Act, 1951 states that the State Government may, by notification in the Official Gazette, appoint for the State a duly qualified person to be the chief inspector of plantations and so many duly qualified persons to be inspectors of plantations subordinate to the chief inspector as it thinks fit.

Sub-section 1A of Section 4 of the Act states that the State Government may also, by notification in the Official Gazette, appoint such officers of the State Government or of any local authority under its control, as it thinks fit, to be additional inspectors of plantations for all or any of the purposes of the Act.

Sub-section 2 of Section 4 of the said Act, states that subject to such rules as may be made in this behalf by the State Government, the chief inspector may declare the local area or areas within which, or the plantations with respect to which, inspectors shall exercise their powers under this Act, and may himself exercise the powers of an inspector within such limits as may be assigned to him by the State Government.

Sub-section (3) of Section 4 of the Plantation Labour Act, 1951 provides that the chief inspector and all inspectors shall be deemed to be public servants within the meaning of the Indian Penal Code (45 of 1860).

Section 5 of the Plantation Labour Act, 1951 provides for the powers and functions of inspectors⁹⁶.

⁹⁵ Section 4 of The Plantation Labour Act, 1951.

Subject to any rules made by the State Government in this behalf, an inspector may within the local limits for which he is appointed -

(a) make such examination and inquiry as he thinks fit in order to ascertain whether the provisions of this Act and of the rules made thereunder are being observed in the case of any plantation;

(b) with such assistants, if any, as he thinks fit, enter, inspect and examine any plantation or part thereof at any reasonable time for the purpose of carrying out the objects of this Act;

(c) examine the crops grown in any plantation or any worker employed therein or require the production of any register or other document maintained in pursuance of this Act, and take on the spot or otherwise statements of any person which he may consider necessary for carrying out the purposes of this Act;

(d) exercise such other powers as may be prescribed.

It also provides that no person shall be compelled under this section to answer any question or make any statement tending to incriminate himself.

4.3. Role of Trade Unions and Collective Bargaining Platforms

The report of the Rege Commission⁹⁷, stated that the employers in the tea industry are highly organised and their associations play an important role in influencing the decisions of the Government concerning the industry. But, the workers were unorganised and helpless. The situation changed to some extent after Independence, when trade unions were allowed to organise tea plantation workers⁹⁸.

The Trade Unions are fundamental to advocate worker's rights and represent workers in a variety of social dialogue platforms. They also play a crucial role in supporting workers' communities to enhance not only their voice, but also to provide development services that can improve the conditions of tea workers. Tea wages are determined through tripartite negotiations for a valid period of three years at the sector and state level. It has been seen that though, the trade unions lack negotiation and representation skills which inhibits their

⁹⁶ Section 5 of The Plantation Labour Act, 1951.

⁹⁷ S K Bhowmik, "Productivity and Labour Standards in Tea Plantation Sector in India", Labour and Social Issues in Plantations in South Asia, pp. 133-166.

⁹⁸ *Ibid.*

capacity to demand wage increases and other workers' rights in the presence of more skilled, articulate and professional employers' representatives.

The presence, cohesion and strength of trade unions in India varies from region to region. Some of the elements that obstruct the effectiveness of trade unions include fragmentation among unions, lack of organisational skills, limited financial capacity, strong political affiliations, low female participation in union decision-making bodies, lack of awareness, and workers' dependence on employers which might prevent them from speaking out. In Assam, weak institutional capacity limits the ability of trade unions to be an effective worker voice, particularly in wage negotiations. In Assam, the Assam Cha Mazdur Sangha is the only major union, which represents the workers⁹⁹. Inside plantations, worker committees organise and convene members to listen to their needs. Nonetheless, their efforts are hindered by the lack of sufficient financial resources.

The labour rights awareness campaigns, leadership training programmes and joint-action forums specifically targets national federations and central trade unions, effectively leaving out lower levels of representation thus, the benefits do not reach the lower levels of workers' representation. There are a number of capacity building interventions that aim to improve the capacity of trade unions and worker organisations, but they lack the proper implementation due to the difficulty in finding education officers who work in the field, and uncertainty of funding. The participation poses challenges for the trade union representatives and workers as the attendees require authorised time off from employers, in order to participate in such programmes that spreads over a duration of 1-45 days.

The training programmes must be organised keeping in mind the workers' time limitations and the management's needs in order to make them valuable for both parties in terms of their duration. For most women participators, the long duration of training programmes create challenges, owing to their traditional roles and family responsibilities. The training programmes are currently focused on providing modules on enhancing the organisational, financial and operational procedures.

⁹⁹ S K Bhowmik, "Productivity and Labour Standards in Tea Plantation Sector in India", Labour and Social Issues in Plantations in South Asia, pp. 133-166.

4.4. The Tea Board of India vis-a-vis The Tea Act, 1953

The Tea Act regulates the tea industry pursuant to relevant international agreements thereby, developing the industry, as well as production and marketing of tea. In the year 1953, the Tea Act repealed both the Central Tea Board Act, 1949 and the Indian Tea Control Act, 1938¹⁰⁰. The Board was formally inaugurated on the 30th April, 1954¹⁰¹. The functions of propaganda and associated activities related to tea, on one hand and the control over the cultivation and the export of tea, on the other hand were merged in one and the same body, that is the Tea Board, instead of two separate bodies i.e., the Central Tea Board and the Indian Tea Licensing Committee¹⁰².

In the year 1954, the Tea Board of India was established as per the provisions of Section 4 of the Tea Act, 1953. The Board is charged with the overall development of the tea industry in India and its functions under the administrative control of the Central Government (Ministry of Commerce and Industry).

4.4.1. Objectives of the Tea Board

The following are the important objectives of the Tea Board:-

- a. To promote and encourage co-operation, education, research and development in relation to the production and marketing of tea.
- b. To regulate and control the activities of the tea industry with special regard to :
 - i. the production of green leaf, manufacture, marketing, import and export of tea.
 - ii. the price to be paid for tea or green leaf, and
 - iii. the conditions of contracts entered into by planters, exporters and manufacturers.
- c. To arbitrate disputes between persons engaged in or connected with the tea industry.
- d. To assist a planter to diversify to other agricultural activities¹⁰³.

¹⁰⁰ Supra at 15.

¹⁰¹ *Ibid.*

¹⁰² *Ibid.*

¹⁰³ Available at www.teaboard.gov.in (Accessed on August 24, 2020 at 11:00 am).

4.4.2. Functions of the Board -

The principal function of the Tea Board is to promote the development of the tea industry as specified under Section 10 of the Tea Act, 1953. The specific measures referred to in the Act for the purpose are as follows:-

- a. To regulate the production and extension of cultivation of tea.
- b. To improve the quality of tea.
- c. To promote co-operative efforts among growers and manufacturers of tea.
- d. To undertake, assist or encourage scientific, technological and economic research and to maintain or assist in the maintenance of demonstration farms and manufacturing stations.
- e. To assist in the control of insects and other pests and diseases affecting tea.
- f. To regulate the sale and export of tea.
- g. To train in tea testing thereby, fixing grade standards of tea.
- h. To increase the consumption in India and elsewhere of tea and carry on propaganda for that purpose.
- i. Registration and licensing of manufacturers, brokers, tea waste dealers and persons engaged in the blending of tea.
- j. To improve the marketing of tea in India and elsewhere.
- k. To collect statistics from growers, manufacturers, dealers and such other persons as may be prescribed on any matter relating to the tea industry, the publications of statistics so collected or portions thereof or extracts there from.
- l. To secure better service conditions and the provisions and improvement of amenities and incentives for workers.
- m. To provide financial help under different schemes¹⁰⁴.

The Tea Board is required to perform its functions under this section in accordance with and subject to such rules as may be made by the Central Government¹⁰⁵.

¹⁰⁴ Supra at 15.

Further, the Enquiry Commission recommended several other functions to the Board¹⁰⁶:-

- a. To maintain replanting reserves on behalf of all estates.
- b. To have a cost of production unit.
- c. To organize tea auctions.
- d. To arrange warehousing.
- e. To draw up a phased program of rehabilitation and development of fixed assets and to have an inspectorate for extension and advisory works.
- f. To co-ordinate the supply of finance for the tea industry.
- g. To certify revaluation of fixed assets whenever necessary.
- h. To have a unit to look after the needs of the industry for efficient and economical procurement of various kinds of supplies and stores and for encouraging the development of co-operative institutions in this connection.
- i. To administer the Tea Export Control Scheme in view of the abolition of export quotas.
- j. To advise the industry in well co-ordinated recruitment of managerial personnel and in establishing suitable training institution for them.
- k. To establish suitable liaison with the Department of Company Law Administration in the Central Government for the administration of the latest company Act in relevant to the tea companies¹⁰⁷.

Some of the recommendations of the commission have already been implemented by the Government of India, while the others have been shelved¹⁰⁸.

4.4.3. Membership of the Board

(I) The Tea Board shall consist of :

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

¹⁰⁷ Report of the Plantation Enquiry Commission, pp. 256-257.

¹⁰⁸ *Supra* at 15.

a. The permanent secretary or his representative, who shall be the Chairman.

b. The Financial Secretary or his representative.

c. The Registrar, Co-operative Societies or his representative.

d. A representative of the Chamber of Agriculture.

e. Two representatives of manufacturers.

f. A representative of planters.

g. A representative of metayers; and

h. Three other persons.

II. The persons specified in Sub-section I (e) to (h) shall be appointed annually by the Minister on such terms and conditions as he thinks fit.

III. The composition of the Board, and any change in its composition, shall be published in the Gazette.

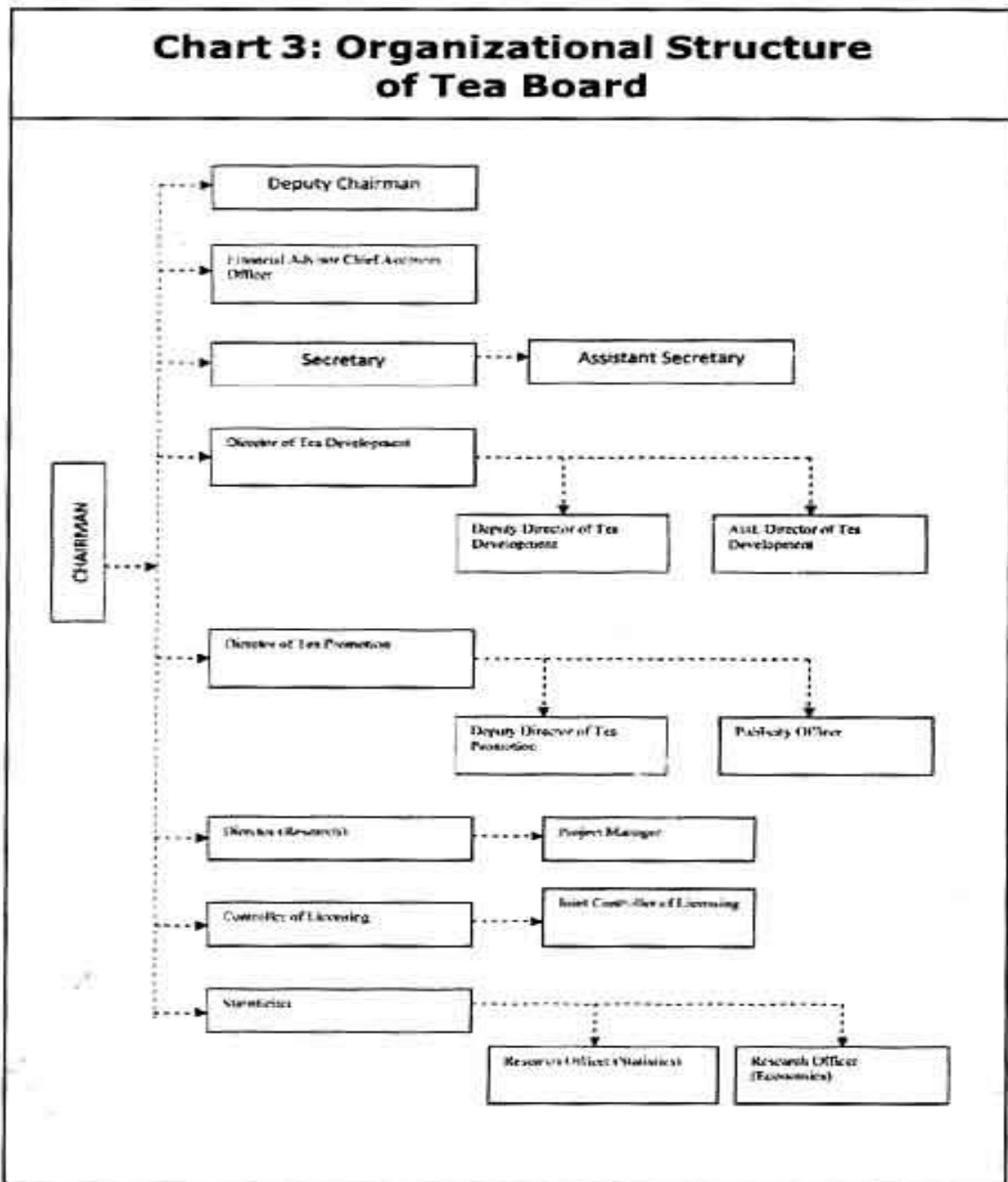
IV. The Board shall meet-

- at least once every month; and
- where requested to do so in writing by the Minister or by not less than 3 members, within one week of the date of the request.

V. The quorum of the Board shall be 5 including the Chairman.

VI. Every member shall be paid such remuneration and allowances as the Ministry may determine¹⁰⁹.

¹⁰⁹ Available at www.teaindustry.com (Accessed on August 20, 2020 at 10:30 am).



A diagram showing Organizational Structure of the Tea Board¹¹⁰.

¹¹⁰ R Sivanesan, "Functions of Tea Board in India : A Study", IJMRBS, Oct, 2013, ISSN 2319-345X, Vol. 2, No. 4.

4.4.4. Staff of the Board

1. There shall be a General Manager of the Board who shall be appointed by the Board subject to the approval of Minister, responsible for the execution of the policy of the Board and for the control and management of its day to day business, acting in accordance with directions he receives from the Board and attend every meeting of the Board.
2. The Board may employ, on such terms and conditions as it thinks fit such other staff as may be necessary for the proper discharge of its function.
3. All staff of the Board shall be under the control of the General Manager.
4. The Board may make provision, in such form as it think fit, to govern the conditions of service of the staff of the Board, in particular, to deal with,
 - a. the appointment, dismissal, discipline, pay and leave, of the staff.
 - b. appeals by staff against dismissal and other disciplinary measures.
 - c. the establishment and maintenance of medical benefit funds, loan funds, staff superannuation schemes, and the contributions payable and the benefits recoverable.
 - d. every employee or member shall be deemed to be a public officer for the purposes of the Public Officer's Protection Act¹¹¹.

4.4.5. Organisation Structure of the Board

The term 'Organization Structure' is highly abstract, and is not visible in the same way as a mechanical structure. An organization structure is the established pattern of relationships among various components or parts of the organization¹¹².

4.4.6. Composition of the Tea Board

The Tea Board of India constitutes various committees. On the 1st April, 1964 the Board re-constituted its committee. The following are the composition of the Tea Board.

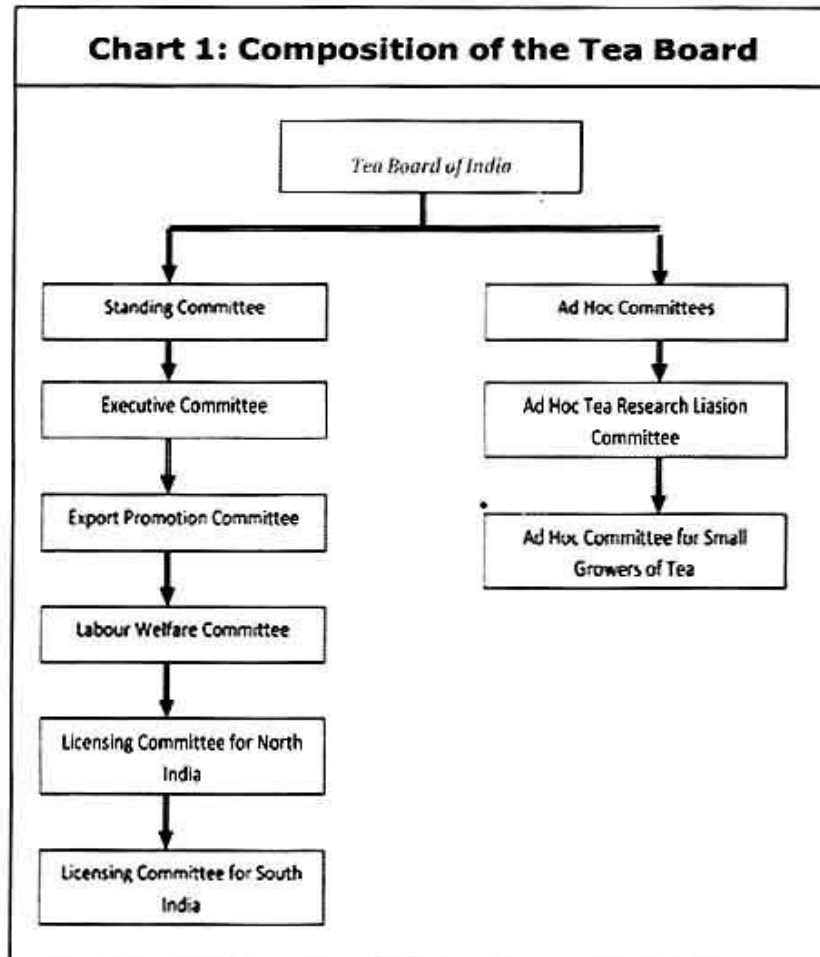
The committees are broadly classified into:

¹¹¹ Available at www.teaindustry.com (Accessed on August 24, 2020 at 11 : 45 am).

¹¹² Supra at 15.

I. Standing Committees, and

II. Ad Hoc Committees¹¹³.



A diagram showing the Composition of the Tea Board¹¹⁴

The Tea Board includes Standing Committees and Ad Hoc Committees. Standing Committees includes Executive Committee, Export Promotion Committee, Labour Welfare Committee, Licensing Committee for North and South India. Ad Hoc Committees includes Tea Research Committee and small growers of tea committee.

¹¹³ Supra at 15.

¹¹⁴ R Sivanesan, "Functions of Tea Board in India : A Study", IJMRBS, Oct, 2013, ISSN 2319-345X, Vol. 2, No. 4.

4.4.7. Administrative Set-up of the Board

The functional activities of the Board's Head office located in Kolkata, West Bengal are as under:

(a) **The Secretariat headed** by Secretary looks after Establishment/ Administrative works and co-ordinates with the various departments of the Board's Office.

(b) **The Establishment branch** headed by Assistant Secretary looks after administrative/policy matter and deal with the staff member of the Board's office.

(c) **The Finance Wing** headed by Financial Advisor and Chief Accounts Officer is responsible for the maintenance of accounts, release of financial assistance to tea gardens and internal audits.

(d) **The Development Directorate** headed by the Director of Tea Development is responsible for formulation and implementation of various developmental schemes and rendering assistance to the industry in the procurement, distribution and movement of essential inputs.

(e) **The Promotion Directorate** headed by the Director of Tea Promotion looks after the works relating to Marketing and promotion of tea in India and abroad.

(f) **The Research Directorate** headed by the Director of Research is responsible for co-ordination of tea research carried out by the different tea research institutions in the country and monitoring the functions of Tea Board's own Research Station.

(g) **The Licensing Department** headed by the controller of licensing is responsible for issue of business licenses for tea exporters and distributors, recording the ownership of all tea gardens in India and implementation of the Tea Waste Order and Tea Warehousing Order.

(h) **The Labour Welfare Department** headed by the Labour Welfare Officer looks after the work relating to implementation of welfare schemes of the Board.

(i) **The Statistics Department** headed by the Statistician is responsible for the collection of statistics relating to tea area, production, tea prices, export, import, labour and all other related data and carrying out techno-economic surveys of various tea growing areas in the country including cost studies.

(j) **The Law Cell** headed by Law Officer looks after all legal matters arising in various functional departments mentioned above.

(k) **The Hindi Cell** headed by the Deputy Director Hindi is responsible for the implementation of the provisions of Official Languages Act and various related measures.

(l) **The Vigilance Cell** is headed by the Deputy Chairman of the Board who has been appointed as the Chief Vigilance Officer of the Board by the Central Vigilance Commission. The Cell engages itself with surveillance and preventive vigilance, in addition to taking appropriate action in matters arising out of information/complaints. The Cell attends to queries of the Government of India and the Central Vigilance Commission as and when such queries are received. Monthly and Quarterly Reports are prepared and sent to the Ministry of Commerce and the Central Vigilance Commission. The over-all vigilance activities are looked after by the Chief Vigilance Officer who is assisted by the officials of the Board including Deputy Director¹¹⁵.

The Administrative set-up of the Tea Board includes Secretariat Branch and Establishment Branch. Secretariat Branch includes Finance wing, Tea Promotion wing, Licensing department, Statistics department and Law Cell. Establishment Branch includes tea development wing, research wing, labour welfare department and vigilance cell.

¹¹⁵ Available at www.teaboard.gov.in (Accessed on August 24, 2020 at 11: 00 am).

Chart 2: Administrative Set-up of Tea Board



A diagram showing the Administrative Set-up of the Tea Board¹¹⁶

¹¹⁶ R Sivanesan, "Functions of Tea Board in India : A Study", IJMRBS, Oct, 2013, ISSN 2319-345X, Vol. 2, No. 4.

4.4.8. The Tea Fund

The Board shall operate the Fund, which shall consist of :

- I. The sums belonging to the Board.
- II. Any grant or loan made to the Board by the Government.
- III. Any other sum which the Board may, with the approval of the Minister, receive.
- IV. The Board may apply sums standing to the credit of the Fund towards
 - a. the payment of expenses authorised by Tea Industry Control Act, 1975.
 - b. the payment, with the general or specific approval of the Minister, of any other expenses required for the carrying out by the Board of its functions.

4.4.9. Formation of Tea Association and Tea Research Association

On the 18th May, 1881 the tea planters formed an association named Indian Tea Association (ITA), with its headquarters at Kolkata for promoting their common interest and objectives¹¹⁷. Following the development, many associations were formed in various regions of North and South India. For the larger interest of the industry, the Tea Research Association was established in 1964 at Tocklai, Assam and was funded jointly by Council of Scientific and Industrial Research (CSIR) and Tea Board of India¹¹⁸. Henceforth, subscriptions of member tea estates and other associate members were called for to carry out the research work.

4.4.10. Offices of the Tea Board

There are 15 offices of the Tea Board in India with its head office located in Kolkata. It also has three overseas offices, designed to undertake the various promotional measures to boost up export of Indian tea. These offices also act as a liaison office for interaction between importers of Indian tea of the respective regions as well as Indian Exporters¹¹⁹.

¹¹⁷ Supra at 15.

¹¹⁸ *Ibid.*

¹¹⁹ Available at www.teaboard.gov.in (Accessed on August 24, 2020 at 11: 00 am).

CHAPTER-V

LEGAL SCENERIO IN ASSAM

5.1. An Analysis of the present condition of the Tea Plantation Labourers in Assam vis-a-vis The Oxfam Report

In collaboration with Tata Institute of Social Sciences, Oxfam India (an NGO) conducted a research and prepared a report titled ‘Addressing the Human Cost of Assam Tea.’ and the research report included interviews of 510 workers in 50 tea estates of the State¹²⁰. Many contenders even stated that there was nothing new in the Oxfam India’s report i.e., it also found that the tea plantation workers are still battling with bottle-neck issues such as lack of proper sanitation and housing facilities, poor wages, lack of quality health and education entitlements, etc¹²¹. The living, working conditions and very low wages of the labourers calls for an immediate attention from the side of the Government.

The report was in favour of the proposed Occupational Health and Safety Bill¹²². The report suggested that the Bill would help the Assam tea industry to ensure fair living wages, decent working and living conditions for tea plantation workers and their families. The report pointed out that increasing the minimum wages of tea plantation workers to Rs 351/- per day by the stakeholders have the potential to address the various unfavourable conditions faced by the tea plantation workers in Assam¹²³.

The researchers also found that despite working for over hours per day, the workers earn between the range of Rs 137-167/- per day (the same is even less for women) while the companies and supermarkets capture the lion’s share of the price paid by costumers for Assam tea in India, leaving a minimal amount for the workers from the tea estates¹²⁴. Half of the workers possess ‘Below Poverty Line’ ration cards provided by the Government¹²⁵.

Oxfam in its report stated that the solutions lie in sharing the end price of tea paid by the customers with the labourers in a fair manner thereby, by making stronger gender policies

¹²⁰ Oxfam calls consumers and supermarkets to support government’s commitment to improve Assam tea sector, Available at <https://www.oxfamindia.org> (Accessed on October 22, 2019 at 2:00 pm).

¹²¹ *Ibid.*

¹²² *Ibid.*

¹²³ *Ibid.*

¹²⁴ *Ibid.*

¹²⁵ Sumir Karmarkar, Oxfam blames brands for inequality to Assam tea workers, Available at deccanherald.com Accessed on October 22, 2019 at 3:00 pm).

and proper implementation of plantation labour laws by reviewing those legislations already existing in order to ensure that the tea plantation labourers can lead lives with dignity, irrespective of their gender¹²⁶. The report stated that the companies/supermarkets should cooperate with the suppliers, stakeholders and civil society to improve the various issues faced by the tea plantation labourers thereby, ensuring fair trading practices.¹²⁷.

One of the major problem of the tea industry is that it is largely labour-intensive in nature. But, the employment of the “casual” labourers are increasing on a large scale by the tea companies, as the legal provisions pertaining to wages, working hours and amenities apply only to permanent labourers¹²⁸. Moreover, the “casual” workers are paid far less than the permanent ones¹²⁹.

Almost half of the work force in the tea industry of Assam comprises of women force¹³⁰. They are considered better at plucking, pruning, cutting dead wood, weeding, etc by the tea industry owners, management or the contractors than their male counterparts¹³¹. The women workers are paid “chukri hazira” (girl wages) which are generally less than the men, they get no maternity benefits forcing many to continue to work during pregnancy and even after giving birth¹³². Since, there are no crèches, the women often bring along their children to the fields and they also get involved in plucking, weeding and hoeing activities in order to help their parents and earn a few bugs at the cost of the development of their childhood and education¹³³.

5.2. Issues peculiar to the Rights of the Tea Plantation Labourers in Assam

The three major issues that are peculiar to the Assam Tea Industry are as follows:- status of women labourers in the industry, employment of child labour and denial of ‘Scheduled Tribe’ status to the tea community in Assam.

¹²⁶ Assam Tea Labour Rights Violation, Available at <https://www.chronicleindia.in> (Accessed on October 22, 2019 at 8:00 am).

¹²⁷ Oxfam plea to buy from labour-act followers, Available at telegraphindia.com (Accessed on October 22, 2019 at 2:30 pm).

¹²⁸ Baishya, Dipali. “History of tea industry and status of tea garden workers of Assam” , Int. J. Appl. Res. 2016; 2(9): 552-556.

¹²⁹ *Ibid.*

¹³⁰ *Ibid.*

¹³¹ *Ibid.*

¹³² *Ibid.*

¹³³ *Ibid.*

5.2.1. Status of Women Labourers in the Tea Plantations of Assam

Women constitute almost half of the work force in the tea estates of Assam. The women dominate a major portion of the total workforce of the Assam tea industry and contribute majorly towards the production and profit of the tea industry. They are mostly entrusted with the task of plucking tender tea leaves and since, plucking is a seasonal activity mostly temporary women workers are employed for the same, who are not covered under the provisions of the Plantation Labour Act, 1951.

The women are vulnerable to child marriage and early pregnancy. These labourers mostly suffer from anaemia due to pregnancy and menstrual blood loss, other health problems such hyper-tension, nutritional deficiency. It has also been witnessed that the consumption of high-salt tea as an energy drink in order to combat dehydration leads to higher blood pressure. The women workers become vulnerable to several diseases due to the spraying of high toxic chemicals and pesticides. Other common and serious health infections that the women suffer are tuberculosis, leprosy, chronic malaria, fever, strain on neck and cervical spine from carrying baskets, abrasions to the hands and lack of protection to the toes, etc. There is also prevalence of vector-borne diseases. Diseases such as tuberculosis, gastrointestinal diseases, diarrhoea are common in the labour colonies owing to the lack of hygiene, water stagnation, poor drainage and over-flowing sewers.

One of India's Millennium Development Goal was to reduce Maternal Mortality Ratio (MMR) from 560 in 1990 to 140 in 2015¹³⁴. However, India has failed to achieve the desired number and its current Maternal Mortality Ratio stands at 178¹³⁵. However, Assam has the country's highest Maternal Mortality Ratio of 328 per 100000 births (2014) which is almost double the Nation's Average of 39 (2016)¹³⁶.

According to a Health Survey of Assam, it has been seen that the Upper regions of Assam i.e., Golaghat, Jorhat, Sivasagar, Dibrugarh, Tinsukia which are the major tea growing areas recorded Maternal Mortality Ratio of 436¹³⁷. The reasons for such large figures of Maternal

¹³⁴ Ms. Nijumoni Das & Ms. Parveen Islam, "Status of Women in Tea Sector of Assam: A Critical Analysis", Mr. Kishor Kumar Mishra, Mr. Shailender Kumar, Mr. Aditya Mishra, Ms. Akansha Jain, Mr Nivesh Sharma (ed.), WOMEN, LAW AND TECHNOLOGY, Victorious Publishers (India), November, 2018, Delhi, pp. 174-187.

¹³⁵ *Ibid.*

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

Mortality Ratio and Infant Mortality Rate are Child Marriage, less span of time between the previous child and the next child, insufficient maternal healthcare, lack of healthy diet, etc¹³⁸.

Assam has around 62000 Anganwadi centres, yet two major factors are there that contribute to the rising number of Infant Mortality Ratio¹³⁹. Firstly, due to heavy monsoon transportation of pregnant women to nearby clinic becomes a difficult task. Secondly, unsafe and unhygienic home-based childbirth in underdeveloped areas. The infant mortality rates of female child are more alarming than male child.

Though, the Plantation Labour Act 1951 regulates the wages of the permanent tea workers, their duty hours and provides that the management has to provide the basic amenities of healthcare, education, drinking water, housing, child care facilities, maternal care and accident cover. But, these provisions lack proper implementation at the ground level.

One of the major flaws of the Plantation Labour Act, 1951 is that the Act covers only permanent workers within its ambit and not the casual workers for which the casual workers are vulnerable and discriminated without any security and safety during working period. There are contentions that the benefits of the Act have not yet reached the tea garden workers. Therefore, the North Eastern Tea Association (NETA) has proposed to the Ministry of Labour and Employment regarding implementation of Employee's State Insurance Act, 1948 with adequate amendments in the Act as the Employee's State Insurance Act, 1948 does not cover seasonal workers and tea plucking is a seasonal business¹⁴⁰.

The women workers are considered inferior to their male counterparts in the tea industry. Thus, they face discrimination in terms of wages. Apart from work in the tea industry, the women also carry out the household chores. They are often subjected to maltreatment by the male members and it can be seen that alcoholism is very common amidst the male members of the family.

Until the year 1965, women did not receive any maternity benefits. At present, maternity benefit is made available through legislative initiative but many times it is seen that women worker folk is either not availing this facility in the fear of losing their source of earning or due to unawareness that such facilities has been provided by the Government. Additionally,

¹³⁸ *Ibid.*

¹³⁹ *Ibid.*

¹⁴⁰ *Ibid.*

many additional facilities like crèche, playschool and paediatric or natal care are hardly seen functioning in a tea estate. Lack of women supervisors make the women tea garden workers more vulnerable to exploitations by the employers. Apart from these issues, social evils such as witch hunting and superstition are prevalent amongst the tea garden community¹⁴¹.

5.2.2. Employment of Child Labour in the Tea Plantations of Assam:

In the tea plantations, child labour forms one of the categories of labour force in India. This practice has its roots in the Colonial Regime wherein, the Britishers employed the whole family of the plantation labourers to work in the tea plantations in order to save recruitment costs. Subsequently, the Plantation Labour Act of 1951 was introduced after India gained Independence. But, it failed to do away with the employment of children workers in the tea plantations. The Plantation Labour Act, 1951 recognises the employment of children and, it defines a child worker as one who is not over fourteen years of age. The children who are employed as workers are treated as permanent workers and they are provided with all the statutory benefits. The Plantation Labour Act, 1951 does not mention a minimum age for child labour¹⁴². However, the Child Labour (Amendment) Act, of 1985, which regulates the employment of children in the informal sector, stipulates 14 years as the minimum age of employment. The Tea Industry is the only formal sector in India which employs children as workers, apart from adults.

In Assam and West Bengal, the number of children employed in tea plantations as permanent labour is more than that of the Southern States. There are two main reasons for the large-scale employment of children as labourers in these two Northern States¹⁴³. The first one is the prevalence of low wage rate in Assam and West Bengal unlike, the Southern States¹⁴⁴. The plantation owners/employers find it more 'economical' to employ these child labourers rather, than adult workers due to the lower wage rates. The second one is the non-availability of proper educational facilities in the tea plantation areas¹⁴⁵. Education is the key to development and as such, if the education facilities are made more accessible to the children in the tea plantation areas there is a possibility of restricting child labour.

¹⁴¹ *Ibid.*

¹⁴² S K Bhowmik, "Productivity and Labour Standards in Tea Plantation Sector in India", *Labour and Social Issues in Plantations in South Asia*, pp. 133-166.

¹⁴³ *Ibid.*

¹⁴⁴ *Ibid.*

¹⁴⁵ *Ibid.*

5.2.3. Denial of Scheduled Tribe Status by the Assam Government:

The tea plantation labourers working in the plantations in Assam, are mostly migrants. They have migrated from states like Bihar, Orissa and Madhya Pradesh, since the times of the Britishers. In their places of origin, they belong either to the ‘Scheduled Tribe’ or ‘Scheduled Caste’ category. They belong to communities such as Oraon, Munda, Santhal, Kharia, etc. In Assam, these plantation labourers have been denied the status of ‘Scheduled Tribe’¹⁴⁶. There are several instances of protests from various political organisations and pressure groups belonging to the tea community in Assam for the inclusion of the community under the ‘Scheduled Tribe’ category. But, the Government has failed to address the issue, initiate special programmes for their upliftment and this is one of the issues of their contention against the Government of Assam.

5.3. The Assam Plantation Labour Rules : A Conspectus

The Government of Assam gave a concrete shape to the Plantation Labour Act, 1951 in the Assam Plantation Labour Rules, 1956¹⁴⁷. This act provides for certain welfare measures for the workers and imposed restrictions on the working hours. They are to be 54 (per week) for adults and 44 (per week) for non-adults. The employers are also to attend to the health aspect, provide adequate drinking water, latrines and urinals separately for men and women for every 50 acres of land under cultivation, proper maintenance of the drinking water and sanitation system. The employer is also to provide a garden hospital for the estates with more than 500 workers or have a lien of 15 beds for every 1000 workers in a neighbouring hospital with a distance of five kilometres. The gardens are also to have a group hospital in a sub area considered central for the people and provide transport to the patients. Along with the canteen facility a well furnished lighted and ventilated crèche for children below 2 is to be provided in gardens with more than 50 women workers. An open playground is to be provided for children above 2. The workers are to be provided with recreational facilities such as community radio and TV sets and indoor games.

¹⁴⁶ S K Bhowmik, “Productivity and Labour Standards in Tea Plantation Sector in India”, Labour and Social Issues in Plantations in South Asia, pp. 133-166.

¹⁴⁷ Assam Plantation Labour Rules – AltExploit, Available at <https://altexploit.wordpress.com> (Accessed on August 20, 2020 at 11:00 am).

Specific to the PLA is the clause on educational facilities in the Assam Plantation Labour Rules, 1956. If the number of children in the 6-12 age group exceeds 25 the employer should provide and maintain at least a primary school for imparting primary education to them. The school should have facilities such as a building in accordance with the guidelines and standard plans of the Education Department. If the garden does not maintain a school because a public school is situated within a mile from the garden then the employer is to pay a cess or tax for the children's primary education.

However, it is recommended that the Assam Plantation Labour Rules, 1956 is required to be amended to implement the provisions of Right to Education as notified under the State Right to Education Rules.

5.4. Initiatives taken by the Assam Government for the welfare of the Tea Plantation Labourers

In the year 1983, the Directorate for Welfare of Tea Garden and Ex-Tea Garden Tribes, Assam was established for the welfare of the Tea Tribes Community for implementing various schemes in the State as follows¹⁴⁸:-

Family Oriented Income Generating Scheme (FOIGS)- The main objective of the scheme is to provide assistance in the form of Governments Grants-in-aid to the Tea Tribes families living below the poverty line with a view to enable the families to enhance their annual income. Under this scheme, a total of 7182 of Tea Tribe families have been assisted by utilizing an amount of Rs 281.00 lakh upto 31.3.2003.

Pre-Matric and Post-Matric Scholarship- Under this scheme, economic assistance is provided to poor Tea Tribe students who are pursuing Pre-Matric and Post-Matric Courses in order to encourage them to pursue their further studies. Under the Pre-Matric Scholarship altogether 1,18,664 students were awarded scholarship utilising Rs 237.86 lakhs and under the Post-Matric Scholarship 1,779 number of students were awarded scholarship with an amount of Rs 15.85 lakh upto 31.3.2003.

¹⁴⁸ Assam Plantation Labour Rules – AltExploit, Available at <https://altexploit.wordpress.com> (Accessed on August 20, 2020 at 11:00 am).

Grants for Non-Government Educational Institutions- The objective of the scheme is to create educational environment around Tea Tribe Students Educational Institutions by providing financial assistance to such institutions for purchasing teaching instruments, books, furniture and major repairing as well as extension of the school building. An amount of Rs 40.45 lakhs have been utilized for providing assistance to 670 number of such institutions upto 31.3.2003.

Grants for Cultural Activities including Education Tour- Under this scheme, financial assistance is provided to the Cultural Organisations of Tea Garden and Ex-Tea Garden Tribes for development of their cultural heritage, which includes purchase of musical instruments, holding of cultural functions and exchange of cultural troops, etc. An amount of Rs 7.9 lakhs has been utilized for providing assistance to 261 organisations upto 31.3.2003.

Grants for Non-Government Organisation- The purpose of the scheme is to assist the Non-Government Organisations such as Mahila Samiti, Association, Clubs, and Libraries of Tea Tribes Community, which are rendering services for all round development of the community. An amount of Rs 7.00 lakh has been spent for providing assistance to 2002 number of Non-Government Organisations upto 31.3.2003.

Grants to Patients suffering from T.B. and other malignant diseases – Under the scheme financial assistance is provided to poor Tea Tribes Community people suffering from various malignant diseases like Cancer, Tuberculosis, etc. for their treatments. An amount of Rs 1.80 lakh has been spent for providing assistance to 184 number of patients upto 31.3.2003.

Grants for purchase of Text-Book and Uniform- Under the scheme, financial assistance is provided to poor Tea Tribes students for purchase of their school uniform. An amount of Rs 3.40 lakh has been utilized to provide uniform to 2510 number of students upto 31.3.2003.

However, none of these Government Schemes and Grants provides special facilities to women workers and their health and safety¹⁴⁹.

In recent days with the implementation of Sarva Siksha Abhiyan in 2001 many tea garden labourers are receiving a free mid-day meal service and other facilities. The Sarva Shiksha Abhiyan which is implemented in partnership with the State Government seeks to provide quality elementary education as well as has a special focus on girl's education

¹⁴⁹ Supra at 13.

On the 2nd January, 2018 the Government of Assam for the encouragement of tea workers towards tea gardening and also towards digitalization has launched a new Cash Award Scheme, under which tea gardener in Assam will receive cash prize of Rs 2,500 from the Government of Assam directly in their bank account. This scheme also aims to encourage the people involved in the tea gardening towards the cashless system. The Assam Government is going to launch a new scheme for the welfare of women, in tea garden particularly for pregnant women. Under this scheme financial support of Rs. 12,000/- will be provided to the pregnant women three months before the delivery. The women do not have to work even after the delivery for another three month.

CHAPTER-VI

DECIPHERING THE JUDICIAL DECISIONS VIS-A-VIS THE RIGHTS OF THE TEA PLANTATION LABOURERS IN INDIA

In the *Planters' Association of Tamil Nadu & Another v. The Secretary to Government, Labour & Employment Department & Others*¹⁵⁰, the appellants viz., The Planters' Association of Tamil Nadu and Tea Estates India Limited, Coimbatore have filed a writ petition seeking to quash the order issued in Labour and Employment Department, wherein the Government ordered appointment of Welfare Officer in every plantation where 300 and more workers are ordinarily employed prescribing qualifications, duties, conditions of service, etc. in exercise of the powers conferred under sub-section (1) of Section 43 read with Section 18 of the Plantations Labour Act, 1951 thereby, amending Tamil Nadu Plantations Labour Rules, 1955.

In this case, the Court was reluctant to agree with the application of the 'principle of desuetude'. The Court contended that by applying the 'principle of desuetude' it cannot kill a welfare measure enacted by the act of Parliament. The Plantation Labour Act is a Central enactment. The power of implementing the Act is left to the State Government. Since, the State Government is a delegate it has to consider the objective situation for implementing the particular provision. The legislation will not become a dead letter in the statute book, merely because there is delay either due to reasons for administration or there were different forces at work which for stalled the implementation of a particular provision.

¹⁵⁰ W.A. No. 2277 of 2012 & M.P. No. 1 of 2012.

In the case of *N. Krishnan & Another v. The Inspector of Plantation, O/o Inspector of Plantation, Kanyakumari*¹⁵¹, the respondent has filed charge-sheets against the petitioners, for the alleged offences punishable under Section 8 of Tamil Nadu Industrial Establishments (National & Festival Holidays) Act, 1958 read with Rule 5 (1) of the Tamil Nadu Industrial Establishments (National & Festival Holidays) Rules, 1959 since the petitioners have failed to file the list of Holidays for the year 2010 on or before 31.12.2009.

It was held that it cannot be construed that the whole Plantation Labour Act, 1951 has been bodily incorporated in the NAFT Act. Since the provisions of Plantation Labour Act are not applicable to the estates, the petitioners cannot claim that the proceedings initiated by invoking the provisions of NAFT Act cannot be sustained and they are liable to be set aside.

In the case of *Manager v. Smt. Alamelu*¹⁵², it was held that residing in the residential quarters provided to the worker by the employer as per the Plantations Labour Act, 1951 is incidental to the employment. In other words, only on account of nature of his employment in the estate, the worker stays in the house afforded by his employer. In this context, there is no impediment for the Court to infer that staying in the house allotted by the employer has got nexus with the employment and if any accident took place resulting in employment injury to the worker or any danger to his life, it ought to be held that he suffered the injury in the course of and out of employment, even though he is not at all physically present in the place of employment during the shift earmarked for him.

Under Section 15 of Plantations Labour Act, 1951 it is the liability of every employer to maintain necessary housing accommodation to every worker (including his family) residing in the plantation and outside the plantation who has put in six months of continuous service in such plantation. Further, Section 16-A provides for liability of employer in respect of accidents resulting from collapse of houses provided by him. The employer is not liable to pay compensation if the collapse is not solely and directly attributable to a fault on the part of any occupant of the house or to a natural calamity.

In determining the liability of the employer and in order to succeed to get compensation, the three tests laid down in *Francis De Costa Case*¹⁵³ must be followed-

¹⁵¹LQ 2015 HC 4606.

¹⁵² C.M.A (NPD) No. 2735 of 2002.

¹⁵³ (1996) 6 SCC 01.

1. There was an accident.
2. The accident had a casual connection with the employment, and
3. The accident must have been suffered in the course of employment.

In the case of *Prabhakar Dev v. State of Kerala*¹⁵⁴, the contention was raised that various other enactments have provisions which would indicate that another person could be nominated as the employer by the person in ultimate control. Assuming that to be so; the fact that in respect of plantations the legislature did not want such an arrangement to be made under the Plantation Labour Act and Rules reflects the contra-intention of the legislature. For the purpose of convenience and in the interests of better and more efficient enforcement of the provisions of the Act, the legislature wanted the deeming fiction to be introduced. That is why such a person who is not really the employer but is only a person entrusted with the affairs is also included in the category of “employer” by a deeming fiction. The ultimate employer must ensure vicariously and the Manager appointed under Section 2 (e) of the Act must personally ensure the actual implementation of the provisions of the Plantations Labour Act strictly in the plantation concerned at the risk of being prosecuted. It appears to be the clear legislative intent.

In the case of *Tata Tea Limited v. The State of Tamil Nadu*¹⁵⁵, it was held that it was not reasonable that holidays cannot be included for the purpose of calculating the continuous service. Section 3 of the Plantation Labour Act, 1951 deals with the conferment of permanent status to workmen. It states that every workman who is in continuous service for a period of four hundred and eighty days in a period of twenty-four calendar months in an industrial establishment shall be made permanent.

In this case, the State Government informed that plantations are covered by the Plantation Labour Act, 1951 and that since it is a social legislation protecting the interests of labours, exemption sought for cannot be granted. Under the Plantation Labour Act, 1951 the Chapter-VI deals with leave with wages for the workman. Section 30 allows every plantation worker to have leave with wages for one day for every 20 days for the work performed by him. Apart from that, Section 20 read with Rule 69 of the Tamil Nadu Plantations Labour Rules, 1985

¹⁵⁴ CrI MC No. 1868 of 2007.

¹⁵⁵ W.P.No. 2329 of 2000.

provides for weekly holiday for the plantation workers wherein the workman is entitled to have Sunday as a compulsory weekly off.

In the case of the *Management of Arasu Rubber Corporation Limited v. The Presiding Officer & Others*¹⁵⁶, it was held that the Supreme Court, while interpreting the provisions of Plantation Labour Act, had laid the basis of the judgment by bringing it within the purview of Article 42 of the Constitution in its judgment relating to *B. Shah v. Presiding Officer*¹⁵⁷, Coimbatore. It was held that, it has to be borne in mind in this connection that in interpreting provisions of beneficial pieces of legislations like the one in hand which is intended to achieve the object of doing social justice to women workers employed in the plantations and which squarely fall within the purview of Article 42 of the Constitution, the beneficent rule of construction which would enable the women worker not only to subsist but also to make up her dissipated energy, nurse her child, preserve her efficacy as a worker and maintain the level of her previous efficiency and output has to be adopted by the Court.

In the light of the observations, made by the Supreme Court and in order to make a full enjoyment of leisure as enshrined under Article 43 of the Constitution, every workman must be paid wages for the rest day as otherwise, there cannot be any enjoyment of leisure by workman. The fact that neither the notification under the Minimum Wages Act nor any provision of the Plantations Labour Act provides for rest day wages is immaterial in the present context.

In the case of *Abraham Thomas v. The Presiding Officer*¹⁵⁸, it was held that the Agricultural Workers Act is a State enactment to provide for the welfare of agricultural workers in the state and to regulate the conditions of their work. Agricultural worker is a person who does agricultural operation in relation to agricultural land i.e., land used for cultivation but does not include any plantation defined in the Plantations Labour Act.

The Plantations Labour Act, 1951 is an Act providing welfare of labourers and to regulate the conditions of work in plantation. The Kerala Agricultural Workers Act excludes plantations as defined under Plantations Act from agricultural land. The worker in the plantation is not an agricultural worker under the Kerala Agricultural Workers Act. In this case, it was held that, the subject-matter and import of both legislations are not identical and hence no repugnance.

¹⁵⁶ W.P. Nos. 15227 and 15228 of 1996.

¹⁵⁷ (1977) 4 SCC 384.

¹⁵⁸ (1997) ILLJ 335 Ker.

Therefore, the contention is that the Industrial Disputes Act is repugnant to Kerala Agricultural Workers Act and the latter Act will prevail is not sustainable.

In *R.L. Rikhye v. State of Assam*¹⁵⁹, the case arose out of a complaint filed by the respondent, Medical Inspector stating that, on 5.6.1992 he inspected Boro Tea Estate and found that the petitioner Sri R.L. Rikhye along with Mr. B.C. Saikia, Manager, Boro Tea Estate violated Sections 26 and 27 of the Plantation Labour Act, 1951 by failing to produce certificate of fitness for non-adult worker of the plantation and also violated the provisions of Rule 76 of the Assam Plantation Labour Rules, 1956 by not maintaining the Register of non-adult workers in Form No. 9. properly. After obtaining the sanction from the Chief Inspector of Plantations under Section 39 of the Act, the complaint was filed against the petitioner i.e., Sri R.L. Rikhye and the Manager of the Tea Estate.

There is nothing in the complaint or in the sanction to show that the present petitioner in this case, Mr. R.L. Rikhye who is the Director of Company, was having any control over the affairs of the plantation and it is clear that in the instant case it is clear that the Manager is looking after the affairs of the plantation. That being so, the present petitioner who is only a Director of the Company cannot be prosecuted under the Plantation Labour Act for the alleged violation of Sections 26 and 27 of the Act and Rule 76 of the Assam Plantations Labour Rules, 1956.

In the case of *Malayalam Plantations Ltd. v. Inspector of Plantations and Others*¹⁶⁰, the question involved the scope of Section 5 of the Maternity Benefit Act, 1961. The Maternity Benefit Act, 1961 replaced the Kerala Maternity Benefit Act, 1957 from 15-8-1970. The Maternity Benefit Act has been made applicable to establishments in plantation as defined in Plantation Labour Act, 1951. The Act is intended to regulate the employment of women in certain establishments for certain periods before and after child birth and to provide for maternity benefit and certain other benefits.

The actual controversy in the case centres around the scope of Section 5(1) of the Maternity Benefit Act, 1961. It states the following-

Subject to the provisions of this Act, every woman shall be entitled to, and her employer shall be liable for, the payment of maternity benefit at the rate of the average daily wage for the

¹⁵⁹ CrI. Pet. No. 23 of 2010.

¹⁶⁰ AIR 1975 Ker 86.

period of her actual absence immediately preceding and including the day of her delivery and for six weeks immediately following that day.

For the purpose of this sub-section, the average daily wage means the average of the woman's wages payable to her for the days on which she has worked during the period of three calendar months immediately preceding the date from which she absented herself on account of maternity, or one rupee a day, whichever is higher.

Here the period for which a worker is entitled to benefit is divided into two parts. For the period before her date of delivery she is entitled to maternity benefit only for the period of her actual absence. For six months after her delivery she is entitled to maternity benefit. The difference between these two periods is understandable. For the earlier period she is not prohibited from working. She may absent herself after giving the required notice. So, maternity benefit is limited to the period of her actual absence only. But she is prohibited from doing any work in any establishment during the six weeks after delivery, and the liability to pay maternity benefit is absolute for that period. Section 5(3) of the Maternity Benefit Act, 1961 provides for payment of the maternity benefit for the maximum period of 12 weeks.

The learned single judge has observed in his judgment under appeal that "week" must be understood as meaning seven consecutive days. The provision relating to the method of finding out average daily wage and to the period of actual absence preceding the date of delivery give an indication that maternity benefit for the period is to be calculated only for the actual working days in a week excluding wageless holidays.

In the case of *The Manager v. The Secretary*¹⁶¹, it was held that the petitioner is the Manager of an Estate to which the Plantation Labour Act is applicable. One of their employees raised a claim for reimbursement of medical expenses incurred by that employee in a hospital of his choice for the treatment of his wife. The Union representing the employee approached the authorities under the Plantation Labour Act for a direction to petitioner to reimburse the expenses incurred by the employee.

Although several questions were raised, the only question pressed by the learned counsel for the petitioner is the question as to whether, when the employer maintains a hospital inside the

¹⁶¹ W.P. (C) No. 6719 of 2007.

Estate for giving free treatment to the employees of the Estate, the authorities under the Plantation Labour Act can direct the employer to reimburse the medical expenses incurred by an employee in hospitals of his or her choice.

However, the writ petition was disposed of without prejudice to the right of the petitioner to raise the very same contention in a more appropriate case where the amount is sufficient to agitate the issue seriously.

CHAPTER-VII

CONCLUSION AND SUGGESTIONS

Thus, we can conclude that the tea garden labourers those who are primarily responsible for the growth of the tea industry in Assam, are staying in the most deplorable conditions. There is lack of proper implementation of the legislations and constitutional provisions in terms of protecting the interests and rights of the tea garden labourers. There is an urgent need of repealing the Plantation Labour Act, 1951 keeping in mind its short-comings.

Some of the suggestions with regard to the issues faced by the tea garden labourers are as follows:-

- The Government should frame stringent laws with regard to the employment of 'casual labourers' in the tea industry, their wages, working hours and facilities that are provided to them.
- Steps should be taken by the Assam Government in fixing minimum daily wages of the tea plantation labourers taking other tea-growing states such as, Kerala, Karnataka and Tamil Nadu as living examples. In Kerala, the tea labourers get a minimum daily wage of Rs 310/-, it is Rs 263/- in Karnataka and Rs 241/- in Tamil Nadu respectively.
- Women supervisors should be appointed so that the women tea garden workers are not exploited.
- The Management and Trade Unions should organise literacy camps among tea garden workers to spread awareness on the benefits of education and to improve their level of education.
- The Assam Government must establish vocational training and educational institutes, provide proper housing and medical facilities in the tea garden areas.
- The Assam Government must provide proper housing, medical and sanitation facilities.
- The Government must legislate upon laws that are more favourable for the women (in terms of wages, working conditions, facilities, etc) and children in the Assam tea

industry. The minimum age should be fixed for employment of children as workers in the tea gardens, like in case of informal sector wherein, the minimum age of employment of child worker is stipulated as 14 years as per The Child Labour (Amendment) Act, 1985.

- The Government, NGO, and Management should organise family planning programmes for the women workers and measures must be taken to make them aware about their health.
- The Government, NGOs, print as well as electronic media should make combined effort to address the issues regarding healthcare and safety of the tea garden workers.

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