

Asia Pacific Labour Law Review

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Workers' Rights for the New Century

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AMRC's main goal is to support democratic and independent labour movements in Asia and the Pacific.
In order to achieve this goal, AMRC upholds the principles
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Editorial Team

Stephen Frost, Omana George, and Ed Shepherd

Layout

Tom Fenton

Cover Design

Eugene Kuo

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The Labour Situation in Bhutan

Nandik S Neopaney

Introduction

Sandwiched between two Asian giants, India and China, Bhutan is a small mountainous Buddhist country, the last Shangri-La in the eastern Himalayas. Until recent decades Bhutan has maintained self-imposed isolation from the outside world. Geography may be what prompted Bhutan to adopt the isolationist policy.

Bhutan was divided into petty kingdoms under the rule of Debrajas till 1907 when the first king of Bhutan Sir Ugyen Wangchuk consolidated the total administration with the support of the British regime in India.

Bhutan emerged as a sovereign, independent country with an hereditary monarchy, maintaining a social fabric consisting of various ethnic groups speaking different languages — Ngalongs, Sharchhops, Lhotsampas (Nepali speaking Bhutanese), and Khengpa in western, eastern, southern and central Bhutan respectively, and numerous dialects are spoken. Bhutan has a predominantly agrarian economy relying on obsolete technology though striving to move ahead with changing times.



Bhutanese people have been known for their peaceful co-existence until 1989 when the Bhutan Government adopted a racial policy, 'One Nation One People' in this land of cultural diversity. When the policy was implemented, cultural pluralism in Bhutan was banned; language, dress and culture of the western Bhutanese ruling elite became mandatory for all Bhutanese.

Deprived of the rights to nationality, traditional cultures, ethnic dress, and mother tongue, discontentment and frustration among many people, especially in the south, became intolerable. At the end of the 1990, people filled the streets demanding human rights and a constitutional monarchy with multi-party democracy. However, in an attempt to suppress the popular movement, the Royal Government responded by branding all activists and supporters of the movement as anti-nationals. Military rule was imposed and given carte blanche the Royal Bhutan Army had a field day.

The consequences were appalling: arbitrary arrests, torture, rape, intimidation, harassment, arson, looting, demolition of houses, and identity cards confiscated by the RBA. The Royal Government also imposed economic sanctions in southern Bhutan depriving the people of basic day-to-day necessities. Following escalation of repression on the people and in fear of persecution, thousands of southern Bhutanese fled into India and then to Nepal. The RGOB began implementing ethnic cleansing policies aimed at depopulating southern Bhutan. Today, more than 100,000 Bhutanese refugees languish in seven refugee camps managed by United Nations High Commissioner for Refugees. The root cause for repressing human rights and trade union rights in Bhutan is basically an outmoded and faulty polity.

The Kingdom of Bhutan is an absolute monarchy. It has no written constitution and no bill of rights. The country has a rubber-stamp assembly that passes every bill presented by the Royal, Government. The judicial system is primitive and consists of an obsolete set of laws upheld by lawyers who have mostly not studied in law school.

As the courts lack independence, the people are denied the rights to defence. Habeas corpus, a necessity for a democratic system, is non-existent in the Bhutanese legal system. Functioning under the absolute control of the executive, the judiciary fights to guard the interest of the ruling monopolist elite. In the absence of any check

on its powers, the executive is an omnipotent organ. Hence domestic legislation and policy enacted under the auspices of this executive is always oppressive and intended to protect and perpetuate its own rule.

Today more than a sixth of Bhutanese citizens are exiled from the country, forced to be refugees. Those at home lead a life akin to captives and are in constant fear. Advocating human rights and democracy in Bhutan is considered as encroaching on national sovereignty, and thus a threat to national security. Human rights and political activists are labelled 'anti-nationals' by the Government, and are punished inhumanely. The workers are arbitrarily thrown out of jobs with no service benefits, charged with fabricated allegations. As there is no forum to protect workers, they simply join the camps of silent sufferers.

It was imperative to organise in exile as the domestic climate is hostile to the rights of workers. The emerging concept of trade unionism is rooted in the ongoing human rights and democratic struggle that has engulfed Bhutan. In the struggle to improve the system, the Government was successful in throwing the government employees out of work on false charges of involvement with relatives in the movement. For having political opinions conflicting with the government's, workers were deprived not only of their jobs and service entitlements (provident fund, gratuity etc.) but also their nationality. These Bhutanese have taken refuge in India and Nepal.

In August 1992 likeminded Bhutanese workers in exile gathered in BIRTHAMODE, a town in Jhapa, Nepal, resolved to create a workers' forum, the Association of Bhutanese Professionals and Technicians (ABPT), but in May 2000 it was acknowledged that the ABPT could not organise all the Bhutanese workers under one common umbrella. For this reason the exiles decided to rename the ABPT and give it a broader scope to accommodate all workers. This culminated in forming the Federation of Bhutanese Trade Unions (FOBTU) on 1 May 1,2000 in Kathmandu because the situation in Bhutan is too hostile towards trade unions. The following unions are affiliated to the FOBTU, and efforts are underway to organise non-union workers both in exile and at home.

1. Bhutan Transport Workers' Union (BTWU).
2. Bhutan Garment Workers' Union (BGWU).

3. General and Allied Workers' Union of Bhutan (GAWUB).
4. Bhutan Administrative Workers' Union (BAWU).
5. Bhutan Financial Workers' Union (BFWU).
6. All Bhutan Artists' Association (ABAA).
7. Bhutan Press Union (BPU).
8. Teachers' Association of Bhutan (TAB).
9. Bhutan Health Association (BHA).
10. Bhutan Building and Wood Workers' Union (BBWWU).
11. Union of Bhutan Business Community (UBBC).

Constitutional provisions and labour policy of the state

No right of an individual is constitutionally guaranteed in Bhutan, because it is a country without a written constitution. However, an initiative was undertaken by a 39-member constitution drafting committee in November 2001, but the committee has not operated in public, and did not seek public opinion.

The Bhutanese are governed by the employers' 'rule of mercy', as there is a legislative vacuum with regard to labour laws. In the absence of legislation to protect the working class, the employer-employee relationship has become one of master-slave where the latter is under an obligation to render unconditional service.

Workers in the formal sector are however covered by service rules, which are generally oppressive in nature, and which provide no grievance-handling procedures. In disputes between employers and employees, the decision of the management is final and binding. There is no independent authority to determine conflicting issues. The only avenue available to the aggrieved party is through civil courts, which are under the tight grip of an executive that is committed to perpetuate management policies. There is no denying the fact that the courts favour employers.

Dispute settlement procedure

There is no mechanism or agency to mediate disputes between workers and employers. Disputes arising out of collective interests or rights invite harsh punishments and termination of service. There is no court or tribunal which is impartial towards labour.

Occupational health and safety and welfare measures

There are no written guidelines for occupational health and safety, which is at the mercy of the employers, as workers have no right to health and safety measures; when such demands are detected workers are liable to termination on disciplinary grounds. As such workers will not be victims of their own making.

Almost all work places lack basic amenities like a pollution-free environment, separate toilets for male and female workers, proper lighting systems, potable water, canteens, regular cleaning of work places, and regular health-checks. There is no provision for safety measures in hazardous environments, and no limits for lifting heavy weights.

There are no crèches or breast-feeding breaks for women workers, and no funds to provide compensation for the families of deceased and disabled workers. There are instances where the relatives of workers who died at work are denied compensation and cursed for not completing the job smoothly.

Terms and conditions of work

The terms and conditions of work like hours of work, lunch break, provident fund, insurance etc. is regulated to some degree in the formal sector. Employers issue appointment letters to employees prior to joining the enterprise. Factories, corporations, and other industrial set-ups are covered by rules framed to suit management requirements. There is no uniformity in pay scales, allowances, working hours, overtime payment, weekly holidays, and other benefits. There is no fixed rate for overtime payment and if an enterprise decides to pay for overtime, it is paid as an honorarium.

Women workers

Most women are engaged in unpaid domestic labour like rearing children and domestic work. Equal opportunity policies in employment in the organised sector are poor for working women because the low level of female education compared to men makes them poor competitors with men in the job market. On top of this, the few educated women who represent the largely illiterate working women are subject to sexual harassment at work by men co-workers and controlling officers.

However, there are many reasons for no official cases of such harassment. Reasons include a lack of labour courts or tribunals, lack of legal protection, fear of family neglect, social prestige, unawareness of workers' universal rights, and fear of dismissal. Though there are no statistics to substantiate this, for the above reasons, there are many occurrences of sexual harassment, but they are hard to prove as offences occur clandestinely. Thus women workers must bear unwelcome approaches by men. Even when cases are detected the law is silent.

Minimum wage

The Government has not determined minimum wages for workers engaged in either organised or unorganised sectors. Wage rates depend merely on the master – servant relationship. Absence of minimum wages exposes workers to exploitation and detriment of their health.

Child labour

This is a much-neglected area that is low visibility. However there is good reason to believe that many children (below the age of 18 years) toil in most of the unorganised sectors, working under hazardous conditions. However, the lack of statistics to substantiate the unfortunate truth leaves the children as silent sufferers.

Unfair dismissal

As noted earlier, many workers are sacked on trumped up charges. Workers are under duress to produce 'clearance certificates' issued by the police, which declare that no one from his/her family is involved in the democratic movement. When a worker fails to produce the certificate, s/he will be dismissed. There is nothing to protect them. Production of the clearance certificate is mandatory for training, promoting, schooling, and obtaining business licences. Workers are the backbone of industrial health in any country and disputes between employers and workers cannot be ruled out in all sizes of enterprise. In such confrontation the Government should act as an impartial referee, but how can a Government at loggerheads with the working class deliver justice?

Conclusion

In 1970 the Bhutan Government attended the United Nations (UN) Assembly as an observer and in 1971 became a

full member. By joining the UN, Bhutan strengthened its status as a sovereign independent nation, and began to take its place as a member of the international community.

Bhutan is party to two international human rights treaties: The Convention of the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

In addition Bhutan has signed but not yet ratified the Convention on the Elimination of All Forms of Racial Discrimination. To the dismay of workers, Bhutan has not signed or ratified any International Labour Organisation (ILO) conventions or recommendations to uphold the dignity of the working class.

As a member of the international community Bhutan is obliged to respect the basic rights of its people, as workers' rights are human rights. Therefore the Government should immediately adopt ILO core labour standards. As a civilised nation, Bhutan is under an obligation to safely repatriate its citizens, by amending the 1985 citizenship act, which is discriminatory, lacks a human face, and denies exiles a legal status. Racial policies of the Bhutan Government invite international outrage.

The present problem is a confrontation between the Government and dissidents. The Government must initiate a judicious approach to start talks with dissident representatives to compromise under a new era of trust for the well-being and prosperity of Bhutan

The newly constituted Bhutanese constitution, which is still in the hibernating stage, must devise methods to guarantee a promising future for all Bhutanese irrespective of race, sex, language, caste, creed, belief, and political opinion.

In light of this the international community can put pressure on the Government by urging the it to comply with the international obligations, solve the Bhutanese refugee crisis, and implement labour-friendly laws.

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