

AN OVERVIEW OF CONSTRUCTION LAW IN INDIA: WITH SPECIAL REFERENCE TO JUSTICE AND SUSTAINABLE DEVELOPMENT GOALS.

ABSTRACT.

Construction industry is a constantly growing industry in India. One of the peculiarities of the industry is the large number of persons associated with the industry directly and indirectly. As such, it is the duty of government to protect the rights of such persons through enactment of legislations covering the activities of the industry. Such laws are necessary to guarantee justice to the persons involved in the activity. This paper seeks to identify the framework of construction law in India and to analyse the laws in the light of concept of justice and Sustainable Development Goals. The paper analyses the existing legislations in India to identify the delivery of justice and its alignment with Sustainable Development Goals. Though the presence of a unified and specific framework of law relating to construction is lacking in India which has its repercussions on its stakeholders, the framework for labour and environmental justice has been established through various labour and environmental legislations.

Keywords: Construction law, justice, Sustainable Development Goals.

INTRODUCTION.

In a country where the rule of law prevails, it is necessary to establish a proper framework of legislative tools to ensure that the rights of persons associated or affected by an activity or industry are protected. However, it can be found that the construction industry in India lacks a proper framework of law regulating it but for the scattered legislations in place in respect of various aspects of construction activities and projects. But does that substantially affect the delivery of justice? This question needs to be addressed particularly considering the fact that there is an increasing investment in the infrastructure sector in India.

The construction industry is interwoven with the rights and duties of many persons. The activities directly, indirectly and remotely affect many persons making them stakeholders. To regulate the rights and duties of these stakeholders, there must be appropriate laws covering essential aspects. But the existing framework of laws in India regulating construction industry is insufficient pertaining to certain aspects especially with respect to access to justice in this

global world. Therefore, the objective of this article is to do an analytical study of the laws in India which regulate the construction industry and to find out if such law is in alignment with justice and Sustainable Development Goals.

FRAMEWORK OF CONSTRUCTION LAW IN INDIA.

Construction law:

Construction law is the law applicable to construction and infrastructure projects.¹ Until the end of twentieth century, it can be seen that there was no branch of law which identified as “Construction Law”.² Construction Law has developed as a separate, distinct and specialised branch of law in countries such as the United Kingdom, Malaysia, Singapore, etc. But India still lacks a unified branch of law relating to construction industry. The existing framework of laws relating to construction in India is scattered.

Indian Contract Act, 1872:

Except for minor works, a construction project is based on a contract. The execution of a construction project is governed by the agreement entered into between the Employer and the Contractor which lays down the rights, duties, and liabilities of parties.

The Indian Contract Act, 1872 (hereinafter referred to as the “ICA, 1872”),³ being the legislation in India governing contracts, is the principal Indian legislation governing the construction industry. The law of contract is the principal law regulating the rights and obligations arising out of agreements to carry out of a construction or an engineering work.⁴

Labour Laws:

There are various labour legislations in India enacted for the welfare of labourers. These laws are to be followed by Employers and Contractors in the construction industry. The Industrial Disputes Act, 1947 lays down provisions regarding strikes, lock-outs, lay-off and retrenchment of workmen, which covers workers in the construction industry.⁵

¹ Julian Bailey, *Construction Law* (2nd edn, Routledge 2016) 4

² *Id.* at 2

³ Indian Contract Act 1872

⁴ *Lafarge Redland Aggregates Ltd v Shephard Hill Civil Engineering Ltd* [2000] 1 WLR 1621 1623

⁵ Industrial Disputes Act 1947

The Contract Labour (Regulation and Abolition) Act, 1970 applies to “every establishment in which twenty or more workmen are employed”⁶ and contains provisions relating to health and welfare of contract labour such as canteen,⁷ rest-rooms,⁸ other facilities,⁹ first-aid facilities,¹⁰ etc.

The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 “applies to every establishment in which five or more inter-State migrant workmen are employed”¹¹ and lays down obligations regarding wages, welfare and other facilities to be provided to inter-State migrant workmen such as wage rates and other conditions of service,¹² displacement allowance,¹³ journey allowance,¹⁴ etc

The Workmen’s Compensation Act, 1923 provides for payment of compensation to workers in case of injury in the course of employment, according. The Minimum Wages Act, 1948 provides for payment of minimum wages to workers. The Payment of Wages Act, 1936 and the Equal Remuneration Act, 1976 are other labour legislations which apply to the construction industry.

Social Security, Health and Safety Laws:

Legislations relating to social security, health and safety of workers such as Employee’s Compensation Act, 2009, Maternity Benefit Act, 1961, Payment of Gratuity Act, 1972, Employees’ Provident Fund and Miscellaneous Provisions Act, 1952, Sexual Harassment at Workplace (Prohibition, Prevention and Redressal) Act, 2013 have operation in the construction industry and must be complied with by Employers and Contractors.

⁶ Contract Labour (Regulation and Abolition) Act 1970, s 1(4)(a)

⁷ *Id.* s 16.

⁸ *Id.* s 17.

⁹ *Id.* s 18.

¹⁰ *Id.* s 19.

¹¹ Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979, s 1(4)(a)

¹² *Id.* s 13.

¹³ *Id.* s 14.

¹⁴ *Id.* s 15.

Building and Other Construction Workers (Regulation of Employment and Condition of Services) Act, 1996:

This Act was enacted “to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures”. It applies “to every establishment which employs, or had employed on any day of the preceding twelve months, ten or more building workers in any building or other construction work”.¹⁵

Environmental Laws:

The construction industry is further regulated by various environmental legislations. Construction activities require permission from the Central Pollution Control Board and State Pollution Control Boards under the Water Act, 1974 and the Air Act, 1981 to use water and for emission standards, etc. so that water and air pollution can be prevented and controlled.¹⁶ Sometimes, the lands where construction is to take place may turn out be a forest land and the Forest (Conservation) Act, 1980 comes into picture to decide if such an activity is allowed in that area or not.¹⁷ Moreover, construction projects are regulated by Environment (Protection) Act, 1986 as certain projects require prior environmental clearance.¹⁸ Further, there are restrictions and regulations on construction projects which can take place in the Coastal Regulation Zones which are specified under the Coastal Regulation Zone Notification, 2011.¹⁹ The Construction & Demolition Waste Management Rules, 2016, made under the Environment (Protection) Act, 1986 are applicable to the construction industry and forms part of the construction law framework in India.²⁰

Land Laws:

Land laws such as the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and the Ancient Monuments and Archaeological Sites & Remains Act, 1958 are also applicable to construction projects. Apart from these laws, the Real Estate (Regulation and Development) Act, 2016 regulate the real estate sector.²¹

¹⁵ Building and Other Construction Workers (Regulation of Employment and Condition of Services) Act 1996, s 1(4)

¹⁶ Water (Prevention and Control of Pollution) Act 1974; Air (Prevention and Control of Pollution) Act 1981

¹⁷ Forest (Conservation) Act 1980

¹⁸ Environment (Protection) Act 1986

¹⁹ Coastal Regulation Zone Notification 2011, s3(ii)

²⁰ Construction & Demolition Waste Management Rules 2016, s3(ii)

Tax Laws:

The tax legislations form another set of legislations which apply to the construction industry. Section 194C of the Income Tax Act, 1961 provides for tax deductible at source, and it is payable when a person pays any sum to a contractor for carrying out work.²² With the introduction of goods and services tax (GST), works contracts are treated as the supply of services and currently fall within the 12% to 18% tax bracket.²³

The Building and Other Construction Workers Welfare Cess Act, 1996 was enacted “to provide for the levy and collection of a cess on the cost of construction incurred by employers with a view to augmenting the resources of the Building and Other Construction Workers’ Welfare Boards constituted under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996”.²⁴

Commercial Courts Act, 2015:

The Act was enacted “to provide for the constitution of Commercial Courts, Commercial Appellate Courts, Commercial Division and Commercial Appellate Division in the High Courts for adjudicating commercial disputes of specified value. Disputes arising out of construction and infrastructure contracts, including tender are commercial disputes”.²⁵

METHODOLOGY

The methodology used for this study is doctrinal research. Various primary and secondary sources have been referred during the course of this study. Primary sources referred include various legislations enacted by the Parliament of India.

DISCUSSION

India ranks 79 out of 142 in the World Justice Project Rule of Law Index, under which India

²¹ Real Estate (Regulation and Development) Act 2016

²² Income Tax Act 1961, s 194C

²³ Laware Associates, ‘Construction Comparative Guide’, (*Mondaq*, 16 March 2023)

<<https://www.mondaq.com/india/real-estate-and-construction/1154898/construction-comparativeguide#:~:text=Construction%20contracts%20in%20India%20are,an%20unlawful%20purpose%20is%20invalid>

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²⁴ Building and Other Construction Workers Welfare Cess Act 1996

²⁵ The Commercial Courts Act 2016, s2(1)(c)(vi)

is placed at rank 111/142 in respect of civil justice. Civil Justice is Factor 7 of the WJP Rule of Law Index. This factor has various sub factors of which India ranked 136/142 for 'Civil justice is not subject to unreasonable delay', 112/142 for 'Civil Justice is effectively enforced', 99/142 for 'ADR mechanisms are accessible, impartial and effective'. India ranks 102/142 in effectively guaranteeing fundamental labour rights.²⁶

Contractual and Inter-organisational Justice in Construction Industry:

The protagonists in the construction project are Employer, Contractor, Contract Administrator, Subcontractor, Consultant, Supplier, Government, Funder and others such as construction workers, project managers, site supervisors and other project staff.²⁷ Apart from the aforementioned entities, there are other persons and entities who are associated with the industry and who are affected by the activities and disputes in the construction project.

It is necessary for these various elements in the construction project to work and choose a non-confrontational approach in its activities so that there can be successful completion of a construction project with each entity receiving its dues. Such a system works especially if there is a legal backing or legislation behind it.²⁸ This will ensure inter organisational or inter-firm justice promising distributive justice in terms of rewards, procedural justice in terms of procedure and informational justice in terms of information exchange.²⁹

It can be rightly said that there is no construction project in the world which has been completed without a single dispute. Disputes come as part and parcel of construction projects. Delays in completion of project and delayed resolution of disputes cause injustice to the stakeholders due to loss of money, time among other things. In India, it can be seen that years are invested in the resolution of disputes, which affects the stakeholders. For instance, internationally, the system of Dispute Adjudication/ Avoidance Boards has been given statutory recognition such as in the United Kingdom, Malaysia, etc. Whereas, in India this system is merely a term of contract voluntarily entered into between the parties and has no legal backing. But for the fact that there is no legislation mandating such a procedure and its

²⁶ 'World Justice Project Rule of Law Index 2023' (*The World Justice Project*)
<<https://worldjusticeproject.org/rule-of-law-index/country/2023/India/Civil%20Justice/>>

²⁷ Julian Bailey, *Construction Law* (2nd edn, Routledge 2016) 27

²⁸ Benson T. H. Lim, Martin Loosemore, 'The effect of inter-organizational justice perceptions on organizational citizenship behaviors in construction projects' (2024)35 IJPM 95

²⁹ J.A. Colquitt, 'On the dimensionality of organizational justice: a construct validation of a measure' (2001)J. APPL. PSYCHOL.

enforcement, the disputes arising in the construction industry would have been settled in a matter of less time rather than being prolonged as is the current state of affairs. This, would in turn have provided timely justice to the various stakeholders or elements involved in a construction project. If every person associated with a project are not able to get their dues on time, which has a substantial effect on their livelihoods and repercussion on other activities, where is justice?

Labour Justice:

The workers in the construction industry are very vulnerable workforce.³⁰ The laws of the country impose hard legal liability as well as soft moral liability³¹ on companies³² in respect of labour conditions, etc. due to which construction companies cannot have unfair advantage over workers through sweatshop labour. Through the various labour legislations enacted in India for the welfare of labour, justice is made available and accessible to the workers in the construction industry, which is a huge workforce in the country. This, way labour justice is established in India.

Environmental Justice:

Another aspect of justice concerning the construction industry is environmental justice. Construction activities are of such a nature that it has effects on the surrounding environment due to discharge of waste, emissions, construction and demolition waste, etc. The aforementioned environmental legislations in India ensure that environmental justice is sought and achieved.

Sustainable Development Goals and Construction Law in India:

Goal 9 of SDGs is industry, innovation and infrastructure. One of the goal targets is to develop quality, reliable, sustainable and resilient infrastructure, including regional and transborder infrastructure. Goal 11 of SDGs is sustainable cities and communities. Building of sustainable and resilient buildings is a target of this Goal.³³ The World Energy Outlook

³⁰ Ananya Seth, 'Labour Legislations and the Indian, Construction Sector – An Overview' (2022) IJPIEL <<https://ijpiel.com/index.php/2022/05/18/labour-legislations-and-the-indian-construction-sector-an-overview/>>

³¹ Halina Ward, 'Legal Issues in Corporate Citizenship' (2003) INT'L INST. FOR ENV'T & DEV. <http://www.iied.org/pubs/pdf/fullIU_16000IIED.pdf>

³² Stathis Banakas, 'A Global Concept of Justice - Dream or Nightmare? Looking at Different Concepts of Justice or Righteousness Competing in Today's World' (2007) 67 Louisiana Law Review 1021, 1037

³³ United Nations, *The UN Sustainable Development Goals* (United Nations, New York, 2015)

202 2023, report by the International Energy Agency (IEA), has highlighted India as a notable
203 exception as it is one of the very few developing countries which have energy efficiency
204 building codes.³⁴The Energy Conservation Building Code (ECBC), developed by the Bureau
205 of Energy Efficiency (BEE), prescribes a minimum standard for energy use in new buildings
206 and major retrofits.³⁵The 2022 Amendment to Energy Conservation Act also provides for
207 including sustainability and green building requirements for a building in the building code
208 by replacing energy conservation building codes with energy conservation and sustainable
209 building codes.³⁶

211 FINDINGS.

212 After analysing the existing framework of construction law in India in the light of concept of
213 justice and the United Nations Sustainable Development Goals, the following are the findings
214 of the study:

216 ☐ There is no specialised law regulating the construction industry but for the various
217 legislations regulating different aspects of a construction project.

219 ☐ Lack of specialised laws in contradiction with other countries delays justice to the
220 stakeholders in respect of resolution of disputes pertaining to the industry.

222 ☐ But laws in India are able to provide environmental justice and labour justice through
223 its environmental and labour legislations.

225 ☐ A significant achievement of India is that the construction law in India (ECBC) is in
226 consonance with Goal 9 and Goal 11 of the UNSDG.

228 CONCLUSION.

229 The laws in India regulating the construction industry are those laws regulating contractual
230 aspects, labour aspects, environmental aspects, etc. Though a unified branch of law relating
231 to construction has not developed yet in India unlike other countries, the existing laws are in

³⁴ International Energy Agency (2023), *World Energy Outlook 2023*(IEA,Licence: Creative Commons Attribution CC BY-NC-SA 4.0)

³⁵ Energy Conservation Building Code, 2017

³⁶ Energy Conservation (Amendment) Act2022

232 tune with providing justice to the stakeholders in various respects. At the same time, the
233 delay in justice in relation to construction disputes which affects the livelihood of
234 stakeholders cannot be overlooked. But the way forward provides hope that India will
235 develop specialised laws for the construction industry.

UNDER PEER REVIEW IN IJAR