



A conceptual study on the status and legal provisions of un-organized sector in India

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Abstract

The Unorganised Sector in India is of prominence in the context of various sectors. It serves as a largest employment provider and also the source of income for many. The point here is that the sector suffers from lack of security to the workers. This as a result leads to the economic and social problems among the workers. The workers are subject to exploitation from the employers. There is lack of awareness about the social security laws by the employees which acts as an impediment in the overall growth of the employees. The Regulations and enactments are done from time to time to enable the workers to be elevated from the deprived conditions. The present study is conceptual study of the Legal provisions available for the workers in Un-Organised Sector in India.

Keywords: unorganised, informal workers, social security

1. Introduction: Unorganised workers in India: Issues and Concerns^[1]

The concept of an informal or unorganized sector began to receive world-wide attention in the early 1970s, when the International Labor Organisation initiated series efforts to identify and study the area through its World Employment Programme Missions in Kenya, Columbia, Sri Lanka and Philippines primarily underlined the development strategy based on economic growth in which employment was considered as the prime objective for development.

1. The British Economist Keith Hart in 1971 coined the term informal sector.
2. He made a detailed study of urban Ghana in which the study reported the new entrants, particularly rural migrants, to the labor market in the urban areas were forced to work in the informal sector partly owing to their lack of skill and experience needed for the jobs in the urban formal sector.
3. Since then, the informal sector has been the subject of several studies and seminars covering various aspects like its size, employment potential, its relationship with the formal sector, technological levels etc.

The term often is defined by indicating the absence of characteristics that belonging to the organised sector. The unorganized sector is often termed as residual sector but, it has its own merits as there is consistent growth rate in employment. The un-organised sector is known by different names such as informal sector, unregulated sector etc. This implies that informal workers are beyond any regulation or legislations passed by the Government. Hence, their working status is rarely covered by the legal status. Social security arising out of employment status and provided by employers

is largely confined to workforce who are identified as organised workers.

Only 0.4% of the unorganized workers in unorganized sector were receiving benefits like provident fund, and this proportion has not changed since 1999-2000.⁵ The social security measures such as old age pension, gratuity, employees' state insurance and other insurance schemes are non-accessible to workers of the unorganized sector. A large number of statutes and schemes addressed to different categories of workers are found neither feasible nor practicable. This is because labor relations in the unorganized sector are chaotic and there is no formal employer-employee relationship. But, even if it exists, it is of casual nature.

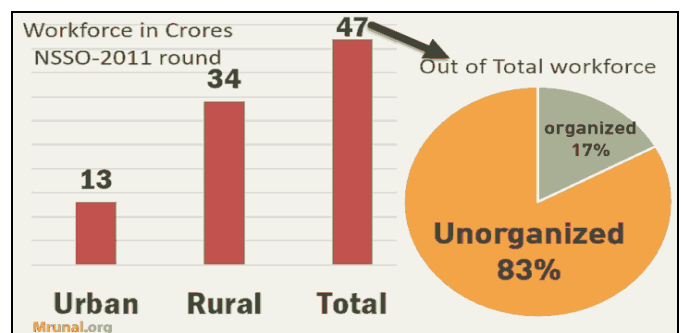


Fig 1

Since the unorganized sector plays pivotal role in the Indian economy, it needs special attention. Hence, an attempt has been made in this chapter to examine the issues and challenges faced by the unorganized workers with a view to overcome the obstacles in the unorganized sector to provide at least a basic minimum social security to the workers.

¹ Unorganised Workers In India: Issues And Concerns

2. Importance of Informal sector in Indian Economy ^[2]

About 370 million workers constituting 92% of the total workforce in a country were employed in the unorganized sector as per NSS Survey 1999-2000. It plays a vital role in terms of providing employment opportunity to large segment of the working force in the country and contributes to the national product significantly. The contribution of the unorganized sector to the net domestic product and its share in the total NDP at current prices has been over 60%. In the matter of savings the share of household sector in the total gross domestic saving mainly unorganized sector is about three fourth.

The informal sector constitutes largest portion of the economy in terms of value addition, savings, investments etc. The share of formal sector is around 12 -14 percent in our national income while that of informal sector is more than 30 percent. In the case of United States, the share of corporate business is nearly 70 percent. The informal forms of organizations are major players in such activities as manufacturing, construction, transport, trade, hotels and restaurants, and business and personal services. The informal sector plays a significant role in the economy in terms of employment opportunities and poverty alleviation.

This sector generates income-earning opportunities for a large number of people. In India, a large section of the total workforce is still in the informal sector, which contributes a sizeable portion of the country's net domestic product. While analyzing the composition of the Indian Economy, it is of two major sectors namely, organized and unorganized. The organized sector contributes two third to the GDP. Whereas the remaining 1/3 is by unorganized sector. The following statistics by National Account Statistics reveals the contribution of unorganized sector to the NDP.

3. Unorganized sector and legislature

India has traditions of social security and social assistance directed particularly towards the more vulnerable sections of society. The institutions of self-sufficient village communities, the system of common property resources, and the system of joint families and the practice of making endowments for religious and charitable provided the required social security and assistance to the needy and poor of the nation. The caste and religion based institution also played significant role in providing the much needed support to the weaker section of the selected castes and group of people.

These informal arrangements of social security measures underwent steady and inevitable erosion in the wake of industrialization and urbanization. During the British rule the policy was to provide assistance only to the employees of the company or the government, basically to promote the commitment and loyalty of the workforce and as a part of non-union Strategy. Only during the post-independence, the state was concerned more with the problems of industrial/organized work force and neglected the rural labour force on social security matters to a greater extent, till recent past.

4. Labor laws and the construction sector: emerging gaps between statute and Implementation ^[3]

The construction workers at most sites in the Commonwealth Games Village (in preparation for the Commonwealth Games to be held in Delhi in October 2010) are being denied minimum wages, equal remuneration, overtime, drinking water, toilet, creche, first aid, and temporary living accommodations. It is ironic that the employers do not comply with minimum standards of working conditions and provision of facilities (prescribed under law) at the sites, which are broadly governed by the government.

Innumerable labour laws are violated in almost all the construction sites: Minimum

Wages Act, 1948 ^[6]. Equal Remuneration Act, 1946; the Interstate Migrant Workmen (Regulation of Employment and Condition of Services) Act, 1979; Bonded Labour System (Abolition) Act, 1976; Contract Labour (Prohibition and Regulation) Act, 1970; and The Buildings and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.3 Majority of the workers are not aware of the provisions under various labour laws. Since most of the workers are not affiliated to any trade unions, a lot of the times their dissent and work related concerns are not represented to the principal employer/contractor. A report by People's Union for Democratic Rights on the contract workers in a Central University, in Delhi, shows how hundreds of contractual workers (construction workers, sweepers, library staff, and mess workers), are being paid little more than 'subsistence' wage and denied their minimum wage. Apart from the non-payment of the minimum wages, there is no system of muster roll, and no provision for drinking water, toilets, or crèches provided for these workers. In addition to this, their working conditions are abysmal and devoid of the most basic amenities. Major construction work in the University campus (construction of hostels and schools/administration buildings) is entrusted to the Central Public Works Department. The government here does not abide to most of the labour laws, which it designs to protect workers. Also, since the work is under the Factories Act is almost absent in all states.

The problem in India is the accessibility of law for the common man. There is, what he called, subversion of the law (planned systematic disregard of labour legislations and immunity towards credibility of law enforcement processes). Law is increasingly perceived as an instrumentality for the preservation of the status quo rather than change, of reinforcing inequalities rather than promoting redistribution. The crisis of the legal system in India is arising due to no corresponding structural change in the society. It is also noted that in India there is a gap between formal equality rights and substantive inequality, including the under enforcement of the law, and the inaccessibility of the legal system to the majority of Indian women.

The terrain of the law cannot be adequately captured by a dichotomous understanding of law as an instrument of oppression or liberation. Rather, law is a more complex terrain with an opportunity for interaction in order to reconstruct a

² Indian Informal Sector: an Analysis Dr. Muna Kalyani; International Journal of Managerial Studies and Research (IJMSR) Volume 4, Issue 1, January 2016, PP 78-85

³ Labour Laws and the Construction Sector: Emerging Gaps between Statute and Implementation

more positive role of law. Along with legal literacy, law reform and litigation, resources have to be constantly and consciously allocated in the making of a law, its dissemination, creation of supportive structures (mobilization through public opinion), favored interpretation systems (courts and tribunals), adequate implementation /enforcement systems, and continuing social audits of the operation of the law to make it a more dynamic institution.

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Therefore, raising the awareness levels of the workers about labour law legislations is the most important task to be able to make substantive changes at the grassroots level. Under the Factories Act is almost absent in all states. He further argues that the problem in India is the accessibility of law for the common man. There is, what he called, subversion of the law (planned systematic disregard of labour legislations and immunity towards credibility of law enforcement processes).

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5. Legislative and policy framework for unorganized Labour ^[4]

This particular chapter will highlight the current legal scenario of labour laws addressing the unorganized labour in India; at the same time welfare policies at the national and state level pertaining to them. The major initiative by the government is the unorganized workers' Social Security Act, 2008. Wherein the creation of Social Security Board at the National and State level has been mandated. It only contains available social security schemes in the country; no legal binding on the part of government or the one who employs no eligibility criteria; no benefit details; minimum wages etc. have been envisaged in the act. Basically, the act (2008) is eyewash which has neither addressed problems nor given solution.

⁴ International journal of science Technology and Management, The Analysis of Problems of Unorganized Labour – A Review Himangini Sharma

6. Objectives of the ministry of labour and Employment ^[5]

The Ministry of Labour and Employment is responsible for laying down policies in respect of labour matters including industrial relations, co-operation between labour and management, settlement of labour disputes, regulation of wages and other conditions of work and safety, women labour and child labour, labour welfare, social security etc. besides, development and administration of employment service and training of craftsmen on national basis.

The implementation of the policies in regard to the above matter is the responsibility of the State Governments subject to control and direction of the Central Govt. except in the case of labour employed in Railways, Mines, Oilfields, Banking and Insurance Companies having branches in more than one State, major Ports and Central Government Undertakings where the Central Government retains the responsibilities in labour matters including employment and training and tenders technical advice as and when necessary.

Functions

- To promote harmonious relations between labour and management and to regulate wages and other conditions of work in the central sphere.
- To ensure speedy implementation of labour law awards, agreements, Code of Discipline etc. for improving industrial relations, with regard to units in which central Government is the appropriate Government.
- To conduct evaluator studies of implementation of labour laws, industrial relations, personnel policies and practices etc., in Public Sector Undertakings.
- To regulate working conditions and safety in mines and factories.
- To prepare ground work for the formulation of National Wage Policy and maintain data on wages, all allowances and other related matters.
- To collect and publish statistics to conduct enquiries, surveys and research studies on various labour subjects.
- To conduct programmes relating to employment potential of scheduled caste and scheduled tribe candidates through Coaching-cum-Guidance Centres.
- To provide amenities to workers employed in the mining industry and beedi manufacturing.
- To assist in rehabilitation of bonded labour.
- To provide welfare measures for certain sections of the unorganised labour.
- To undertake training, education, research and consultancy service in the field of industrial relations and labour in general.
- To educate all sections of workers for their intelligent participation in social and economic development of the nation.
- To monitor the running of social security schemes viz Employees Provident Fund Organisation and Employees State Insurance Corporation.
- Policy framework for National Employment Service, Implementation of National Vocational Training Programme.

7. Organizational set up

The objectives are sought to be achieved by the main Ministry through its attached and subordinate offices and autonomous bodies. The important offices and organisations under the Ministry are listed below:-

1. Directorate General of Employment and Training.
2. Organisation of the Chief Labour Commissioner (Central).
3. Directorate General of Factory Advice Service and Labour Institute.
4. Directorate General of Mines Safety.
5. Directorate General of Labour Bureau.
6. Central Government Industrial Tribunals.
7. Offices of Labour Welfare Commissioners.
8. Employees' Provident Fund Organisation.
9. Employees' State Insurance Corporation
10. Central Board for Workers Education.
11. V.V. Giri National Labour Institute.
12. Board of Arbitration (JCM)

8. Comprehensive legislations for regulation of minimum conditions of work, social security and welfare of agricultural and non-agricultural workers

The preceding discussion indicates that there has been a growing consensus on the need for a comprehensive legislation. There is also some agreement among the stake holders that the new law needs to have a different implementation mechanism involving tripartite regulatory bodies and having inbuilt systems of self-regulation. There is also some consensus that the needs of the agricultural and non-agricultural workers with regard to their working conditions are very different and that the new proposed bill should address the needs of agricultural and non-agricultural workers separately either within the same bill or in two distinct bills one each for agriculture and non-agricultural sectors.

The Commission has examined these proposals in the light of its own findings on the condition of unorganised sector workers, and its analysis of the existing state of regulation of conditions of work, as well as protection and promotion of livelihood of the workers in the sector as a whole. It is noted that the existing proposals differ in scope, coverage and institutional mechanisms. The general scope of these proposals extends to working conditions, social security and welfare, and protection and promotion of livelihoods.

The coverage of these proposals varies in as much as some of them are confined only to agricultural wage workers, while some cover both wage and self-employed workers in the non-agricultural unorganised sector only, and some encompass all workers in both the agricultural and non-agricultural sectors. Further, the coverage may also be confined to listed schedules of employment.

The Commission concurs with the need for a comprehensive legislation for the unorganised sector. With regard to social security, the Commission has already recommended a National Minimum Social Security Scheme for all unorganised sector workers, which can be added upon by the states, and has suggested a Draft legislation. Issues contained therein are already under consideration of government. The Commission therefore proposed a legislative framework to

⁵ The Ministry of Labour And Employment

ensure minimum conditions of work for all unorganised workers, with special attention being paid to the special needs of vulnerable sections of the unorganised workers (women, migrants, and homeworkers).

However, given the differences between agricultural and non-agricultural workers, the Commission recommended two separate Bills (for the agricultural and non-agricultural workers). Part 1 of these Bills related to conditions of work. The Commission also made recommendations with respect to the aspect of livelihood promotion in Part 2 of the Bills. These two Draft Bills were publicised by the Commission in February 2007, and a series of state level, regional and national consultations were held with all stake holders on the contents of these Bills. In particular, two national consultations were held with Central Trade Unions and other national organisations representing unorganised sector workers. A number of views emerged in these consultations which have been helpful in finalising these Bills. Views received by the Commission have also been appended to this Report.

Two main views emerged, however, which had a bearing on the structure of the Draft Bills as prepared by the Commission in February 2007. First, it was argued by the trade unions and national organisations that, although they welcomed the Commission's proposals, the Indian Labour Conference (40th Session) had resolved for composite Bills incorporating both social security and conditions of work proposals. Second, a number of responses stated that the Commission's proposals on livelihood promotion could be dealt more appropriately through recommendation of policies or programmes, rather than through legislation.

The Commission deliberated at length on these two issues. With respect to the first issue, while the Commission could have left it to government to synthesise the two proposals if it so desired, the Commission felt that it could also itself combine its earlier proposal on social security with those on conditions of work in the two separate Bills for agricultural and non-agricultural workers. As far as the government was concerned, nothing would be altered as far as the social security proposals of the NCEUS were concerned.

But the synthesised Bills would be in line with the Tri-partite conclusions and would, therefore, have greater acceptability among the stake holders. Further, it was felt, that since the UPA government had clearly committed itself to a comprehensive protective legislation for agricultural workers in its Common Minimum Programme, the new synthesised Draft Bill for agricultural workers would also be more in line with this commitment. For these reasons, the legislative content of the social security proposals have been incorporated in the two final Bills.

As regard the second issue, the Commission has given some responsibility for welfare and livelihood promotion to the Social Security and Welfare Boards proposed in the final draft of the Bills. However, the principal recommendations of the Commission with respect to livelihood promotion are now being suggested outside of the proposed legislative framework. They will form part of the detailed Report on Conditions of Work and Livelihood Promotion and will also be submitted to government in the form of an Action Plan.

9. Social security laws in India ^[6]

i) Employees' State Insurance Act, 1948 (ESI Act)

- a) Covers factories and establishments with 10 or more employees
- b) Provides medical care to employees and their families.
- c) Provides Cash benefits during sickness and maternity
- d) Monthly pension after death or permanent disability.

ii) Employees' Provident Funds Act, 1952

Applies to specific scheduled factories and establishments employing 20 or more employees and ensures terminal benefits to provident fund, superannuation pension, and family pension in case of death during service.

iii) Workmen's Compensation Act, 1923 (WC Act)

Requires payment of compensation to the workman or his family in cases of employment related injuries resulting in death or disability.

iv) Maternity Benefit Act, 1961 (M.B. Act)

Provides for 12 weeks wages during maternity as well as paid leave in certain other related contingencies.

v) Payment of Gratuity Act, 1972 (P.G. Act)

Provides 15 days wages for each year of service to employees who have worked for five years or more in establishments having a minimum of 10 workers.

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