

Recommendations of Technical Group on Umbrella Legislation for Unorganised Sector
From the proceedings of
The National Seminar on Unorganised Sector Labour:
Social Protection, Skill Development and Legislative Intervention
held on 7th November 2002 at Vigyan Bhawan
Organized by V. V. Giri National Labour Institute, Sector – 24, Noida - 201301

Keynote Presentation	:	Shri D. Bandhopadhyaya
Chairperson	:	Shri. M. B. Pranesh, Principal Secretary, Government of Tamil Nadu
Special Presentation	:	Shri Rajeshwar yadav, OSD to Union Labour Minister
Convenor of the group &	:	Shri. S.K. Mukhopadhyaya, CLC (Convenor)
Rapporteurs	:	Dr. C.S.K. Singh, Shri Subhash C. Bajaj,

Discussion in the group led to the following observations & conclusions:

1. It was felt that there should be **no haste** in getting through the draft legislation after the brief discussion in the Seminar. It is desirable that the conclusions of the seminar & the report of the National Commission, on Labour regarding the unorganised Sector are **discussed with the 'Workers' representatives** and the Employers' representatives. Finally it should be discussed in the **Tripartite Group (ILC)** before further action taken by the government in consultation with the State Government.
2. It was felt that there should be a **separate Law for the agricultural workers**, agricultural being defined in a very broad manner to include Horticulture, Sericulture, Pisciculture, Silviculture & so on. The rest of the workers in the unorganised sector which should also include workers in the tiny sector could be **broadly classified into the following** :
 - i. Home based workers
 - ii. Self employed workers
 - iii. Domestic workers
 - iv. Tiny enterprises &
 - v. The rest
3. It may also be necessary to take note of the fact that **in this sector employer – employee relationship is not always clear**. The Legislation & the scheme will have to take note of the varying situation.
4. The **approach of the legislation** both for the Unorganised Sector & the Agricultural workers should **not merely be welfare oriented but also provide for regulation of employment** provision of **minimum employment earnings guarantee** wherever practicable, as well as a **role of the worker for proper enforcement of the law & the scheme**. Attempt must be made to ensure workers participation in formulation & implementation of the scheme.

5. The role of the **Central Government** should generally to provide **leadership & coordination** the **scheme should be generally operated at the State & Union Territory levels**. The central Government has to play an important role in the collection of funds & the disbursement auditing of the funds through state boards.
 6. **Provision must be made in the Law for payment of minimum wages on the basis of the recommendations on the 15th LLC supplemented by the Raptakos Brett judgement of the Supreme Court. Mention of 'Floor' with regard to minimum wages should not be there. There should be a National Minimum wage below which no state level Minimum wage can go. In this context there is no need for scheduling employment for coverage under the Minimum Wage Act. The fixation of piece rate wage for unorganised workers must be such as would enable an ordinary worker to earn a time rated wage.**
 7. The proposed Law shall be in addition to other Laws which are in the books such as Trade Union Acts, Workmen's Compensation Act, Equal Remuneration Act & so on. Therefore there is no need for this Law to reproduce those provisions.
 8. Keeping in view the difficulties in defining the unorganised sector Workers in the law, it was felt that those categories, which can be kept out of the purview of the law, that can purview of the law can be by the government. The question **whether the law can be made to apply only to establishments employing less than 10 workers should also be considered.**
 9. Without prejudice to the conclusions of the other group dealing with Social Security, it was felt that **minimum level of Social Security particularly in the areas of health, maternity benefits, disability & old age benefits must be provided, if necessary through public assistance also**. The existing schemes of ESI & provident fund may also be extended to this sector. **Different provisions may be necessary for the self employed & appropriate scale of contribution for benefits will have to be worked out.**
 10. Considering that this sector represent 92% of the workforce it will require that an adequate % of the revenue of the Central & State Government be set apart for social security to this category of workers & their families. A system of levy offices on activities, coupled with contributions both from employers & workers would also be an additional source of funding.
 11. The burden of proof of making payment to the workers wherever there are dues must be on the employers. This will also ensure proper maintenance of records. At the same time care must be taken to see that employers are not over burdened with multiplicity of forms & registers. **A single register & single annual return will suffice for the purpose of law enforcement & of statistics.**
 12. **Representations** of both the **employers & the Trade Unions** must be equal in number on all bodies. Representation of **NGOs, experts, academics & other interest groups** should also be given in adequate numbers.
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THE UNORGANISED SECTOR WORKERS BILL, 2004

A CRITIQUE

1. This is, hopefully, the last version of this exercise that has been going on for quite some time now. In fact the exercise started soon after the 2nd National Commission on Labour gave its report. One of the specific Terms of Reference to the Commission was to suggest an umbrella legislation for the Unorganised Sector Workers. The recommendation of the Commission included a suggested draft of such a law. In November 2002, the Ministry of Labour organized a seminar at the national level on the Report of the Commission. The first draft of a Bill that had been prepared in the Ministry of Labour also came up for discussions at this consultation. The technical group (of the seminar) which dealt with the umbrella legislation and whose recommendations were accepted by the seminar had made a large number of important recommendations.
2. It is pity that none of them finds any place in the 2004 Bill, or for that matter in any of its earlier manifestations; the more important of these are the following :
 - a) Separate law for agricultural workers
 - b) Law should not be merely welfare oriented but also provide for regulation of employment, minimum employment earnings guarantee and role for workers in the enforcement of the law and the scheme, including workers participation in the formulation of the scheme.

- c) Minimize role of the Central Govt. to provide leadership, co-ordination, funding etc.,
 - d) Minimum wages of the basis of 15th ILC, supplemented by the Reptekos Brett judgement; fixation of piece rate to be such as would enable an ordinary worker to earn a time rated wage.
 - e) adequate percentage of Central and State Govts. revenue to be set apart for social security; besides this, a system of levies on activities as well as contributions from the employers and workers to be additional sources of funding.
3. Any law which does not incorporate these features will be a pale shadow of a law.
4. Coming to the 2004 Bill, the following more important provisions call for comments:
- i) There is no need for a welfare board at the Central level. Even in terms of numbers of workers in the Central Govt. jurisdiction, even on currently accepted basis, is very minimal also in activities like construction, agriculture and so on, there can't be any clear cut demarcation of workers, as coming under Central jurisdiction. It is enough that Central Govt. has a representative advisory committee which can
 - a) recommend broad parameters of matters which could be incorporated in the schemes formulated by the State and UT Govts. / Boards
 - b) advise the Central Govt. and through them the State Govts / UT administration on all matters connected with the implementation of the law
 - c) recommend the basis on which Central funds can be disbursed to the State / UT level Boards / Funds. This is no place to deal on detail with the composition functions and duties of the advisory committee
 - ii) The functions and powers of the Boards at the State level are to be more specifically spelt out. The Boards must be empowered to implement the schemes in full and not leave all such matters to be done through Workers

Welfare Centres, which will result in the whole effort becoming a bureaucratic affair without the workers and their representatives in the driving seat.

- iii) The important issue whether there must be only one Board and one Welfare Fund in each State / UT or there must be separate Board / Fund for each of the major sectors of employment has been skirted by providing for only one Board / Fund. This question needs detailed consideration and predominant opinion among workers is that there must be separate Boards / Funds for each major group of employment. Both in the matter of representation in these Boards as well as dealing with specific issues relating to each major sector of employment, the advantage and perhaps the even the necessity, lies in having separate Boards / Funds.

Considering that there is already a strong opinion for a separate law, implying separate Board / Fund for agricultural workers and that the existing Building and other Construction Workers Act 1996 deals with construction workers, logic would appear to demand separate Boards / Funds for separate major group of employments. The numbers involved are so large that a single Board may be inadequate, particularly in the large States, i.e., those with population exceeding 10 millions.

- iv) The Workers Facilitation Centre should be replaced by tripartite bodies at the appropriate lower levels to be set up by and under the control and supervision of the relevant Board. This provision in the Bill needs total recasting.
- v) The law must specifically provide for a minimum percentage National and State level Gross Domestic Product or at least of the revenue budgets to be set apart for social security needs of the unorganized sector workers and their dependents. There will be a declaration of policy by the Govt. to effectuate the constitutional mandate in article 41 of the Constitution to provide "public assistance in cases of unemployment, old age, sickness and disablement and in cases of undeserved want". This minimum percentage should be progressively raised over a period of time, say ten or fifteen

years, at the end of which the levels of social security available to our workers and their dependents is comparable to those obtaining in the developed world.

vi) The law should have provisions relating to employment, social security etc of migrant workers, be they intra-state or inter state.

vii) There are a large number of other matters which are not being dealt with here, for want of time. The Govt. will no doubt take note of other comments / suggestions received from other agencies / bodies also and endeavor to incorporate all those in this draft before introducing the Bill in Parliament.

Unorganised Sector Workers' Bill

The Workers in the Unorganised Sector consisting of more than 370 workers represent over 93 percent of the workforce of the country. They are engaged in a variety of occupations or employment and they contribute more than 65 % of the GDP. A characteristic feature of this workers in this sector is lack of legal protection. Despite the existence of various labour laws the workers in this sector, for various reasons are in a disadvantaged position. Neither their employment nor their conditions of work or service are regulated and those who are employed for wages are at the mercy of the employers and those who are self employed are exposed to unfavourable forces of nature or the marketplace.

One of the terms of reference of the Second National Commission on Labour was to suggest an umbrella legislation for ensuring a minimum level of protection and welfare to the workers in the unorganized sector. The Commission has made certain recommendations in that regard. In pursuance of these recommendations the Government of India has brought forward a bill which however does not ensure a minimum level of protection or social security or welfare. A copy of the latest version of the Bill is attached.

Any law which seeks to minimum level of protection the workers should ordinarily provide for the regulation of the following matters:

- (a) Employment
- (b) Conditions of Service
- (c) Condition of work
- (d) Safety health and welfare at work place
- (e) Social Security
- (f) Settlement of disputes and
- (g) Labour administration

The bill drawn up by the Government provides that the appropriate Government shall formulate schemes for ensuring safety, social security and welfare of workers employed in scheduled employments or establishments and other schemes for regulation of employment etc. There are no guidelines for formulating such schemes.

The basic need of the workers in the unorganised sector is security of employment. Most of the workers in this sector are employed on casual basis. They lack assured or adequate means of livelihood. It is one of the Directive Principles of State Policy enshrined in the Constitution that the citizens, men and women equally, should have the right to an adequate means of livelihood. This principle is yet to be translated into practice.

It does not lay down the standard of medical care or the quanta of benefits to be provided. The bill seems to provide for a defined contribution system of social security under which the nature and quanta of benefits will be determined by the amount of contributions received or the amount of funds available. In other words the social security that will be provided under the Act will be determined by the economics of the supply side to the exclusion of the demand side.

The Bill specifies the rates of contributions to be made by the workers, employers, and the Government, the total of which works out to 12% percent of the wages of the workers of which 5% will be contributed by the workers themselves and the balance by the employers and the government. Ordinarily an indexed pension scheme itself will require a contribution more than 10% of wages. It is therefore obvious that no worthwhile social security can be provided out of the funds that may be available. Besides it is well known that it is difficult if not impossible to collect contributions from the employers in the unorganized sector. Suggestions have therefore been made to levy a cess like the education cess to raise necessary funds for social security.

The Bill provides for the establishment of Workers Welfare Centres for administration of the Schemes. A Workers Facilitation Centre will consist of an officer not below the rank of a Section Officer in the Government and such other employees as may be considered necessary. It will thus be a bureaucratic set up in which people have generally lost confidence lacking the empathy required for administration of social sector schemes.

The Bill is totally silent about the mechanism and procedure for settlement of disputes between the workers and their employers, or between the workers and the Board/s or between the workers themselves.

More than 50% of the workers in the Unorganised Sector are self employed. Many of these eke their livelihood by exercising the traditional rights to the use of common properties and natural resources which are, in the wake of globalisation, being eroded. Many of them are also being displaced and dispossessed of their income generating assets especially land in the garb of development resulting in death of many people by suicide.

The Bill is also silent about the enforcement of the law.

The Constitution promises social and economic justice. Justice to the workers in the unorganised sector who are the victims of very exploitative conditions is therefore an urgent imperative. The experience of the implementation of the existing labour legislation has made it necessary to make creative changes in the structure and contents of any future labour legislation designed to liberate the workers from the unjust practices prevalent in the field. The participation of the workers as envisaged in the Constitution under article 43 A in the working of the legislation and enforcement of remedies there under is essential if credibility and confidence are to be commanded by the law.

Having regard to these facts we, the representatives of the National Centre for Labour and the National Campaign Committee for Central Legislation for the Unorganised sector request that the Bill be revised in consultation with the representatives of the workers in the Unorganised Sector.

As the demand for a legislation for the unorganized sector has been pending for a very long time it is also requested that this request be considered early on a high priority basis

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To
The Chairman,
Petition Committee of the Lok Sabha,
Parliament House,
New Delhi.

Respected Sir,

1. We, the unorganized sector workers of India, who number 37 crores and who constitute 93% of the total work force of our country, of whom a substantial number are women, petition the august Parliament of India through you for recognizing our plight as also the crying need for redress through an appropriate law.
2. We are not a burden on society, for we happen to be the society itself, given our large number and the larger number of our dependents. Generations of neglect and indifference have consistently added to our loss of dignity, to our misery and to our difficulties. If, as a country, we are faced with problems of bonded labour, child labour and other social ills, we can trace their origins to this indifference and neglect. That we contribute nearly two-thirds of India's G D P is forgotten; that we contribute significantly to the alleviation of the problem of unemployment is side-lined; that we are the ultimate sufferers of liberalization and globalization is glossed over. Silently we have suffered all iniquities and injustices. We do not propose to do so any further we are confident that, at your hands, we will get the needed legislative mandate that will improve our status and thus enhance the prestige and strength of our nation.
3. What do we need by way of such legislative mandate?
Our problems and concerns are too well known to be elaborated here. Successive commissions and studies have dealt with this. The latest, The Second National Labour Commission, which was asked to work out the details of umbrella legislation for us, did produce a draft law. The Ministry Of Labour of the Government of India circulated the draft law and organized in November 2002 a National Seminar to consider this draft law. The sub group of the National Seminar which examined the legislative proposals was not satisfied and demanded action on specific lines; the conclusions of the subgroup were endorsed and adopted by the seminar. However even these were ignored in to by the Government of India as is evident from the succession of drafts that kept coming out of the Ministry of Labour. The latest of such drafts was no different.
4. We reiterate that we are producers of wealth for the country and do not want to be considered mere beneficiaries of state's munificence and treated as such. We want to be partners and participants in the process of formulating the law and schemes there under; we also want to be participants in the implementation of schemes through tripartite bodies at various levels in which we are represented in adequate strength.

Regulation of employment, payment of minimum wages based on the conclusions of the 15th Indian Labour Conference and supplemented by the judgment of the Supreme Court of India in the Raptakos Brett case, commitment to a policy on social security as the right of every Indian, provision of appropriate social security measures, and more -- the steps that

will enable us to live in dignity as socially useful members of our society are matters that should inform the provisions of the proposed law.

Articles 41 and 43A of the Constitution of India are the bases for our demands.

5. Specifically, we want the following:-

- (a) Given its size, there must be a separate law for agricultural workers, on the model of the Kerala law. The law can include workers engaged in horticulture, pisciculture, silviculture, poultry farming, animal husbandry, dairying and allied activities.
- (b) The 1996 law on building and construction workers needs to be amended and made comprehensive on the lines suggested by the National Campaign Committee for Construction Workers under the chairmanship of Justice V R Krishna Iyer, retired judge of the Supreme Court of India.
- (c) The law for unorganized sector workers should not be merely welfare oriented but also provide for regulation of employment, guaranteed minimum employment earnings, minimum wage as indicated above, fixation of piece rates in a manner that would enable a diligent worker earn after a day's honest work the equivalent of a time rated daily wage, appropriate and adequate provisions for social security including maternity entitlement, pension, ESI, PF, gratuity etc and safety, child care facilities, housing training and skill formation and upgradation, fixation of wages, resolution of disputes, protection of employment, protection of natural and common property resources - rights, protection of migrant labour and more, all these being implemented through tripartite bodies at various levels in which workers have the decisive say.
- (d) Minimize the role of central Government to providing leadership, setting standards, co-ordination, funding and general direction, for which it may get advice from a high power tripartite Advisory Committee which will advise, among others, on matters relating to the nature of schemes to be drawn up by various Boards/Funds, the basis for distribution of central funds among various states and union territories/Boards/Funds, implementation of the law and schemes and other allied matters.
- (e) The functions of the state/union territory Boards must be specifically spelt out in the law; these must be such as to enable the Boards to function effectively and autonomously, without undue "interference" from the state or central government. The composition of the Board and its lower formations must be tripartite in nature and give the pride of place to the workers and their representatives, including adequate representation for women workers.
- (f) The implementation of the law including implementation of schemes must be by the tripartite bodies at the appropriate level. In this scheme of things, there is no place for the Workers Welfare Centers, as they would make the whole process bureaucratic, disempowering the workers and their representatives.
- (g) A single board and a single scheme would not serve the purpose we have in view; there must be provision in the law for the appropriate government to set up as many Boards as are necessary for different groups of employments. As conditions vary from place to place and from state to state, the grouping of employments will have to be decided by the appropriate governments, on the basis of the suggestions made by the representatives of Unorganised Sector Workers.
- (h) The fixation of wages and more particularly, the piece rate wages must be enabled to be fixed by the concerned Board keeping in view the principle that a diligent piece rated worker must be able to earn a time rated daily wage for eight hours of work.
- (i) The law must prescribe a minimum percentage of the GDP to be set apart for social security and this percentage must be raised every year until it is able to provide, say after ten years or so, a level of social security that is reasonably satisfactory.
- (j) There should be a provision for a Complaints Committee on sexual harassment in the work place for Unorganized Sector Workers.

The National Campaign Committee for Unorganized Sector Workers, of which Retired Justice V R Krishna Iyer is the President, is currently engaged in the preparation of a draft

law incorporating the above and other matters and hopes to get it ready soon. Meanwhile, it is our earnest request that our petition carrying the signatures of millions of workers is sympathetically considered and appropriate action taken. We will be grateful if an opportunity is afforded to some of our representatives to appear before you and make an oral submission also.

6. Another matter of great importance to us: The National Rural Employment Guarantee Bill, 2004, introduced in Parliament in December 2004, suffers, in our view, from many deficiencies and calls for amendments that would ensure

- (a) Time bound extension to the whole of rural India;
- (b) extension of the law to semi-skilled and skilled work with appropriate wage protection, keeping in view that a very large number of us are semi-skilled and skilled in a variety of occupations and any proposal to confine the guarantee to unskilled manual work will result in obliteration of our skills and force us to migrate to urban areas for employment suitable to our skills.
- (c) Removal of restriction of the law to only BPL households.
- (d) The law should be put permanently on the statute book and should not be only for a limited period.

We, on behalf of 37crores of us, thank you, in the hope, that our petition receives the utmost consideration at your hands.

<u>Ser No.</u>	<u>Name</u>	<u>Address/Organisation</u>	<u>Signature</u>
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