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No. 5085/OSD/D/NAC/05

भारत सरकार

राष्ट्रीय सलाहकार परिषद

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GOVERNMENT OF INDIA

NATIONAL ADVISORY COUNCIL

NEW DELHI

August 4, 2005

Respected Arunaji

Please find enclosed following documents for perusal:-

- (1) Comments of the National Commission for Enterprises in the Unorganised Sector on the draft 'Unorganised Sector Workers Social Security Bill'.
- (2) Agricultural Workers (Social Security and Conditions of Work) Bill, 2005.
- (3) Non Agricultural Unorganised Sector Workers Social Security Bill, 2005.
- (4) Non Agricultural Unorganised Sector Workers (Conditions of Work & Livelihood Promotion) Bill, 2005.

Yours sincerely,

(DHIRAJ SRIVASTAVA)

Encl: as above

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Comments on the Draft Unorganised Sector Workers' Bill prepared by the National Advisory Council in light of the Draft Bills prepared by the National Commission for Enterprises in the Unorganised Sector

1. The Union Minister for Labour and Employment requested the National Commission for Enterprises in the Unorganised Sector (henceforth the Commission) to examine the Unorganised Sector Workers' Bill, 2004 (henceforth 2004 Draft) prepared and circulated by the Union Ministry of Labour and Employment and make appropriate recommendations with a view to prepare a fresh draft. As such the Commission has been engaged in this work for the last three months. As part of this exercise, the Commission has had discussions with several academics, trade union leaders, activists, insurance agencies, and officials of the Ministry of Labour and other selected Government departments. We also had an opportunity to discuss with some State Governments. In addition, the Commission had access to the comments and views expressed by State Governments, trade unions and NGOs on the 2004 Draft.

2. The Prime Minister's Office, vide its letter No.590/40/C/3/04-ES.2 dated 12th July 2005, requested the Commission to provide comments on the Draft Unorganised Sector Workers' Social Security Bill prepared by the National Advisory Council (henceforth NAC Draft). Since the work on the preparation of fresh Bills to replace the 2004 Draft has just been completed, the Commission is in a position to provide detailed comments on the NAC Draft.

3. Based on the Commission's interaction with different stakeholders and comments received on the 2004 Draft, the Commission has realised that a single Bill may not be the best way to address the problems faced by the 37 crores of workers in the unorganised sector. Various stakeholders expressed the view that the problems faced by the agricultural sector workers be separated from those of the non-agricultural sector workers. It was further noted that the issue of social security be separated from conditions of work and livelihood protection for workers and the self-employed in the non-agricultural sector. We have therefore recommended the preparation of the following three Bills:

- a) Social security for workers in the non-agricultural sector;
- b) Conditions of work and protection of livelihood for workers in the non-agricultural sector; and
- c) Social Security, Conditions of Work and Protection of Livelihood for workers in the agricultural sector.

4. Drafts of these three Bills have been prepared and they are attached with this note. In this way, the Commission has addressed the task of restructuring and redrafting the 2004 Draft. It is in this context that the Commission would like to put forward its comments to the NAC Draft.

5. The NAC Draft addresses an important pending national issue of providing a measure of social security to workers in the unorganised sector who account for more than 90 percent of the workforce in the country. The NAC Draft is an outcome of the wider discussion on the inadequacies of the 2004 Draft. In the initial period of discussion on the 2004 Draft, the Commission had an opportunity to share its preliminary note on social security with the NAC. Both the members of the Commission and some members of the NAC had participated in the consultation organised by the Ministry of Labour and Employment on the 2004 Draft. In addition, the Commission also had an opportunity to discuss the issues with some of the members of the NAC. It is a matter of satisfaction to note that there is a large area of convergence in thinking between the Commission and the NAC. It might be useful here to identify such **areas of convergence**. These are:

- a) *Coverage of all workers in the unorganised sector* (The Commission however does not exclude workers who may have individual insurance or pension schemes on their own and its scheme also includes workers in the organised sector who are not covered by any social security scheme);
- b) *The need for a national body* (Designated as 'Authority' in the NAC Draft and 'Board' by the Commission);
- c) *Workers Facilitation Centres at the local level;*
- d) *The idea of a "floor level scheme"* (called "national minimum social security" by the Commission);
- e) *The responsibility of the Central Government in formulating and providing the "floor level scheme"; and*
- f) *Mode of raising resources through tax, cess, employer/employee contribution and grants/loans;*

6. These areas of convergence suggest that there is agreement on fundamental issues relating to social security for workers in the unorganised sector. However, there are some important differences, which need to be noted for a proper appreciation of the manner in which the proposed Bill/Act should be implemented. **The two main differences are in (a) organisational model, and (b) mode of financing.** These are discussed below:

- a) **Separate Bills for Agricultural and Non-Agricultural Workers:** While the NAC Draft has proposed one Bill for both these sectors; the Commission has proposed two separate Bills with identical social security benefits. This is because the magnitude of agricultural workers (including small farmers who are the equivalents of self-employed in non-agriculture) is so large and the problems of implementation so different (spread over thousands of villages in rural areas). During the discussions the Commission had with trade union leaders, academics and activists, there was a general consensus that the agricultural sector workers are treated in a separate Bill combining social security and conditions work. This will imply two separate Boards at the National and State levels. In the view of the Commission, a separate legislative and organisational mechanism is likely to better address the concerns and local conditions of the agricultural workers – who are the weakest link in the chain of occupational groups – than clubbing them with non-agricultural workers half of whom are in the urban areas.
- b) **Organisational Model:** The NAC Draft has adopted a corporate model with a Central Authority at the top, Workers' Facilitation Centres at the bottom and Facilitation Agents in the middle. In this model, a crucial stakeholder whose absence is conspicuous is the State Government. Given the constitutional responsibility of the State Governments as well as the nature and magnitude of employment in the unorganised sector (agriculture and non-agriculture), it is important to factor in the role of the State Governments. In the NAC Draft the Facilitation Agents seem to occupy the place of the State Governments with the rider that they "*shall work, wherever necessary, with other Welfare Boards, and Departments of the Government, State or Union or Panchayat Raj institutions in a manner that is prescribed by the Directors*". The Commission has proposed a federated-structure and a participatory role for all stakeholders in policy making and functioning of the proposed system. There will be a 'National Social Security Board' at the top, State Social Security Boards in the middle and Workers' Facilitation Centre at the bottom. The National Board will be mainly concerned with policy making and financing whereas the State Boards will be the main implementing agency. We believe that the State Government should have an important role in providing social security to the workers in the unorganised sector. This is intended to ensure that the stakeholders own responsibility for policy recommendations as well as implementation. In States where there are no existing Welfare Boards or similar organisations, the State Boards will have the option to form new Welfare Boards and/or designate suitable institutions/agencies such as NGOs, Post Offices, Insurance Companies, and Banks. In our view, the State Board should be given the primary responsibility to monitor and implement the different aspects of the Bill. The State Boards should be representative not only of the Government but also of the different Welfare Boards and possibly of the civil society.

The Commission believes that the State Boards will be in a position to implement the social security scheme through such mechanisms as are appropriate to their contexts and conditions. While the Central Government will be directly involved in providing for the minimum social security, State Boards or other Welfare Boards may float additional benefits through additional schemes, funded by workers, employers and other agencies, and by additional cess or tax. The Commission is of the view that there is need to take the State Governments on board and encourage them to formulate social security schemes beyond the national minimum. In fact several such schemes are already in operation in a number of States.

c) **Social Security Benefits:** The national minimum social security recommended by the Commission are (i) Old age pension above the age of 60 years, (ii) Health insurance for self, spouse and children below the age of 18 years, (iii) Maternity benefits for women workers or spouse of men workers, and (iv) Insurance to cover death and disability arising out of accidents. The additional social security benefits recommended are: (i) Provident Fund scheme, (ii) Employment injury benefits, (iii) Housing schemes, (iv) Educational schemes for children of workers, (v) Skill up gradation schemes, (vi) Funeral assistance, (vii) Assistance for marriage of daughters, and (viii) Any other schemes to enhance the socio economic security of unorganised workers.

d) **Mode of financing:** While the idea and content of a 'minimum' or a 'floor level' is the same (Insurance for life, health and disability, maternity and old age), there is a difference in financing the scheme. The NAC Draft has proposed that there be no worker contribution for life, health and disability and maternity whereas old age pension will be based on worker contribution. The Commission has suggested a worker contribution at the rate of one rupee per day, for both wagedworkers and self-employed, (without any reference to days of employment or level of wages). Employer, wherever identifiable, will pay contribution equal to that of the worker. For the self-employed (or where the employer cannot be identified) the Central and State Governments will share the contribution equally. In addition, the Central Government and the State Government will pay Re.0.50 and Re.0.25 per day per worker respectively as their contribution to the social security of workers in the unorganised sector. This is in accordance with the current practice of government contribution to the social security schemes in the organised sector. This will provide an amount of Rs.1,003 per worker per annum. For workers belonging to Below Poverty Line households, the worker contribution will be paid by the Central Government. Details of the financial implications of this formulation are being worked out. Preliminary estimates indicate that the total financial cost to the Central Government will be around Rs.15,000 crores and for all State Governments around Rs.4,500 crores.

e) **Addressing Social Security and related issues in one initiative:** The 2004 Draft, however inadequate, sought to address issues relating to social security, conditions of work and related issues in one Bill. It was felt that any revision of the Bill into one or more Bills should take into account the concerns regarding minimum conditions of work and livelihood protection. With the preparation of three Draft Bills, the Commission has addressed all these issues.

Chapter I

6. The Commission is currently holding talks with insurance companies, Department of Posts and other institutions to work out a package of benefits based on the above rates of contribution. It appears that a minimum package could consist of (i) sickness benefits of upto Rs.15-20,000 for a family of five, Rs. 1,500-2,000 per child delivery, and compensation for death of the breadwinner (not exceeding Rs.25,000) as well as compensation upto two weeks for loss of days of employment due to sickness, (ii) a monthly old age pension for Rs.200 (which is equivalent to half the current Poverty Line), and (iii) a life insurance cover of Rs. 25,000.

7. A Task Force constituted by the Commission is currently working on the details of a social security scheme as envisaged in the Draft Bills attached here.

8. The Commission would like to treat the three Bills as drafts for wider discussion. On the basis of discussions with the stakeholders, it should be possible to give final shape to the Bills.

Chapter II

NATIONAL SOCIAL SECURITY BOARD FOR AGRICULTURAL WORKERS

31st July 2005.

1. Constitution of a National Board
2. Funding Mechanism
3. Exemption from Income Tax
4. Extension of the National Fund

Chapter III

NATIONAL SOCIAL SECURITY BOARD FOR AGRICULTURAL WORKERS

5. Establishment and incorporation
6. Functions of the Board
7. Composition of the Board
8. General Duties
9. Executive Council
10. Secretariat of the Board

AGRICULTURAL WORKERS (SOCIAL SECURITY AND CONDITIONS OF WORK) BILL, 2005

Statement of objects and reasons

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2. Definitions
3. Rules of evidence

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4. Framing of schemes.

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Statement of objects and reasons

In the unorganised sector of the Indian economy, agriculture has a prominent place since it employs nearly 60 per cent of the total workforce. The agricultural sector referred to here consists of crop cultivation, forestry, livestock and fishing activities. The workers in this sector may be broadly divided into self-employed (including contributing family workers) and wage workers. This bill is intended to provide a measure of social security, minimum conditions of work and a mechanism for dispute resolution. This bill proposes a model that will be inclusive in nature and provide for clearly demarcated division of responsibilities between the Central and State governments. It mandates the Central and State Governments to implement a National Social Security scheme.

AGRICULTURAL WORKERS (SOCIAL SECURITY AND CONDITIONS OF WORK) BILL, 2005

A

BILL

to provide for social security, conditions of work, dispute resolution and promotion of livelihood system for agricultural workers and to provide for other matters connected therewith or incidental thereto

BE it enacted by Parliament in the fifty-fifth year of the Republic of India as follows:-

Chapter I

PRELIMINARY

1. Short title, extent, commencement and application:

(1) The Act may be called Agricultural Workers (Social Security and Conditions of Work) Act, 2005.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint

2. Definitions:

For the purposes of this Act, unless the context otherwise requires;

- a) **"Agricultural Sector"** would include the following occupations:
 - (i) Farming, including the cultivation and tillage of soil etc;
 - (ii) Dairy farming;
 - (iii) Production, cultivation, growing and harvesting of any horticultural commodity;
 - (iv) Raising of livestock, bee-keeping or poultry;
 - (v) Fishing and/ or fish farming
 - (vi) Any practice performed on a farm as incidental to, or in conjunction with, the farm operations (including any forestry or timbering operations and the preparation for market and delivery to storage or to market or to carriage for transportation of farm products).
 - (vii) Growing fodder or thatching grass or for grazing cattle.
- b) **"Agricultural wage worker"** means a person who is mainly employed in the agricultural sector on hire whether in cash or in kind or partly in cash and partly in kind, but, does not include any unpaid family member;
- c) **"Agricultural worker"** means Agricultural wage worker and Self employed agricultural worker.
- d) **"Child"** means a person who has not completed 15 years of age.
- e) **"Employer"** means a natural or juridical person, or an association of such persons, by whom any agricultural worker is engaged or employed either directly or otherwise, for any remuneration.
- f) **"Identity card"** means a card issued to a agricultural worker carrying unique social security number issued by the authorised agency of the State Board;
- g) **"National Board"** means the National Social Security Board for agricultural workers.
- h) **"Registered worker"** means a worker who has been registered with National Social Security Board for agricultural workers.

- i) **"Scheme"** means a scheme notified by the appropriate Government under the Act.
- j) **"Self employed agricultural worker"** means any person who is not employed by an employer, but directly engages himself / herself in the agricultural sector, subject to such ceiling on land cultivated as may be notified by the State Government;
- k) **"State Board"** means the (name of the State) State Social Security Board for agricultural worker;
- l) **"Wages"** means the term wages as defined under the Payment of Wages Act 1936.

3. Rules of evidence:

In this Act, notwithstanding anything contained in the Indian Evidence Act, 1872, the burden of proof that compliance with the provisions of the Act and the Scheme has been effected shall be entirely on the employer and the units of the Board wherever applicable.

[Explanatory Note: This section facilitates shifting of the burden of proof from the workers to the employer. This is a departure from the normal practice and ordinary rules of evidence, which places the burden on the plaintiff.]

Part-1

Chapter II

SOCIAL SECURITY BENEFITS

4. Framing of Schemes:

(1) By this Act, the Central Government shall formulate a scheme to be called National Social Security Scheme for agricultural workers consisting of the following national minimum social security benefits:

- (a) Old age pension to all agricultural workers above the age of 60 years;
- (b) Health insurance for self, spouse and children below the age of 18 years;
- (c) Maternity benefits for women workers or spouse of men workers; and
- (d) Insurance to cover death and disability arising out of accidents.

(2) In addition to the national minimum, the Central Government may frame such schemes as it may deem necessary or finance such schemes of the State Governments as it may find appropriate, subject to availability of finance by such means as mentioned in Section 5 and may include those listed under (3) below .

(3) The State Government may formulate such agricultural workers based schemes as it may find appropriate to (a) strengthen the national minimum social security by way of its own contribution, and/or (b) design and implement additional social security benefits through its own schemes. These may include:

- a) Provident fund schemes,
- b) Employment injury benefit scheme,
- c) Housing schemes,
- d) Educational schemes for children of workers,
- e) Skill up gradation of workers,
- f) Funeral assistance,
- g) Marriage of daughters, and
- h) Any other schemes to enhance the socio economic security of agricultural worker.

Chapter III

NATIONAL SOCIAL SECURITY FUND FOR AGRICULTURAL WORKERS

5. Constitution of a National Fund:

The Central Government shall create a National Social Security Fund to which contributions shall accrue from the following sources:

- a) Grants and loans from the Central Government;
- b) Contributions from workers, employers and Governments for the specified national minimum social security shall be as under:
 - (i) Re. 1/- per day by the worker, provided that for those below the poverty line the contribution shall be made by the Central government;
 - (ii) Re. 1/- per day, per worker, by the employer, provided that where the employer is not identifiable, the contribution shall be equally shared by the Central Government and the respective State Governments;
 - (iii) Re. 0.50 per worker, per day, by the Central Government and Re. 0.25 per worker, per day by the State Government.

[Explanatory note: The contribution of Central and State Governments in (iii) above is in accordance with the practice of Government contribution to social security schemes in the organised sector]

- c) Any tax or cess that the Central Government may impose on the corporate sector (public and private) for the purpose of providing social security for agricultural workers;
- d) Any tax or cess that the Central Government may impose on commodities and/or services in lieu of employers' contributions (which are either difficult to collect or appropriate employers in the agricultural sector are not directly identifiable);

In addition to the above, contributions may also accrue from the following sources:

- e) Contributions from the national financial/developmental institutions; and
- f) Any voluntary contribution from individuals or institutions.

6. Existing Welfare Boards:

Where separate Welfare Boards have already been created by the Central or the State Governments, which have schemes similar to the national minimum social security schemes (specified above), the concerned National or State Boards shall function in collaboration with such existing Welfare Boards to ensure that the workers receive the benefit, either under the existing schemes of the Welfare Boards or under the national minimum social security schemes, whichever is more beneficial to the workers. Surplus funds, if any, of the existing Welfare Boards shall be utilised by them for additional social security schemes, in addition to the national minimum social security scheme.

7. Exemption from Income Tax:

All financial contributions made by individuals and institutions to the National Social Security Fund will be exempted from the payment of income tax under the Income Tax Act.

8. Utilisation of the National Fund:

All contributions accruing to the National Board shall be credited to the Fund, which shall be applied for meeting the following:

- a) Expenses on social security schemes of the Central Government,
- b) Grants to the State Boards, including for the purposes of the functioning of the Workers' Facilitation Centres,
- c) Expenses on the administration of the Board as per the annual budget approved by the Executive Council,
- d) Investment in permitted schemes,
- e) Any other item in connection with the administration of this Act.

Chapter IV

NATIONAL SOCIAL SECURITY BOARD FOR AGRICULTURAL WORKERS

9. Establishment and incorporation:

With effect from such date as the Central Government may, by notification appoint, there shall be established for the purposes of this Act, a Board to be called the National Social Security Board for agricultural workers.

10. Functions of the Board:

The National Board shall provide the following functions:

- a) administration of this Act and formulation of policies at the national level, and shall have such powers as may be laid down to direct, co ordinate, supervise, and monitor the functioning of State Boards;
- b) review the working including auditing of the State-level Social Security Boards every four years and make suitable recommendations to the concerned Government(s) for further improvement;
- c) manage and maintain the National Social Security Fund and provide financial assistance to State Boards;
- d) advise the Central Government on policy matters relating to social security, health and safety and welfare of agricultural workers;
- e) assist in capacity building of the State Boards, and collect, compile and publish statistics relating to the agricultural sector and undertake such promotional activities as may be decided from time to time.

11. Composition of the Board:

(1) The National Board for agricultural workers shall be constituted by the Central Government from any of the following organisations:

- a) State Boards for agricultural workers;
- b) national-level unions of agricultural workers;
- c) national-level associations of agricultural workers with an explicit social security scheme for its members;

(2) The Central Government shall decide the number and names of such organisations to be represented on the National Board.

(3) The National Board shall work through a General Council and an Executive Council.

12. General Council:

- (1) The Union Minister for Labour and Employment shall be the Chairperson of the General Council.
- (2) The Secretary to the Government of India, Ministry of Labour and Employment, shall be the Member-Secretary of the General Council.
- (3) There shall be a General Council for the Board consisting of one representative from each of the member-organisations.
- (4) The General Council shall meet once a year within six months of the last day of the previous financial year.
- (5) The General Council shall discuss and review the functioning of the National Board in the light of the annual report for the preceding year. It shall also provide a platform for members to articulate their views, ideas and problems with regard to the agricultural sector in general and social security issues in particular and shall give broad policy directions to the Executive Council.

13. Executive Council:

(1) The Board shall have an Executive Council with the Secretary to the Government of India, Ministry of Labour and Employment, as its Chairperson and a full time Chief Executive Officer to be designated by the Central Government as its *ex-officio* Member-Secretary. In addition, the Central Government shall nominate the members to the Executive Council as per the following:

- a) Two representatives of the organisations of agricultural wage workers, which are members of the National Board.
- b) Two representatives of organisations of self employed agricultural workers, which are members of the National Board.
- c) One representative each of the Government of India from the Ministries of Agriculture, Finance and Health;
- d) Six representatives of the State Boards;
- e) One expert in the management of insurance products and services;
- f) One expert in the area of social security and related issues in the agricultural sector; and
- g) One expert in the management of finances.

(2) The tenure of the members shall be for a period of three years. The Executive Council shall meet as often as required but not less than twice a year.

[a, b, and d may be based on the principle of rotation amongst the member-organisations.]

14. Secretariat of the Board:

The National Board shall have a secretariat with adequate professional and other staff. The staff of the National Board would be governed by the Central Government rules and regulations existing from time to time.

Chapter V

STATE LEVEL SOCIAL SECURITY BOARDS FOR AGRICULTURAL WORKERS

15. Establishment of State Boards:

(1) Each State shall have a State Board to implement the national minimum social security as well as design and implement state level social security and welfare programmes for agricultural workers. The State Governments shall constitute the State Boards within one year of the date of commencement of this Act. The State Boards shall have the following as its members:

- a) Workers Welfare Boards (both existing and newly designed) providing social security and welfare to the agricultural workers;
- b) Organisations which are registered as trade unions/cooperatives/charitable societies engaged in the provision of social security for agricultural workers subject to such qualifying criteria as the State Government may lay down;
- c) Departments or agencies of the State Government acting as employers of the agricultural wage workers (e.g. irrigation department, forest department, etc.) and
- d) Representatives of organisations of self employed agricultural workers;

(2) The State Government shall decide the number and names of such organisations to be represented on the State Board.

(3) The State Board shall work through a General Council and an Executive Council

16. State Fund:

(1) The State Government shall create a State Social Security Fund to which contributions shall accrue from the following sources:

- (i) Grants and loans from National Board and the State Government;
- (ii) Any tax or cess that the State Government may impose on commodities and/or services in lieu of employers' contributions (which are either difficult to collect or appropriate employers in the agricultural sector are not directly identifiable);
- (iii) Contributions from the national financial/developmental institutions; and
- (iv) Any voluntary contribution from individuals or institutions.

(2) All financial contributions made by individuals and institutions to the State Social Security Fund will be exempted from the payment of income tax under the Income Tax Act.

(3) All contributions accruing to the State Boards shall be credited to the State Social Security Fund which shall be applied for meeting the following:

- (i) Expenses on the implementation of the national minimum social security and additional social security schemes of the State Government;
- (ii) Grants to the Welfare Boards and the Workers' Facilitation Centres;
- (iii) Expenses on the administration of the State Board as per the annual budget approved by the Executive Council;
- (iv) Investment in permitted schemes;
- (v) Any other item in connection with the administration of this Act.

17. Functions:

The State Boards shall have the following functions:

- a) administration of this Act at the state level;
- b) implement the national minimum social security for agricultural workers through appropriate organisational arrangements;
- c) implement social security schemes, in addition to the National Social Security Scheme, that the State Board may design in consultation with the State Government;
- d) provide financial assistance to other member-organisations implementing social security programmes;

- e) advise the State Government on policy matters relating to social security, health and safety and welfare of workers;
- f) create awareness among the agricultural workers about the need for social security registration and the existence of various social security schemes;
- g) collect, compile and publish statistics, with the help of statistical organisations, regarding workers and their conditions of work, and employers who engage these workers at the Panchayat/Municipal, District, State levels with such details as gender and age, nature of occupation, level of earnings, etc;
- h) review the working of the Welfare Boards and other implementing agencies on the basis of annual reports and statement of audited accounts or specially commissioned reports and make suitable recommendations to the concerned government(s) for further improvement;
- i) assist in capacity building of Workers Welfare Boards and Workers' facilitation Centres;
- j) initiate innovative approaches, through interaction across sectors and constituencies, for the enhancement of welfare, working conditions and productivity of agricultural workers; and
- k) Submission of annual report to the National Board within four months from the last day of the previous financial year along with an audited statement of accounts.

18. General Council:

(1) There shall be a General Council for the State Board consisting of one representative from each of the member-organisations. The Minister for Labour in the concerned State shall be the Chair person of the General Council. The Secretary to the concerned State Government, Department of Labour, shall be the Member-Secretary.

(2) The General Council shall meet once a year within six months of the last day of the previous financial year.

(3) The General Council shall discuss and review the functioning of the State Board in the light of the annual report for the preceding year. It will also provide a platform for members to articulate their views, ideas and problems with regard to the agricultural sector in general and social security issues in particular and shall give broad policy directions to the Executive Council.

19. Executive Council:

(1) The State Board shall have an Executive Council with the Secretary of the concerned State Government, Department of Labour, as Chairperson and an official designated by the State Government as Chief Executive Officer, who shall be the ex-officio Member-Secretary, after taking the view of the General Council of the Concerned State Board. In addition, the State Government shall nominate the members to the Executive Council as per the following:

- a) Two representatives of the organisations of agricultural wage workers, which are members of the State Board.
- b) Two representatives of organisations of self employed agricultural workers, which are members of the State Board.
- c) One representative from the National Board nominated by it;
- d) One representative each from the Departments of Agriculture, Finance and Health of the State Government;
- e) Such number of representatives as the State Government may decide of Agricultural Workers Welfare Boards and organisations providing social security to agricultural workers that are members of the State Board;
- f) One expert in the management of insurance products and services;
- g) One expert in the area of social security and related issues in the agricultural sector workers; and
- h) One expert in the management of finances.

(2) The tenure of the members shall be for a period of three years. The Executive Council shall meet as often as required but not less than twice a year.

[a, and b may be based on the principle of rotation amongst the member-organisations.]

(3) Appropriate rules for appointment and removal from office of the chief executive shall be framed by the State Government.

20. Secretariat of the Board:

The State Board shall have a secretariat with adequate professional and other staff. The staff of the State Board shall be governed by the State Government rules and regulations existing from time to time.

Chapter VI

REGISTRATION OF AGRICULTURAL WORKERS

21. Eligibility for registration:

Every agricultural worker as defined in this Act shall be eligible for registration that shall entitle him/her for the social security benefits subject to the following conditions:

- a) He/she should have completed 18 years of age; and
- b) a self declaration confirming his work experience mainly in the agricultural sector

22. Unique Identification Social Security Number:

Each registered agricultural worker shall be eligible for receiving a Unique Identification Social Security Number in the form of an Identity Card issued by the concerned State Board. With a view to prevent duplication of identity, the Identity Card shall also carry the registration number of the ration card of the worker. In the absence of a ration card, the registration number on the voter's card shall be entered in the Identity Card.

23. District Committee for registration of agricultural workers:

A district-level committee shall be constituted as the registering authority for the National Social Security Scheme. The District Committee will have the District Collector/Magistrate as the Chairman and the District Labour Officer as its Convenor and Nodal Officer. The District Committee shall include:

- a) Two representatives of agricultural wage workers organisations such as unions, associations or co-operatives in the agricultural sector;
- b) Two representatives of organisations working among the agricultural wage workers who do not have organisations of their own;
- c) Two representatives of self employed agricultural workers;
- d) A representative of the District Panchayat; and
- e) A representative of the State Board.

24. Identity card:

This Identity Card shall be issued under the authority of the District Committee based on a formal application for registration from the agricultural workers and forwarded by the Workers' Facilitation Centre with its recommendation. The District Committee shall send the Identity Cards to the Workers' Facilitation Centre for distribution to the concerned workers.

25. Portability of registration:

The Identity Card issued by the District Committee to workers shall remain valid even in the case of migration to another district in the country and the new address can be changed on application to the concerned District Committee.

26. Cessation of registration:

(1) The validity of the Identity Card shall be for a period of three years from the date of registration and can be renewed. If it is not renewed within one year of expiry, the agricultural worker will cease to be eligible for the benefits of the scheme.

(2) In the event of death, the Identify Card shall become invalid after the settlement of claims and the name of the agricultural worker shall be removed from the list of registered workers.

Chapter VII

DELIVERY OF SOCIAL SECURITY BENEFITS

27. Implementation Machinery:

(1) The member-organisations of the State Boards shall be responsible for the delivery of mandatory social security benefits as decided by the State and National Boards. If adequate member-organisations do not exist, the State Boards shall decide the manner in which social security benefits shall have to be delivered to the registered workers.

(2) The State Boards may decide on such delivery mechanism as may be feasible under local conditions. This may include existing delivery mechanisms as Welfare Boards or through tie-ups with local organisations like banks, post-offices and insurance companies.

28. Workers' Facilitation Centres:

(1) In order to extend coverage and reach the agricultural workers in remote areas the Boards may designate any one or more of the following at the local level as Workers' Facilitation Centres (WFC) for purposes of facilitating registration of workers:

- a) Existing Worker Welfare Boards and their local offices;
- b) Local Panchayati Raj Institutions (PRI);
- c) Organisations of workers including trade unions, associations and cooperatives in the agricultural sector;
- d) Self-Help Groups; and
- e) Non profit organisations working among the agricultural workers.

(2) Such designated Workers' Centres shall perform the following functions:

- a) Disseminate information on available social security schemes for the workers;
- b) Facilitate the filling, processing and forwarding of application forms for registration of workers;
- c) Obtain registration from the District Committee and deliver the Identity Cards to the registered workers;
- d) Facilitate the registered workers to enrol in social security schemes;
- e) Act as an authorized intermediary in collecting contributions from the workers to the social security schemes and remit them with the designated institutions;
- f) Ensure the delivery of social security benefits in cooperation with institutions designated to deliver such social security (insurance companies, Post Offices, Departments of the State/Central Government and other concerned institutions).

(3) The Workers' Facilitation Centres shall be entitled to charge such fees as may be decided by the State Board for the performance of its functions. Wherever required, it may also receive personnel recruited or deputed by the State Board for purposes of administration.

29. Premium and Compensation/Benefits:

- (1) The National Board shall decide the amount and manner of payment of contribution by the workers to the National Social Security Schemes. It shall however be the responsibility of the State Boards to remit the contributions of registered workers to the National Board.
- (2) For schemes initiated by the State Boards, the concerned State Board shall decide the contributions of workers and employers.
- (3) The claim of registered workers for social security benefits shall lie solely against the State Board and it shall be the responsibility of the State Board to settle the dues, if any.

Part- 2

Chapter VIII

CONDITIONS OF WORK FOR AGRICULTURAL WAGE WORKER

30. Rights and Entitlements:

The State Government shall seek to ensure to every agricultural wage worker, the following Rights and Entitlements:

- (1) An employer shall give preference in employment to an agricultural wage worker who has worked on the same land during the previous agricultural season;
- (2) The normal hours of work shall be limited to eight hours a day beyond which a worker shall be appropriately compensated;

Provided that nothing contained in this section shall be deemed to prohibit an agreement between the employer and the agricultural wage workers for working for less than eight hours on any particular day or days or on all days of employment or to effect any custom or practice prevailing in the locality under which the agricultural wage worker is required to work for less than eight hours.

- (3) No agricultural wage worker shall be paid wages below the prescribed Minimum wages;
- (4) No Agricultural wage worker shall be employed as bonded labour or child labour;

(5) All Agricultural wage workers shall have the right to organise for collective bargaining.

(6) Every employer shall provide the agricultural wage worker with adequate safety equipment while handling hazardous substances and equipments.

(7) No employer shall discriminate against any agricultural worker on the grounds of sex, caste, religion, place of origin in the payment of wages and conditions of work as laid down in this Act.

(8) The employer shall ensure that there is no sexual harassment at the workplace.

Chapter IX

DISPUTE RESOLUTION BODIES AND THEIR CONSTITUTION

31. Resolution of Disputes:

There shall be Dispute Resolution Councils for agricultural workers, employers, Workers' Facilitation Centres and State Boards in each state which shall be constituted in the manner prescribed by the appropriate State Government.

32. Reference of disputes:

(1) Any agricultural worker, or organisation representing such worker or Workers' Facilitation Centres or State Boards may raise a dispute relating to the non-observance of provisions of this Act (except Chapter X and XI), by filing a complaint before the Dispute Resolution Council in the manner prescribed by the State Government.

(2) Upon reference of such dispute, the Dispute Resolution Council shall at the first instance proceed to arrive at a conciliated settlement to the satisfaction of all parties. Upon failure of such conciliation proceedings, the Dispute Resolution Council shall adjudicate on the matter as expeditiously as possible.

(3) Where the dispute pertains to any matter covered by any other existing law, the Dispute Resolution Council shall forward the complaint to the appropriate authority created under the relevant Act for adjudication and such reference shall be treated as a valid Complaint under such Act.

(4) The Dispute Resolution Council shall have the same powers as are vested in civil court under the Code of Civil Procedure, 1908 (5 of 1908).

33. Consequences of contravention of provisions of this Act:

Whoever contravenes any provisions of this Act (except Chapter X and XI) or of any rules made there under, other than those made punishable under any other law, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both, and in the case of continuing contravention, with an additional fine which may extend upto one hundred rupees for every day during which such contravention continues. The Dispute Resolution Council shall be authorised to give the fine so collected either in whole or in part to the aggrieved party.

Part-3

Chapter X

PROTECTION AND PROMOTION OF LIVELIHOOD OF SELF EMPLOYED WORKERS IN THE AGRICULTURAL SECTOR

34. Entitlements of Self employed workers:

The appropriate State Government shall seek to safeguard and promote the livelihood of the self employed workers in the agricultural sector through the following measures:

- (i) Provision of credit, adequate raw material (input) supply and adequate marketing facilities for the goods and services produced;
- (ii) Ensuring access to Banking Institutions, in the State or co-operative Sector and / or such appropriate arrangement for the purpose of affordable credit facilities;
- (iii) Ensuring the right to livelihood including the right over common properties and natural resources in the following manner:
 - a) Ensuring the traditional rights of all types of agricultural workers having traditional access to common property resources for their livelihood ,
 - b) Ensuring the right of workers to share the public space to engage in economic activities;
- (iv) Encourage the promotion of associations of self employed workers with a view to articulation of their problems and such organisation would have standing to raise grievance before the State Advisory Committee.

Part-4

Chapter XI

STATE ADVISORY COMMITTEE

35. Constitution:

A State Advisory Committee shall be constituted by every State Govt. or Govt of the Union Territory for agricultural workers.

36. Functions of the State Advisory Committee

Every State Advisory Committee shall have the following functions:

- (i) to advise the Government regarding the promotion of gainful employment opportunities for agricultural workers;
- (ii) to advise and develop plans for the promotion of livelihood options available for self employed workers in the agricultural sector;
- (iii) to identify skill and training requirements for both self employed workers and wage workers in this sector and to advise the government accordingly;
- (iv) to collect, compile and publish statistics with the help of statistical organisation regarding the agricultural sector and the possibilities and challenges facing this sector in terms of employment opportunities;
- (v) to assess and advise the government on the credit requirements and banking needs of this sector;
- (vi) to carry out periodic surveys on the condition of work in this sector and to make suitable recommendations to the government; and
- (vii) to encourage the promotion of labour cooperation to secure gainful employment and dignified conditions of work.
- (viii) To hold public meetings to entertain petitions submitted by the agricultural workers and to explain the efforts made to address the grievances of agricultural workers.

37. Composition of the State Advisory Committees

A State Advisory Committee shall consist of the Minister of Agriculture who shall be Chairperson and the Secretary, Ministry of Agriculture who shall be the Member-Secretary. In addition the Committee shall consist of the following:

- (i) Two representatives of unions of agricultural workers;
- (ii) Two representatives of organisations of self employed workers in the agricultural sector
- (iii) One representative each from the Ministries of Labour, Agriculture, Rural development, Panchayats and Health of the State; and
- (iv) Appropriate number of experts in the area of skill formation, finance, marketing, technology and natural resource management

38. Duration:

The tenure of the members shall be for a period of three years. The State Advisory Committee shall meet as often as required but not less than twice a year.

Chapter XII

MISCELLANEOUS

39. Accounts and Audit:

- (a) The National Board and the State Boards shall maintain proper accounts and other relevant records and prepare annual statements of accounts in such form as may be prescribed.
- (b) The National Board shall furnish to the Central Government, before such date as may be prescribed, the audited copy of the consolidated account of itself and the Funds together with the auditor's report.

40. Power to make Rules:

The Central and the state Government shall have the power to make rules for the purposes of carrying out the objects of the Act.

41. Savings:

This law shall not affect the functioning of any other State or Central Acts providing for substantially similar or superior benefits to the agricultural sector workers.

NON AGRICULTURAL UNORGANISED SECTOR WORKERS SOCIAL SECURITY BILL 2005

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Statement of objects and reasons

The unorganised sector of the economy in India is the largest sector in terms of employment of the workforce. It consists of agriculture and such related activities as forestry, livestock and fishing as well as non-agriculture. The workers may be broadly divided into self-employed and wage workers. Wage workers may be sub-divided into those (a) working in the unorganised sector, and (b) working in the organised sector without any social security cover. Around ninety percent of the workers in India are neither covered by any formal system of social security nor regulation of conditions of work. This Bill is intended to provide a measure of social security to the workers in the non-agricultural unorganised sector. This Bill proposes a model that will be inclusive in nature and provide for clearly demarcated division of responsibilities between the Central and State Governments. It mandates the Central and State Governments to implement a National Social Security Scheme.

NON AGRICULTURAL UNORGANISED SECTOR WORKERS SOCIAL SECURITY BILL 2005

A BILL

to provide for social security and welfare of non agricultural unorganized sector workers and to provide for other matters connected therewith or incidental thereto.

BE it enacted by Parliament in the fifty-fifth year of the Republic of India as follows:-

Chapter I

PRELIMINARY

1. Short title, extent, commencement and application:

(1) This Act may be called Non Agricultural Unorganised Sector Workers Social security Act, 2005.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

2. Definitions:

For the purposes of this Act, unless the context otherwise requires, -

- a) **"Central Government"** means the Government of India;
- b) **"Employer"** means a natural or juridical person, or an association of such persons, by whom any non agricultural unorganised sector worker is engaged or employed either directly or otherwise, for any remuneration.
- c) **"Home based worker"** means a person involved in the production of goods or services for an employer in his / her own home or other premises of his / her choice other than the work place of the employer, for remuneration irrespective of whether or not the employer provides the equipment, materials or other inputs.
- d) **"Identity card"** means a card issued to a worker carrying unique social security number issued by the authorised agency of the State Board;
- e) **"National Board"** means the National Social Security Board for non agricultural unorganised sector workers,
- f) **"Non Agricultural Unorganised Sector"** means all private unincorporated enterprises including own-account enterprises engaged in any industry, trade and/or business;
- g) **"Non-agricultural unorganised sector workers"** means a self employed worker or a wage worker and includes wage workers in the Organised Sector without any social security cover,
- h) **"State Government"** means the Government of a State in the Indian Union;
- i) **"State Board"** means the (name of the State) State Social Security Board for non agricultural unorganised sector workers;
- j) **"Self employed worker"** means any person who is not employed by an employer, but directly engages himself / herself in any occupation in the non-agricultural unorganised sector, subject to a monthly earning of Rs.5,000/- or such limits as may be notified from time to time;
- k) **"Wage worker"** means a person employed for a remuneration in the non agricultural unorganised sector, directly by an employer or through any agency or contractor or under putting out system, whether exclusively for one employer or for one or more employers, whether simultaneously or otherwise, whether as a home based worker, or as a temporary or casual worker, or as a migrant worker, or as a outworker, or, workers employed by households including domestic workers, with a monthly wage of not more than Rs 5000/- or such limits

as may be notified from time to time, but does not include an unpaid family worker.

3. Rules of evidence:

In this Act, notwithstanding anything contained in the Indian Evidence Act, 1872, the burden of proof that compliance with the provisions of the Act and the Scheme has been effected shall be entirely on the employer and the units of the Board wherever applicable.

[Explanatory Note: This section facilitates shifting of the burden of proof from the workers to the employer. This is a departure from the normal practice and ordinary rules of evidence, which places the burden on the plaintiff.]

Chapter II

SOCIAL SECURITY BENEFITS

4. Framing of Schemes

(1) By this Act, the Central Government shall formulate a scheme to be called National Social Security Scheme for the non agricultural unorganised sector workers consisting of the following national minimum social security benefits:

- (i) Old age pension to all workers above the age of 60 years;
- (ii) Health insurance for self, spouse and children below the age of 18 years;
- (iii) Maternity benefits for women workers or spouse of men workers ; and
- (iv) Insurance to cover death and disability arising out of accidents.

(2) In addition to the national minimum, the Central Government may frame such schemes as it may deem necessary or finance such schemes of the State Governments as it may find appropriate subject to availability of finance by such means as mentioned in Section 5 and may include those listed under (3) below.

(3) The State Government may formulate such non agricultural worker-based schemes as it may find appropriate to (a) strengthen the national minimum social security by way

of its own contribution, and/or (b) design and implement additional social security benefits through its own schemes. These may include:

- a) Provident fund schemes,
- b) Employment injury benefit scheme,
- c) Housing schemes,
- d) Educational schemes for children of workers,
- e) Skill up gradation of workers,
- f) Funeral assistance,
- g) Marriage of daughters, and
- h) Any other schemes to enhance the socio economic security of non agricultural unorganised sector worker.

Chapter III

NATIONAL SOCIAL SECURITY FUND FOR NON AGRICULTURAL UNORGANISED SECTOR WORKERS

5. Constitution of a National Fund

The Central Government shall create a National Social Security Fund to which contributions shall accrue from the following sources:

- a) Grants and loans from the Central Government;
- b) Contributions from workers, employers and Governments for the specified national minimum social security shall be as under:
 - (i) Re. 1/- per day by the worker, provided that for those below the poverty line the contribution shall be made by the Central government;
 - (ii) Re. 1/- per day, per worker, by the employer, provided that where the employer is not identifiable, the contribution shall be equally shared by the Central Government and the respective State Governments;
 - (iii) Re. 0.50 per worker, per day, by the Central Government, and Re. 0.25. per worker, per day by the State Government.

[Explanatory note: The contribution of Central and State Governments in (iii) above is in accordance with the practice of Government contribution to social security schemes in the organised sector]

- c) Any tax or cess that the Central Government may impose on the corporate sector (public and private) for the purpose of providing social security for non-agricultural unorganised sector workers,

- d) Any tax or cess that the Central Government may impose on commodities and/or services in lieu of employers' contributions (which are either difficult to collect or appropriate employers in the non agricultural unorganised sector are not directly identifiable).

In addition to the above, contributions may also accrue from the following sources:

- e) Contributions from the national financial/developmental institutions; and
- f) Any voluntary contribution from individuals or institutions.

6. Existing Welfare Boards:

Where separate Welfare Boards have already been created by the Central or the State Governments, which have schemes similar to the national minimum social security schemes (specified above), the concerned National or State Boards shall function in collaboration with such existing Welfare Boards to ensure that the workers receive the benefit, either under the existing schemes of the Welfare Boards or under the national minimum social security schemes, whichever is more beneficial to the workers. Surplus funds, if any, of the existing Welfare Boards shall be utilised by them for additional social security schemes, in addition to the national minimum social security scheme.

7. Exemption from Income Tax

All financial contributions made by individuals and institutions to the National Social Security Fund will be exempted from the payment of income tax under the Income Tax Act.

8. Utilisation of the National Fund

All contributions accruing to the National Board shall be credited to the Fund, which shall be applied for meeting the following:

- a) Expenses on social security schemes of the Central Government,
- b) Grants to the State Boards, including for the purposes of the functioning of the Workers' Facilitation Centres,
- c) Expenses on the administration of the Board as per the annual budget approved by the Executive Council,
- d) Investment in permitted schemes,
- e) Any other item in connection with the administration of this Act.

Chapter IV

NATIONAL SOCIAL SECURITY BOARD FOR NON AGRICULTURAL UNORGANISED SECTOR WORKERS

9. Establishment and incorporation

With effect from such date as the Central Government may, by notification appoint, there shall be established for the purposes of this Act, a Board to be called the National Social Security Board for non agricultural unorganised sector workers.

10. Functions of the Board

The National Board shall provide the following functions:

- a) administration of this Act and formulation of policies at the national level, and shall have such powers as may be laid down to direct, co ordinate, supervise, and monitor the functioning of State Boards and the Central Welfare Boards;
- b) review the working including auditing of the State-level Social Security Boards and the Central Welfare Boards every four years and make suitable recommendations to the concerned Government(s) for further improvement;
- c) manage and maintain the National Social Security Fund and provide financial assistance to State Boards;
- d) advise the Central Government on policy matters relating to social security, health and safety and welfare of non agricultural sector workers;
- e) assist in capacity building of the State Boards, and collect, compile and publish statistics relating to the non agricultural unorganised sector and undertake such promotional activities as may be decided from time to time.

11. Composition of the Board

(1) The National Board for non agricultural unorganised sector workers shall be constituted by the Central Government from any of the following organisations:

- a) State Boards for non agricultural unorganised sector workers;

- b) Central Welfare Boards for non agricultural unorganised sector workers administered by the Ministry of Labour and Employment;
- c) national-level unions of non agricultural unorganised sector workers;
- d) national-level voluntary associations of non agricultural unorganised sector workers including self-employed with an explicit social security scheme for its members; and
- e) national-level organizations of employers in the non agricultural unorganised sector (such as organizations of tiny and small scale industries) and government/public institutions with a stake in the welfare of the non agricultural unorganised sector workers such as the All India Handicrafts Board, All India Handloom Board, Central Social Welfare Board, Department of Women and Child Development, and Department of Small Scale Industries.

(2) The Central Government shall decide the number and names of such organisations to be represented on the National Board.

(3) The National Board shall work through a General Council and an Executive Council.

12. General Council

(1) The Union Minister for Labour and Employment shall be the Chairperson of the General Council.

(2) The Secretary to the Government of India, Ministry of Labour and Employment, shall be the Member-Secretary of the General Council.

(3) There shall be a General Council for the Board consisting of one representative from each of the member-organisations.

(4) The General Council shall meet once a year within six months of the last day of the previous financial year.

(5) The General Council shall discuss and review the functioning of the National Board in the light of the annual report for the preceding year. It shall also provide a platform for members to articulate their views, ideas and problems with regard to the non agricultural unorganised sector in general and social security issues in particular and shall give broad policy directions to the Executive Council.

13. Executive Council

(1) The Board shall have an Executive Council with the Secretary to the Government of India, Ministry of Labour and Employment, as its Chairperson and a full time Chief Executive Officer to be designated by the Central Government as its *ex-officio* Member-Secretary. In addition, the Central Government shall nominate the members to the Executive Council as per the following:

- a) Two representatives of the organisations of wagedworkers in the non agricultural unorganised sector, which are members of the National Board.
- b) Two representatives of organisations of self-employed workers in the non agricultural unorganised sector workers, which are members of the National Board.
- c) Two representatives of organisations of employers in the non agricultural unorganised sector that are members of the National Board [E.g. associations of tiny industries, small-scale industries, etc.]
- d) One representative from any one of the Central Welfare Boards;
- e) One representative each of the Government of India from the Ministry of Finance, Health and Small Scale Industries;
- f) Six representatives of the State Boards;
- g) One expert in the management of insurance products and services;
- h) One expert in the area of social security and related issues in the non agricultural unorganised sector workers; and
- i) One expert in the management of finances.

(2) The tenure of the members shall be for a period of three years. The Executive Council shall meet as often as required but not less than twice a year.

[a, b, c, and f may be based on the principle of rotation amongst the member-organisations.]

14. Secretariat of the Board

The National Board shall have a secretariat with adequate professional and other staff. The staff of the National Board shall be governed by the Central Government rules and regulations existing from time to time.

Chapter V

STATE LEVEL SOCIAL SECURITY BOARDS FOR NON AGRICULTURAL UNORGANISED SECTOR WORKERS

15. Establishment of State Boards

(1) Each State shall have a State Board to implement the national minimum social security as well as design and implement state level social security and welfare programmes for non agricultural unorganised sector workers. The State Governments shall constitute the State Boards within one year of the date of commencement of this Act. The State Boards shall have the following as its members:

- a) Workers Welfare Boards (both existing and newly designed) providing social security and welfare to the non agricultural unorganised sector workers;
 - b) Organisations which are registered as trade unions/cooperatives/charitable societies, engaged in the provision of social security for non agricultural unorganised sector workers subject to such qualifying criteria as the State Government may lay down;
 - c) Departments or agencies of the State Government acting as employers of the non agricultural unorganised sector workers (e.g. those employing anganwadi workers, khadi workers, etc.); and
 - d) Representatives of employers organisations in the non agricultural unorganised sector;
- (2) The State Government shall decide the number and names of such organisations to be represented on the State Board.
- (3) The State Board shall work through a General Council and an Executive Council.

16. State Fund:

- (1) The State Government shall create a State Social Security Fund to which contributions shall accrue from the following sources:
- (i) Grants and loans from National Board and the State Government;
 - (ii) Any tax or cess that the State Government may impose on commodities and/or services in lieu of employers' contributions (which are either difficult to collect

or appropriate employers in the non agricultural unorganised sector are not directly identifiable);

(iii) Contributions from the national financial/developmental institutions; and

(iv) Any voluntary contribution from individuals or institutions.

(2) All financial contributions made by individuals and institutions to the State Social Security Fund will be exempted from the payment of income tax under the Income Tax Act.

(3) All contributions accruing to the State Boards shall be credited to the State Social Security Fund which shall be applied for meeting the following:

- (i) Expenses on the implementation of the national minimum social security and additional social security schemes of the State Government;
- (ii) Grants to the Welfare Boards and the Workers' Facilitation Centres;
- (iii) Expenses on the administration of the State Board as per the annual budget approved by the Executive Council;
- (iv) Investment in permitted schemes;
- (v) Any other item in connection with the administration of this Act.

17. Functions

The State Boards will have the following functions:

- a) administration of this Act at the state level;
- b) implement the national minimum social security for non agricultural unorganised sector workers through appropriate organisational arrangements;
- c) implement social security schemes, in addition to the National Social Security Scheme, that the State Board may design in consultation with the State Government;
- d) provide financial assistance to other member-organisations implementing social security programmes;
- e) advise the State Government on policy matters relating to social security, health and safety and welfare of workers;
- f) create awareness among the non agricultural unorganised sector workers about the need for social security registration and the existence of various social security schemes;

- g) collect, compile and publish statistics, with the help of statistical organisations, regarding workers and their conditions of work, and employers who engage these workers at the Panchayat/Municipal, District, State levels with such details as gender and age, nature of occupation, level of earnings, etc.;
- h) review the working of the Welfare Boards and other implementing agencies on the basis of annual reports and statements of audited accounts or specially commissioned reports and make suitable recommendations to the concerned government(s) for further improvement;
- i) assist in capacity building of Workers Welfare Boards and Workers' facilitation Centres;
- j) initiate innovative approaches, through interaction across sectors and constituencies, for the enhancement of welfare, working conditions and productivity of non agricultural unorganised sector workers; and
- k) Submission of annual report to the National Board within four months from the last day of the previous financial year along with an audited statement of accounts.

18. General Council:

- (1) There shall be a General Council for the State Board consisting of one representative from each of the member-organisations. The Minister for Labour in the concerned State shall be the Chairperson of the General Council. The Secretary to the concerned State Government, Department of Labour, shall be the Member-Secretary.
- (2) The General Council shall meet once a year within six months of the last day of the previous financial year.
- (3) The General Council shall discuss and review the functioning of the State Board in the light of the annual report for the preceding year. It will also provide a platform for members to articulate their views, ideas and problems with regard to the non agricultural unorganised sector in general and social security issues in particular and shall give broad policy directions to the Executive Council.

19. Executive Council:

- (1) The State Board shall have an Executive Council with the Secretary of the concerned State Government, Department of Labour, as Chairperson and an official

designated by the State Government as Chief Executive Officer, who shall be the ex-officio Member-Secretary, after taking the view of the General Council of the Concerned State Board. In addition, the State Government shall nominate the members to the Executive Council as per the following:

- a) Two representatives of the organisations of wagedworkers in the non agricultural unorganised sector, which are members of the State Board;
- b) Two representatives of organisations of self-employed workers in the non agricultural unorganised sector, which are members of the State Board;
- c) Two representatives of organisations of employers in the non agricultural unorganised sector that are members of the State Board [E.g. associations of tiny industries, small-scale industries, etc.];
- d) One representative from the National Board nominated by it;
- e) One representative each from the Departments of Finance, Health and Small Scale Industries of the State government;
- f) Six representatives of the State level Workers Welfare Boards or organisations providing social security to the non agricultural unorganised sector workers that are members of the State Board;
- g) One expert in the management of insurance products and services;
- h) One expert in the area of social security and related issues in the non agricultural unorganised sector; and
- i) One expert in the management of finances.

(2) The tenure of the members shall be for a period of three years. The Executive Council shall meet as often as required but not less than twice a year.

[a, b, c, and f may be based on the principle of rotation amongst the member-organisations.]

(3) Appropriate rules for appointment and removal from office of the chief executive shall be framed by the State Government.

20. Secretariat of the Board:

The State Board shall have a secretariat with adequate professional and other staff. The staff of the State Board shall be governed by the State Government rules and regulations existing from time to time.

Chapter VI

REGISTRATION OF NON AGRICULTURAL UNORGANISED SECTOR WORKERS

21. Eligibility for registration:

Every Non-agricultural unorganised sector worker shall be eligible for registration that shall entitle him/her for the social security benefits subject to the following conditions:

- a) He/she should have completed 18 years of age; and
- b) a self declaration confirming his work experience mainly in the non agricultural sector.

22. Unique Identification Social Security Number

Each registered worker shall be eligible for receiving a Unique Identification Social Security Number in the form of an Identity Card issued by the concerned State Board. With a view to prevent duplication of identity, the Identity Card shall also carry the registration number of the ration card of the worker. In the absence of a ration card, the registration number on the voter's card shall be entered in the Identity Card.

23. District Committee for registration of workers:

A district-level committee shall be constituted as the registering authority for the National Social Security Scheme. The District Committee will have the District Collector/Magistrate as the Chairman and the District Labour Officer as its Convenor and Nodal Officer. The District Committee shall include:

- a) Two representatives of workers' organisations such as unions, associations or co-operatives in the non agricultural unorganised sector;
- b) Two representatives of organisations working among the non agricultural unorganised sector workers who do not have organisations of their own;
- c) Two representatives of employers' organisations in the non agricultural unorganised sector;
- d) A representative of the District Panchayat; and
- e) A representative of the State Board.

24. Identity card:

This Identity Card shall be issued under the authority of the District Committee based on a formal application for registration from workers and forwarded by the Workers' Facilitation Centre with its recommendation. The District Committee shall send the Identity Cards to the Workers' Facilitation Centre for distribution to the concerned workers.

25. Portability of registration

The Identity Card issued by the District Committee to workers shall remain valid even in the case of migration to another district in the country and the new address can be changed on application to the concerned District Committee.

26. Cessation of registration

(1) The validity of the Identity Card shall be for a period of three years from the date of registration and can be renewed. If it is not renewed within one year of expiry, the worker will cease to be eligible for the benefits of the scheme.

(2) In the event of death, the Identity Card shall become invalid after the settlement of claims and the name of the worker shall be removed from the list of registered workers.

Chapter VII

DELIVERY OF SOCIAL SECURITY BENEFITS

27. Implementation Machinery

(1) The member-organisations of the State Boards shall be responsible for the delivery of mandatory social security benefits as decided by the State and National Boards. If adequate member-organisations do not exist, the State Boards shall decide the manner in which social security benefits shall have to be delivered to the registered workers.

(2) The State Boards may decide on such delivery mechanism as may be feasible under local conditions. This may include existing delivery mechanisms as Welfare

Boards or through tie-ups with local organisations like banks, post-offices and insurance companies.

28. Workers' Facilitation Centres:

(1) In order to extend coverage and reach the non agricultural unorganised sector workers in remote areas the Boards may designate any one or more of the following at the local level as Workers' Facilitation Centres (WFC) for purposes of facilitating registration of workers:

- a) Existing Worker Welfare Boards and their local offices;
- b) Local Panchayati Raj Institutions (PRI) or urban local bodies;
- c) Organisations of workers including trade unions, associations and cooperatives in the non agricultural unorganised sector;
- d) Self-Help Groups; and
- e) Non-profit organisations working among the non agricultural unorganised sector workers,

(2) Such designated Workers' Centres shall perform the following functions:

- a) Disseminate information on available social security schemes for the workers;
- b) Facilitate the filling, processing and forwarding of application forms for registration of workers;
- c) Obtain registration from the District Committee and deliver the Identity Cards to the registered workers;
- d) Facilitate the registered workers to enrol in social security schemes;
- e) Act as an authorized intermediary in collecting contributions from the workers to the social security schemes and remit them with the designated institutions;
- f) Ensure the delivery of social security benefits in cooperation with institutions designated to deliver such social security (insurance companies, Post Offices, Departments of the State/Central Government and other concerned institutions).

(3) The Workers' Facilitation Centres shall be entitled to charge such fees as may be decided by the State Board for the performance of its functions. Wherever required, it may also receive personnel recruited or deputed by the State Board for purposes of administration.

29. Premium and Compensation/Benefits:

- (1) The National Board shall decide the amount and manner of payment of contribution by the workers to the National Social Security Schemes. It shall however be the responsibility of the State Boards to remit the contributions of registered workers to the National Board.
- (2) For schemes initiated by the State Boards, the concerned State Board shall decide the contributions of workers and employers.
- (3) The claim of registered workers for social security benefits shall lie solely against the State Board and it shall be the responsibility of the State Board to settle the dues, if any.

Chapter VIII

DISPUTE RESOLUTION BODIES AND THEIR CONSTITUTION

30. Resolution of Disputes:

There shall be Dispute Resolution Councils for non-agricultural unorganised sector workers, Workers' Facilitation Centres and State Boards in each state which shall be constituted in the manner prescribed by the State Government.

31. Reference of disputes:

- (1) Any non-agricultural unorganised sector worker or organisation representing such worker or Workers' Facilitation Centres or State Boards may raise a dispute relating to the non-observance of provisions of this Act by filing a complaint before the Dispute Resolution Council in the manner prescribed by the State Government.
- (2) Upon reference of such dispute, the Dispute Resolution Council shall at the first instance proceed to arrive at a conciliated settlement to the satisfaction of all parties. Upon failure of such conciliation proceedings, the Dispute Resolution Council shall adjudicate on the matter as expeditiously as possible.
- (3) Where the dispute pertains to any matter covered by any other existing law, the Dispute Resolution Council shall forward the complaint to the appropriate authority created under the relevant Act for adjudication and such reference shall be treated as a valid complaint under such Act.
- (4) The Dispute Resolution Council shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (of 1908).

32. Consequences of contravention of provisions of this Act:

Whoever contravenes any provisions of this Act or the rules made there under, other than those made punishable under any other law, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both, and in case of continuing contravention, with additional fine which may extend upto one hundred rupees for every day during which such contravention continues. The Dispute Resolution Council shall be authorised to give the fine so collected either in whole or in part to the aggrieved party.

Chapter IX

MISCELLANEOUS

33. Accounts and Audit:

- (a) The National Board and the State Boards shall maintain proper accounts and other relevant records and prepare annual statements of accounts in such form as may be prescribed.
- (b) The National Board shall furnish to the Central Government, before such date as may be prescribed, the audited copy of the consolidated account of itself and the Funds together with the auditor's report.

34. Power to make Rules:

The Central and the State Government shall have the power to make rules for the purposes of carrying out the objects of the Act.

35. Savings:

This law shall not affect the functioning of any other State or Central Acts providing for substantially similar or superior benefits to the non agricultural unorganised sector workers.

NON AGRICULTURAL UNORGANISED SECTOR WORKERS (CONDITIONS OF WORK & LIVELIHOOD PROMOTION) BILL 2005

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13. Power to make Rules
14. Savings

Statement of objects and reasons

In the unorganised sector of the Indian economy, accounting for more than 90 per cent of employment, the non-agricultural sector accounts for nearly 30 per cent of the total workforce. This sector covers a variety of employments. The workers in this sector may be broadly divided into self-employed (including contributing family workers) and wage workers. For the purpose of this Bill, non-agricultural unorganised sector workers include workers in the organised sector without any social security cover. This Bill is intended to provide minimum conditions of work, protection and promotion of livelihoods and a mechanism for dispute resolution.

NON AGRICULTURAL UNORGANISED SECTOR WORKERS (CONDITIONS OF WORK & LIVELIHOOD PROMOTION) BILL 2005

A

BILL

to provide for minimum labour standards, dispute mechanism and protection and promotion of livelihood system for non agricultural unorganized sector workers and to provide for other matters connected therewith or incidental thereto.

BE it enacted by Parliament in the fifty-fifth year of the Republic of India as follows:-

Chapter I

PRELIMINARY

1. Short title, extent and commencement and application:

- (1) The Act may be called Non Agricultural Unorganised Sector Workers (Conditions of Work & Livelihood Promotion) Act, 2005.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

2. Definitions:

For the purposes of this Act, unless the context otherwise requires;

- a) **"Child"** means a person who has not completed 15 years of age,
- b) **"Employer"** means a natural or juridical person, or an association of such persons, by whom any non agricultural unorganised sector worker is engaged or employed either directly or otherwise, for any remuneration,
- c) **"Government"** means either Central Government, or State Government, or Union Territory administration,
- d) **"Home based worker"** means a person involved in the production of goods or services for an employer in his / her own home or other premises of his / her choice other than the work place of the employer for remuneration irrespective of whether or not the employer provides the equipment, materials or other inputs,
- e) **"Non-agricultural unorganised sector"** means all private unincorporated enterprises including own-account enterprises engaged in any industry, trade and/or business,
- f) **"Non-agricultural unorganised sector workers"** means a self employed worker or a wage worker,
- g) **"Self employed worker"** means any person who is not employed by an employer, but directly engages himself / herself in any occupation in the non-agricultural unorganised sector, subject to a monthly earning of Rs.5,000/- or such limits as may be notified from time to time,
- h) **"Wage worker"** means a person employed for a remuneration in the unorganised sector, directly by an employer or through any agency or contractor or under putting out system, whether exclusively for one employer or for one or more employers, whether simultaneously or otherwise, whether as a home based worker, or as a temporary or casual worker, or as a migrant worker, or as a outworker, or, workers employed by households including domestic workers, with a monthly wage of not more than Rs 5000/- or such limits as may be notified from time to time but does not include an unpaid family worker.
- i) **"Wages"** means the term wages as defined under the Payment of Wages Act 1936.

3. Rules of evidence:

In this Act, notwithstanding anything contained in the Indian Evidence Act, 1872, the burden of proof that compliance with the provisions of the Act has been effected will be entirely on the employer wherever applicable.

[Explanatory Note: This section facilitates shifting of the burden of proof from the workers to the employer. This is a departure from the normal practice and ordinary rules of evidence, which places the burden on the plaintiff.]

Part -1

Chapter II

MINIMUM LABOUR STANDARDS TO BE ENSURED FOR THE NON- AGRICULTURAL UNORGANISED SECTOR WORKERS

4. Entitlements of the non-agricultural unorganised sector workers:

The following minimum labour standards shall be ensured for all non-agricultural unorganised sector wage workers:

- a) No employer shall employ any non-agricultural unorganised sector wage worker in contravention of the following Acts:
 - (i) Bonded Labour System (Abolition) Act, 1976;
 - (ii) Child Labour (Prohibition and Regulation) Act, 1986;
 - (iii) The Employment of Manual scavengers and Construction of Dry Latrines (Prohibition) Act, 1993; and
 - (iv) Minimum Wages Act, 1948.
- b) The normal hours of work shall be limited to eight hours a day beyond which a worker shall be appropriately compensated;
- c) All non agricultural unorganised sector workers shall have the right to organise for collective bargaining;
- d) No employer shall discriminate against any non-agricultural unorganised sector wage worker on the grounds of sex, caste, religion, place of origin in the payment of wages and conditions of work as laid down in this Act;
- e) The employer shall take adequate steps to ensure the safety of working conditions of unorganised sector workers and ensure a safe working environment;
- f) The employer shall ensure that there is no sexual harassment at the workplace.

DISPUTE RESOLUTION BODIES AND THEIR CONSTITUTION

5. Resolution of Disputes:

There shall be Dispute Resolution Councils for non-agricultural unorganised sector wage workers and employers in each state which shall be constituted in the manner prescribed by the State Government.

6. Reference of disputes:

- (1) Any non-agricultural unorganised sector wage worker or organisation representing such worker or employer may raise a dispute relating to the non-observance of conditions of work as specified in this Act by filing a complaint before the Dispute Resolution Council in the manner prescribed by the State Government.
- (2) Upon reference of such dispute, the Dispute Resolution Council shall at the first instance proceed to arrive at a conciliated settlement to the satisfaction of both parties. Upon failure of such conciliation proceedings, the Dispute Resolution Council shall adjudicate on the matter as expeditiously as possible.
- (3) Where the dispute pertains to any matter covered by any other existing law, the Dispute Resolution Council shall forward the complaint to the appropriate authority created under the relevant Act for adjudication and such reference shall be treated as a valid complaint under such Act.
- (4) The Dispute Resolution Council shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (of 1908).

7. Contravention of provisions regarding employment of non-agricultural unorganised sector workers:

Whoever contravenes any provisions of this Act or the rules made thereunder, other than those made punishable under any other law, regarding the employment of non-agricultural unorganised sector workers, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both, and in case of continuing contravention, with additional fine which may extend upto one hundred rupees for every day during which such contravention continues. The Dispute Resolution Council shall be authorised to give the fine so collected either in whole or in part to the aggrieved party.

Part-2

Chapter IV

PROTECTION AND PROMOTION OF LIVELIHOOD OF SELF EMPLOYED WORKERS IN THE NON-AGRICULTURAL UNORGANISED SECTOR

8. Entitlements of Self employed workers:

The appropriate State Government shall seek to safeguard and promote the livelihood of the self employed workers in the non-agricultural unorganised sector through the following measures:

- (i) Provision of credit, adequate raw material (input) supply and adequate marketing facilities for the goods and services produced;
- (ii) Ensuring access to Banking Institutions, in the State or co-operative Sector and / or such appropriate arrangement for the purpose of affordable credit facilities;
- (iii) Ensuring the right to livelihood including the right over common properties and natural resources in the following manner:
 - a) Ensuring the traditional rights of all types of non-agricultural unorganised sector workers having traditional access to common property resources for their livelihood ,
 - b) Ensuring the right of workers to share the public space to engage in economic activities;
- (iv) Ensuring that city plans and rural development plans pay adequate regard to the concerns of self employed workers such as street vendors, and protection and promotion of their livelihood;
- (v) Encourage the promotion of associations of self employed workers with a view to articulation of their problems and such organisation would have standing to raise grievance before the State Advisory Committee.

Part-3

Chapter V

STATE ADVISORY COMMITTEE

9. Constitution:

A State Advisory Committee shall be constituted by every State Govt. or Govt of the Union Territory for self employed as well as wage worker in the non-agricultural unorganised sector.

10. Functions of the State Advisory Committee

Every State Advisory Committee shall have the following functions:

- (i) to advise the Government regarding the promotion of gainful employment opportunities for non agricultural unorganised sector workers;
- (ii) to advise and develop plans for the promotion of livelihood options available for self employed workers in the non-agricultural unorganised sector;
- (iii) to identify skill and training requirements for both self employed workers and wage workers in this sector and to advise the government accordingly;
- (iv) collect, compile and publish statistics with the help of statistical organisation regarding the non-agricultural unorganised sector and the possibilities and challenges facing this sector in terms of employment opportunities;
- (v) to assess and advise the government on the credit requirements and banking needs of this sector;
- (vi) to carry out periodic surveys on the condition of work in this sector and to make suitable recommendations to the government; and
- (vii) to encourage the promotion of labour cooperation to secure gainful employment and dignified conditions of work.
- (viii) To hold public meetings to entertain petitions submitted by the non agricultural unorganised sector workers and to explain the efforts made to address the grievances of non agricultural unorganised sector workers.