

# Legal Protection of Workers in Unorganized Sectors

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## ABSTRACT:

Each sector has a significant role in the development of a society. That may be an organized sector or unorganized sector. With respect to the organized sectors there are fixed working hours, wages and there will be a security of employment. But in the unorganized sectors the jobs of the workers may not be regular and also not secure. Thus, the rules and regulations of the workers will vary between organized and unorganized sectors. There are more privileges for the workers of organized sectors than the unorganized sectors. Whereas, in most of the countries above 75% of the total work force depend on the unorganized sector. Moreover, the existence of a vast majority of unorganized labor employment cannot be neglected in society. So, there should be benefits and protection of workers in unorganized sectors. Hence, there are legislations and provisions in the constitution which focus on the welfare of the workers in the unorganized sectors. Nevertheless most of the people may not be aware of the protections given to those workers under the constitution and the legislation. An attempt is made in this article to focus on those legal protections guaranteed for the benefit and welfare of the workers in unorganized sectors.

**Keywords:** Benefits, Legal protection, Legislation, Unorganized sector.

## INTRODUCTION:

The Unorganized sector plays an important role in the functioning and development of the society. The Workers in the unorganized sectors constitute above 75% of total workforce in the country. Workers in the organized sector will be mostly well-educated people. Therefore, the major reason for the comparative increase in the number of workers in the unorganized sector is illiteracy. Due to reasons like illiteracy, economic condition, family conditions etc, a person may either choose or is forced to do work in an unorganized sector. Furthermore, their job may not be safe and secure. As well as most of the workers in the unorganized sector are facing problems like work hazards, low wages, etc. Nevertheless, certain schemes and policies are available to workers in unorganized sectors and many more benefits are also available to them. But the workers in the unorganized sectors may not be aware of those benefits and schemes conferred upon them. The Unorganized workers social security Act, 2008 legislation was enacted by the government which provides the social security benefits to the unorganized sectors. Likewise, there are certain constitutional provisions applicable to the workers in the unorganized sectors. Moreover, there are certain schemes and legislations that intend to protect the interest of the workers in the unorganized sectors.

**DEFINITION:****UNORGANIZED SECTOR:****According to "The Unorganised Workers' Social Security Act, 2008"**

Section 2 (l) of the Unorganised Workers Social Security Act, 2008 defines an unorganized sector as a production or service oriented enterprise owned by individuals or self employed workers (one who is not working for an employer and is engaged in an unorganized sector job earning an income below a threshold or owning land below a notified limit) and if workers are employed, then the total number of workers cannot exceed 10<sup>1</sup>.

**According to "National Commission for Enterprises in Unorganized sector (NCEUS)"**

The Unorganized sectors are consisting of all the unincorporated private enterprises owned by the individuals or households engaged in sale or production of the goods and services operated on a proprietary or on a partnership basis with less than the ten total workers.

**UNORGANIZED WORKER:**

The term unorganized worker has been defined under Section 2 (m) of the Unorganised Workers' Social Security Act, 2008, as a home based worker, self-employed worker or a wage worker in the unorganized sector and includes a worker in the organized sector who is not covered by any of the Acts mentioned in Schedule-II of Act<sup>2</sup> i.e., the Industrial Disputes Act, 1947, the Employee's Compensation Act, 1923, the Employees Provident Funds and Miscellaneous Provision Act, 1952, the Employees' State Insurance Act, 1948, the Maternity Benefit Act, 1961 and the Payment of Gratuity Act, 1972.

**REFERENCE TO THE REPORT OF THE NATIONAL COMMISSION ON LABOUR**

In the organized sector too, there is a section of permanent workers who are getting casualised and contractualised as a consequence of the new economic and industrial policies. However, for practical purposes, we propose to look upon these unionized workers too as part of the workers in the unorganized sector. Thus, workers in the unorganized sector include all the workers of the unorganized sector as well as the casual and contract workers in the organized sector who, for one reason or other, have failed to get the benefits of protective legislation or laws on social security.

**Characteristics**

The unorganized sector was very diverse. Many efforts have been made to identify the characteristics of employment or undertakings in the sector. But none of the characteristics can be termed as a key characteristic in defining the sector. However, there are some lists of characteristics which will be helpful:

- A. Low scale of the organization
- B. Operation of labor relations on a casual basis or on the basis of personal relations or kinship.
- C. Small own account (household) or micro enterprises or family-owned enterprises.
- D. Ownership of a fixed and other asset by self
- E. Risking of the finance capital by self
- F. Family laborers involvement

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<sup>1</sup> Section 2(l) of the Unorganised Workers' Social Security Act, 2008

<sup>2</sup> Section 2 (m) of the Unorganised Workers' Social Security Act, 2008

- G. Production expenditure indistinguishable from house-hold expenditures and use of the
- H. capital goods
- I. Easy entry and also exit
- J. Free mobility in the sector
- K. Use of an indigenous resources and technology
- L. Unregulated or unprotected in nature
- M. Absence of a fixed working hour
- N. Lack of security for employment and social security benefits
- O. Use of the labor intensive technology
- P. Lack of support from the government
- Q. Workers dwelling in slums and squatter areas
- R. Lack of housing and lack of access to urban services
- S. High percentage of migrant labor.

### **CLASSIFICATION OF UNORGANIZED SECTORS:**

The Ministry of Labour, Government of India, has categorized the unorganized sector under four groups:

#### **By occupation:**

Landless agricultural laborers, small and marginal farmers, fishermen, sharecroppers, those who engaged in animal husbandry, beedi rolling, labeling and packing, building and construction workers, leather workers, weavers, salt workers, artisans, workers in brick kilns and stone quarries, workers in saw mills, oil mills etc.

#### **Nature of employment:**

Bonded laborers, contract and casual laborers, migrant workers, etc.

#### **Service Category:**

Domestic workers, barbers, fishermen and women, vegetable, fruit vendors, milk vendors, etc.

#### **Special Distressed category:**

Drivers of animal driven vehicles, toddy tappers, scavengers, carriers of head loads, loaders and unloaders, etc.

### **MAJOR PROBLEMS FACED BY WORKERS IN UNORGANIZED SECTOR:**

Even though the unorganized sector contributes to the economy they are facing many difficulties and challenges. Major problems faced by the workers in unorganized sector such as,

1. **Insecurities in job:** Due to high levels of job insecurity, unorganized workers have to depend on various jobs. Factors like climate change, advancement in technology etc., may affect the employment opportunities of unorganized workers.
2. **Low wages:** Wages are one of the major reasons for the workers to be employed in the unorganized sector. But, most of the workers in the unorganized sectors are not getting wages equal to the level of work they have done. Moreover, the workers in unorganized sectors are not paid minimum wages in most of the cases.

3. **Long Working hours:** In the unorganized sector, long working hours are beyond the labor and regulatory norms in the country. Especially, in the agricultural sector there are no fixed working hours as there are no laws regulating the working hours of the agricultural sector. In some other unorganized sectors, the working hours are fixed from 12-15 hours and their wages depend on the hours they work for their employer. As most of the workers are not highly literate, they depend on wages given by the employer and they are exploited by the employer as they force the workers to work for more hours.
4. **Working hazards, occupational safety and living conditions:** Unorganized workers are largely engaged in hazardous working conditions which may even be harmful for their health. Workers employed in places such as firework factories, tobacco factories, matchstick factories etc., may also face health issues as a consequence of inhaling the dust or any hazardous particles exhausted by manufacturing those products. Likewise, agricultural workers are affected by the excessive use of pesticides, insecticide and fertilizer. The workers living in slum areas have unsanitary conditions. Moreover, their income was also not sufficient to fulfill their basic requirements.
5. **Women and Children are unprotected:** Children are still employed in tea shops, small shops etc., for low-cost wages. Likewise, women were also not given reasonable wages for their hours of work. As well as they were also facing many physical and mental problems during the course of employment. Article 39 (d) of the Constitution of India speaks about equal pay for equal work, which means all workers should be given equal wages without any discrimination.
6. **Exploitation:** Workers in unorganized sectors are less protected than the workers in the organized sectors. For the workers in unorganized sectors there is no fixed working hours and there is no job security.

### **CONSTITUTIONAL PROVISIONS AND ROLE OF JUDICIARY IN PROTECTING THE RIGHTS OF UNORGANIZED SECTORS:**

There are schemes and legislations which intend to protect the interest of the workers in unorganized sectors. Apart from these legislations, the Constitution of India also guarantees the fundamental rights which were even applicable to the workers in the unorganized sector. Moreover, in many cases, the Supreme Court of India emphasized the right to livelihood as an integral component of the right to life. Thus there are certain landmark cases ensuring the benefit of the unorganized sectors.

#### **Article 14:**

Article 14 of the Constitution of India guarantees equality before law. This Article states that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India<sup>3</sup>. Thus, according to this principle, everyone who resides in India should be treated equally and also will get equal protection of the law.

#### **Article 16:**

Article 16 guarantees the equality of opportunity in matters of public employment. This Article states that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State<sup>4</sup>.

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<sup>3</sup> Article 14 of the Constitution of India, 1950

<sup>4</sup> Article 16 of the Constitution of India, 1950

In the case **Daily Rated Casual Labour Vs. Union of India**, the court has held that whenever employees are classified into casual and regular employees it leads to infringement of the Article 14 and Article 16 of the Constitution<sup>5</sup>.

#### **Article 21:**

Any person who works but not paid minimum wages for the work he does, then it will be violative of Article 21 of the Constitution of India. Article 21 also states that bonded labor should be recognised by the government to complete the rehabilitation of the laborers<sup>6</sup>. Every State Government has to provide the basic human dignity to the bonded labor.

In **Neeraja Chaudhary Vs. State of Madhya Pradesh**, the court held that under the Bonded Labour System (Abolition) Act, 1976 it is not enough to identify and release bonded laborers but it is more important that they must be rehabilitated. The Act has been enacted pursuant to the Directive Principles of State Policy with a view to ensure the basic human dignity to bonded laborers and any failure of action on the part of the State in implementing the provisions of this legislation will be the clearest violation of Article 21 of the Constitution<sup>7</sup>.

#### **Article 23:**

Article 23 prohibits forced labour and also states that violation of this Article shall be an offense punishable in accordance with law<sup>8</sup>. Moreover, Article 23 also prohibits employing workers for wages below the statutory minimum level as it results in forced labor.

In **Peoples' Union of Democratic Rights Vs. Union of India**, Supreme Court held that even if poverty forces anyone to work for minimum wages, Article 23 prohibits employing workers for wages below the statutory minimum level as it results in forced labor<sup>9</sup>.

In **Sanjit Roy Vs. State of Rajasthan**, the court held that whenever any person who works for the State is affected by drought or scarcity, and the state shall not pay minimum wages then it violates Article 23 of the Constitution of India. Any labor work done by prisoners and if they are not paid minimum wages, then it means it is a forced labor and it infringes Article 23 of the Constitution<sup>10</sup>.

In **Deena Vs. Union of India**, the court held that labor work taken from prisoners without paying sufficient wages is considered forced labor. And it is a violation of Article 23 of the Constitution<sup>11</sup>.

#### **Child Labour:**

##### **Article 24: Prohibition of employment of children in factories, etc.**

Article 24 of the Constitution states No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment<sup>12</sup>.

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<sup>5</sup> (1988) 1 SCC 122

<sup>6</sup> Article 21 of the Constitution of India, 1950

<sup>7</sup> AIR 1984 SC 1099

<sup>8</sup> Article 23 of the Constitution of India, 1950

<sup>9</sup> 1982 AIR 1473

<sup>10</sup> 1983 AIR 328

<sup>11</sup> 1983 AIR 1155

<sup>12</sup> Article 24 of the Constitution of India, 1950

**M. C. Metha Vs. State of Tamil Nadu** was a landmark case in which the Supreme Court of India has directed the government to conduct a survey and to put an end to child labour in the matchstick and Cracker factories<sup>13</sup>.

**Article 21A:** The Constitution (86th Amendment) Act, 2002 added Article 21A. Article 21A states that the State shall provide free and compulsory education to all the children in the age of six to fourteen years in such a manner as the State may by law determine<sup>14</sup>. To give effect to the 86th Constitution Amendment Act, 2002, the Parliament passed the **Right of Children to Compulsory Education Act, 2009**. It provides the responsibilities of the Central and the State Government, teachers, parents and community members in ensuring that all the children between the age of 6 and 14 years receive free and compulsory education. In **Ng. Komon Vs. State of Manipur**, the Court held that shifting of school to another village would deprive the school going children of age of 6 to 14 years of their fundamental right to have free and compulsory education in Government School and is in violation of Article 21A<sup>15</sup>. And in case of **Pramati Educational and Cultural Trust Vs. Union of India**, the Supreme Court held that Article 21 A is constitutionally valid. Even though the constitution insists that there should be no child labour, unfortunately still children are employed in the unorganized sector either forcibly or be chosen because of family conditions especially economic reasons. Nevertheless this is not completely eradicated in the country so far. Whereas, employing the child labour can be controlled by improving legal awareness among the people<sup>16</sup>.

#### **ILO Suggestion for extending Social Security to Agricultural Workers:**

The International Labour Organization gives a message for the extending of Social Security to Agricultural Workers. They are as follows:

- The extension of the legal coverage to the agricultural workers need to be complemented by additional measures to ensure the effective coverage of the agricultural workers, to allow flexibility in time and amount of contributions, to facilitate registration and administration, to adapt labor inspection mechanisms to the specific situation of agricultural workers, and to inform agricultural workers about the existing schemes and how to access them.
- It is important to assess the special needs and gaps of agricultural workers and to adapt schemes to their specificities, in particular those of women working in agriculture and rural areas.
- Developing and implementing integrated and coherent policies: it is important to link social protection policies with other policies, for instance to promote employment creation, enhance access to credit, especially for women and youth, improve food security and nutrition, improve occupational safety and health, reduce child labour in agriculture and ensure effective application of the labour standards.

#### **UNORGANISED WORKERS' SOCIAL SECURITY ACT, 2008:**

The Unorganised Workers Social Security Act, 2008 was passed by the Parliament of India. This Act aims to provide social security and welfare to the unorganized sectors. The Central Government and the State Government have made various schemes connected to life, disability, old age, housing, education,

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<sup>13</sup> 1991 AIR 417

<sup>14</sup> Article 21A of the Constitution of India, 1950

<sup>15</sup> AIR 2010 Gau 102

<sup>16</sup> [(2014) 8 SCC 1]

employment etc., and funded by both Central and State Governments. This Act is applicable to the whole of India, specifically for the unorganized sector. For the implementation of law, the government has constituted the National Social Security Board and the State Social Security Board.

**The Salient features of the Act are as follows:**

- **Section 2** deals with the definitions including those relating to the unorganized sector workers.
- **Section 3 (1)** states that the Central Government shall formulate and notify suitable welfare schemes for the unorganized sectors on the matters relating to (a) life and disability cover, (b) health and the maternity benefits, (c) old age protection, (d) any other benefits as may be determined by the Central Government.
- **Section 3 (4)** states that the State Government may formulate and notify suitable welfare schemes for the unorganized workers, including schemes relating to employment injury benefit, provident fund, skill up gradation of workers, educational schemes for children, housing, funeral assistance, old age homes.
- Section 4 relates to the funding of schemes formulated by the Central Government.
- **Section 5** provides for the constitution of National Social Security Board by the Central Government consist of Chairperson, Secretary and 34 nominated members representing the members unorganized sector workers, employers of unorganized sector, eminent person from civil society, members from Lok Sabha and Rajya Sabha, Central Government ministries and Department concerned and State Government.
- **Section 6** provides the constitution of the State Social Security Board. The composition of the board is the same as that of the National Social Security Board.
- **Section 7** deals with the funding pattern of the schemes formulated by the State Government.
- **Section 8** deals with the record keeping function by the District Administration. Provided that the State Government may direct (a) the District Panchayat in rural areas and (b) the Urban Local Bodies in urban areas to perform that function.
- **Section 9** deals with the Workers facilitation centers. This section states that the State Government may set up Workers' facilitation centers as may be considered necessary to perform the following functions, namely
  - A. disseminate information on the available social security schemes for the unorganized workers;
  - B. facilitate the filling, processing and the forwarding of application forms for the registration of the unorganized workers;
  - C. to assist the unorganized worker to obtain registration from the District Administration;
  - D. facilitate enrollment of the registered unorganized workers in the social security schemes.
- **Section 10** provides for the eligibility for registration and social security benefits. This provision states that every unorganized worker shall be eligible for registration subject to the fulfillment of the conditions mentioned under this section.
- **Section 11-17** contains the miscellaneous provisions for implementing the Act<sup>17</sup>.

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<sup>17</sup> The provisions from section 1 to 17 are referred from The Unorganised Workers' Social Security Act, 2008

**SOCIAL SECURITY SCHEME FOR UNORGANIZED WORKERS:**

Certain Social Security Schemes mentioned under Schedule I of the Unorganised Workers' Social Security Act for the benefit and welfare of the workers in unorganized sectors.

**Indira Gandhi National Old Age Pension Scheme:**

Old age pension is provided not only to the age destitute but to all citizens above the age of 60 years and living below the poverty line. For the persons above the age of 80 years the amount has been raised from Rs.200/- to Rs.500/- per month. The States has been asked to top up with the Central Government per capita grant of Rs.200/- per month.

**National Scheme for Welfare of Fishermen and Training and Extension:**

This scheme provides financial assistance to the fishermen. They can use these for constructing houses and the community halls for both recreation and work purposes. Furthermore, through the amount availed under this scheme, fishermen can install tube wells.

**Aam Admi Bima Yojana:**

This scheme has been launched with a view to providing death and disability cover to rural landless households between the age of 18-59 years. This scheme also envisages an add-on benefit of providing scholarship upto a maximum of two children of beneficiary studying 9th to 12th standard at the rate of Rs.300/- per quarter per child.

**Rashtriya Swasthya Bima Yojana:**

Rashtriya Swasthya Bima Yojana is a Health Insurance Scheme for BPL families (a unit of five) in Unorganised Sector. The benefits under this scheme include:

- Beneficiaries are entitled to smart card based cashless health insurance cover of Rs. 30,000 per family per annum on the family floater basis.
- Coverage of all pre-existing diseases.
- Coverage of hospitalization expenses, including maternity benefit.
- Payment of transportation cost of Rs. 100/- per visit.

This Scheme has been extended to building and other construction workers registered under the Building and other Construction Workers (Regulation of Employment and Condition of Service) Act, 1996. This Rashtriya Swasthya Bima Yojana has been transferred to the Ministry of Health and Family Welfare.

- Apart from the schemes mentioned above, there are certain other schemes mentioned under Schedule I of the Unorganised Workers' Social Security Act are as follows:

- National Family Benefit Scheme
- Janani Suraksha Yojana
- Handloom Weavers' Comprehensive Welfare Scheme
- Handicraft Artisans' Comprehensive Welfare Scheme
- Pension to Master craft persons
- Janshree Bima Yojana



## **The Payment of Wages Act and the Minimum Wages Act:**

Minimum wages is one of the major problems of workers in unorganized sectors. The Government of India is committed to improve the welfare and well-being of the workers in organized and unorganized sectors and ensure implementation of the Minimum Wages Act, 1948 and Payment of Wages Act, 1936.

## **CONCLUSION:**

Majority of workers in the country are from the unorganized sector including the agriculture workers, the construction workers, contract laborers, shops and road sellers etc. They are facing problems like low wages, long working hours, insecurities in jobs etc. Unorganised Workers' Social Security Act and certain other schemes are available to provide social security and welfare to the workers in the unorganized sectors. Nevertheless, the majority of the workers in the unorganized sectors are unaware about these legal protections. So, the workers have to be made aware of these protections by way of propagating through camps, giving pamphlets, by the media, etc. Moreover, the government should take essential steps to educate the workers in the unorganized sector regarding the welfare schemes and benefits available to them. In this way, the workers in the unorganized sectors can get a better development in their present living conditions.