

## UNORGANISED LABOURERS AND WELFARE LAWS IN INDIA

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### ABSTRACT

In India, unorganized labourers play a crucial role in the economy. They are necessary for both development and production. Informal workers predominate in some industries, such as construction, agriculture, domestic services, and hotels. Unorganized labourers also make up a sizeable portion of the migrant work force. Despite playing a significant role in economic growth, unorganized workers' financial situation is far from ideal. They are eligible for many of the rights outlined in the Constitution. Unorganized workers are granted protection by the fundamental rights and directive principles of state policy outlined in the Constitution. There a variety of welfare laws to regulate working conditions like minimum wages, fixed working hours, social security, workplace safety, maternity leave, rest and recreation, and workplace facilities. India has ratified a number of human rights treaties that safeguard the rights of unorganized labourers. However, the workers' basic rights are actually violated. This paper attempts to evaluate the extent to which India's welfare laws protect the rights of unorganized workers.

**Keywords:** Unorganised Labourers, Constitution, human Rights, Work Related Rights, Welfare.

### 1. INTRODUCTION

#### 1.1 Unorganised Labourers and Welfare Laws In India

Unorganised workers **constitute** the majority of the labour force in India. Women form a major component of unorganised or informal labourers. The National Commission for Enterprises in the Unorganised workers (NCEUS) defines Unorganised workers as follows. “Unorganised workers consist of those working in the unorganised enterprises or households, excluding regular workers with social security benefits and the workers in the formal sector without any employment/ social security benefits provided by the employers.”<sup>1</sup> According to Unorganised Workers Social Security Act (2008), “the unorganized sector means those enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers the number of workers is less than ten.”<sup>2</sup> National Commission on Labour identified certain characteristics of unorganized sector like low level of organization, casual labour relations, small own account or family owned enterprises, or micro enterprises, ownership of fixed and other assets by self, involvement of family members,

<sup>1</sup>See NCEUS, Paragraph 1.14 of the Report on Conditions of Work and Promotion of Livelihoods in the

Unorganised Sector 3 (2007).

<sup>2</sup> § 2 (1) of the Unorganised Workers Social Security Act (2008) .

easy entry and exit, free mobility, use of indigenous resources and technology, absence of fixed working hours, unregulated and unprotected nature of work, lack of employment security and social security, use of labour intensive technology, lack of support from the government etc.<sup>3</sup> National Commission on Labour expressed its concern that new economic policies are changing the nature of employment.<sup>4</sup> Contracting and subcontracting of work is getting very common in organised sector which takes away social security of workers.

### **I. Protection of Unorganised Workers Under the Human Rights Documents**

There are numerous human rights documents to safeguard the right of workers. Decent work has been recognized as an international developmental goal.<sup>5</sup> There shall be freedom to select the job. Decent work respects the fundamental rights of the human person as well as the rights of workers in terms of conditions of work, safety and remuneration.<sup>6</sup> There are eight core conventions of International Labour Organisation (ILO) namely Equal Remuneration Convention (1951), Discrimination (Employment & Occupation) Convention (1958), Freedom of Association and Protection of Right to Organize Convention (1948), The Right to Organize and Collective Bargaining Convention (1949), Forced Labour Convention (1930), Abolition of Forced Labour Convention (1957), Minimum Age Convention (1973) and Worst Forms of Child Labour Convention (1999).<sup>7</sup> The Declaration on Fundamental Principles and Rights at Work (1998) states that by joining ILO and endorsing the principles of the constitution of ILO, the member States

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<sup>3</sup> See Paragraph 7.18 of the Report of the National Commission on Labour (2002). See also India Labour & Employment Report 149 (2014).

<sup>4</sup> See also paragraphs 7.24 & 7.25 of the Report of the National Commission on Labour (2002). "In the organized sector too, permanent workers are getting casualised and contractualised as a consequence of new economic and industrial policies. All workers who are not covered under the social security laws can be considered as part of the unorganized sector."

<sup>5</sup> See Transferring Our World : *The 2030 Agenda for Sustainable Development*. Decent work for all is one of the millennium development goal (20Dec, 2018), [www.sustainabledevelopment.un.org/post2015/transferringourworld/publication](http://www.sustainabledevelopment.un.org/post2015/transferringourworld/publication) accessed on 23-01-2022.

<sup>6</sup> See Paragraph 7 of the General comment No. 18 of the UN Committee on Economic, Social and Cultural Rights, on the Right to Work art.6 of the International Covenant on Economic, Social and Cultural Rights, E/C.12/GC/18 dated 6/2/2006.

See art. 2 of ILO Declaration on Fundamental Principles and Rights at Work (1998).

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are bound by the core labour rights.<sup>8</sup> India is a founder member of ILO and hence duty bound to implement these rights for unorganised workers.

#### a. Right to work as a human right

Right to work is guaranteed as a human right in various international documents.<sup>9</sup> The civil and political rights are considered as the first generation of human rights. They protect people from the arbitrary State action. The economic, social and cultural rights are considered as the second generation of human rights. It imposes some obligations on the State for securing the welfare of the people.<sup>10</sup> The right to work and allied rights are coming under the second generation of human rights. The work shall be free, voluntary and fair.<sup>11</sup> Workers shall get paid leave. Promotion shall be based on merit and seniority.

### II. Protection of Unorganised labourers under the Constitution

The basic principles of Constitution are embodied in the preamble, fundamental rights and directive principles of state policy. The preamble of the Constitution promises justice, liberty, equality and fraternity.<sup>12</sup> According to Dr. Ambedkar "These principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy".<sup>13</sup> The Constitutional provisions for social justice are intended to reduce the imbalances in social, economic and political development of the people.<sup>14</sup>

The Declaration was designed to equip ILO to face the challenges of globalization. See STEVE HUGHES & NIGEL HAWOTH, THE INTERNATIONAL LABOUR ORGANIZATION COMING IN FROM THE COLD 47(2011).<sup>8</sup>

See arts .23 & 24 of Universal Declaration of Human Rights (UDHR)1948, art. 5 of International Convention on Elimination of all forms of Racial Discrimination (ICERD) (1965 ), art. 11 of Convention on the Elimination of Discrimination against Women (CEDAW) (1979) articles 25&26 of International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) (1990) , art. 27 of International Convention on the Rights of Persons with Disabilities (2006).<sup>9</sup>

<sup>10</sup> See CHRISTIAN TOMUSCHAT, HUMAN RIGHTS BETWEEN IDEALISM AND REALISM 26-29 (2008).

<sup>11</sup> See articles 6 & 7 of International Covenant on Economic, Social and Cultural Rights (ICESCR),1966  
<sup>12</sup>

We, the people of India, having solemnly resolved to constitute India into a sovereign socialist secular democratic republic and to secure to all its citizens: justice, social, economic and political; liberty of thought, expression, belief, faith and worship; Equality of status and of opportunity; and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the nation.

Constitutional Assembly Debates Vol. XI ,979.<sup>13</sup>

<sup>14</sup> See Saxena, *Social Justice & Constitution*, in LAW AND CHANGING SOCIETY 190 (Manju Saxena & Harish Chandran ed.,1999).

While the preamble set out the goals of the Constitution, fundamental rights and directive principles of state policy are the means to achieve the goals. The fundamental rights and directive principles had their roots deep in the struggle for independence.<sup>15</sup> The fundamental rights can be broadly grouped as right to equality,<sup>16</sup> right to freedom<sup>17</sup>, right against exploitation,<sup>18</sup> right to freedom of religion,<sup>19</sup> cultural and educational rights<sup>20</sup> and the right to constitutional remedies.<sup>21</sup> The fundamental rights are the restrictions on the power of the State. State cannot make any law that takes away or abridges the fundamental rights.<sup>22</sup> The civil and political rights are included as fundamental rights and they are enforceable by the Court.

#### a. Right to equality and unorganised labourers

Constitution protects gender equality and prohibit discrimination on the ground of sex.<sup>23</sup> A woman in the unorganised sector is subjected to discrimination as a woman and as a casual worker. In *Visakha v State of Rajasthan*<sup>24</sup>, the J.S.Verma CJ., stated that “sexual harassment at workplace amounts to violation of gender equality and right to life and personal liberty which is a clear violation of articles 14, 15 and 21 of the Constitution”. According to Human Development Report, though women work more than men, the women earn less than men.<sup>25</sup> Women in the unorganised sector are discriminated on wages and working conditions.

#### b. Right to life and unorganised labourers

The Constitution of India guarantees right to life and personal liberty.<sup>26</sup> In *Francis Coralie Mullin v Administrator, Union Territory of Delhi*,<sup>27</sup> the Supreme Court held that the expression life in article 21 does not refer to mere physical or animal existence but embraces something more. Right to life means the right to live with human dignity. In *Bandhua Mukthi Morcha v Union of*

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GRANVILLE AUSTIN, THE INDIAN CONSTITUTION, CORNER STONE OF A NATION 50 (1966).	15
arts, 14 – 18 of Constitution of India.	16
. arts.19-22 of Constitution of India.	17
arts.23 & 24 of Constitution of India.	18
Arts.25-28 of Constitution of India.	19
arts. 29 & 30 of Constitution of India.	20
arts, 32-35 . Constitution of India.	21
art. 13 Constitution of India.	22
Arts. 14 and 15 Constitution of India.	23

<sup>24</sup> *AIR 1997 SC 3011(India)*. In this case Supreme Court applied the principles of international documents in the absence of domestic law and laid down certain guidelines that are to be followed by the private and public institutions to prevent sexual harassment at workplace.

<sup>25</sup> Human Development Report 11-12(2015). “Across most countries in all regions, women work more than men. Women are estimated to contribute 52% of global work, men 48%. Even when women are in paid work, they face discrimination and disadvantages. Globally women earn 24% less than men.”

<sup>26</sup> Art.21 of Constitution of India states that “ No person shall be deprived of his life or personal liberty except according to procedure established by law” .

*AIR 1981 SC 746, 753 .* 27

*India*<sup>28</sup> while dealing with bonded labour, Supreme Court held that “Right to live with dignity include protection of health and strength of workers, men and women and of tender age of children against abuse, opportunities and facilities for children to develop in healthy manner, educational facilities, just and human conditions of work, maternity relief etc.”<sup>29</sup> The Parliament has enacted Bonded Labour System Abolition Act in the year (1976) to prohibit debt bondage of workers.

In *Olga Tellis v Bombay Municipal Corporation*<sup>30</sup>, Supreme Court held that the right to life includes the right to livelihood..In *Calcutta Electricity Supply Corporation Ltd v Subhash Chandra Bose*,<sup>31</sup> Court held that right to health is a fundamental right under article 21 of Constitution. The working atmosphere must be healthy.

### c. Right to freedom and unorganised labourers

Constitution guarantees six fundamental freedoms to all citizens.<sup>32</sup> Freedom of association is a valuable right of a worker.<sup>33</sup> Social dialogue enables the worker to negotiate on their rights.<sup>34</sup> The informal labour cannot assert their rights through collective bargaining because of their scattered nature of employment.

Article 19(1)(g) of the Constitution guarantee the freedom of occupation to all. In *Unichoyi v State of Kerala*,<sup>35</sup> while upholding the constitutionality of Minimum Wages Act (1948), Court observed that “In an under developed country which faces the problem of unemployment on a very large scale, it is not unlikely that labour may offer to work even on starvation wages”.

### d. Right against exploitation and unorganised labourers

The unorganised workers are subjected to economic exploitation. They are not provided with human conditions of work. Article 23(1) of the Constitution prohibits forced labour, begar and traffic in human being.<sup>36</sup> Begar is compulsory work without any payment.<sup>37</sup>In *Peoples Union*

<sup>28</sup> AIR 1984 SC 802.

AIR 1984 SC 802, 811 Right to live with human dignity enshrined under art. 21 derives its life breath from  
arts. 39 (e), (f), 41 and 42.  
AIR 1986 SC 180, 194 .

<sup>31</sup>(1992) ISCC 441,462-463.

Art. 19 Constitution. 32

Art.19(1)(b)and 19(1)(c) Constitution . 33

See DHARAM GHAI, DECENT WORK, OBJECTIVES AND STRATEGIES 22(2006). 34

AIR 1962 SC 12, 17 . 35

<sup>36</sup> Art. 23 of the Constitution of India states that “Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law”.

See the speech of Prof. K .T. Shah in the Constituent Assembly, Constitutional Assembly Debates, Vol.VII, 804-805. Sri Raj Bahadur opined that“ The beggar has been a blot in the humanity and has been a denial of all that is good and noble in human civilization. Through centuries this curse has remained as a dead weight on the shoulders of common man like the practice of slavery.” Constitutional Assembly Debates, Vol.VII, 809-810.

for *Democratic Rights V Union of India*<sup>38</sup>, the Supreme Court observed that every form of forced labour is within the prohibition of article 23 whether the worker gets remuneration or not.<sup>39</sup> The employer has the duty to give fair wages that enable an unorganised worker to lead a dignified life.

Bonded labour is a form of forced labour. In *Bandhua Mukthi Morcha V Union of India*,<sup>40</sup> Court considered the inhuman life of the bonded labourers employed in stone quarries in Faridabad district near the city of Delhi. Bhagavathy J., observed that, "System of bonded labour is a gross violation of Constitutional values, egalitarian socio-economic order and basic human dignity."<sup>41</sup>

According to the observation of The National Commission for Enterprises in the Unorganised workers (N C EUS) "Bonded labourers work under extremely restricted work environment. They are at the mercy of the employer who exploits them economically and physically with no returns. Their economic freedom is curtailed entirely and they have no means to break-free and redeem their situation".<sup>42</sup>

Child labour is regulated by the Constitution.<sup>43</sup> In *Gaurav Jain v Union of India*<sup>44</sup> K. Ramaswamy J., observed that "Children of the world are innocent, vulnerable and dependant. They are all curious, active and full of hope. Their lives should be full of joy and peace, playing, learning and growing."

#### e. Directive principles of state policy and unorganised labourers

The directive principles of state policy enumerate the obligations of welfare state. It is the duty of the State to implement the principles through positive State action. Economic and social rights are included under directive principles of state policy the realisation of which are dependent upon the economic capacity of the State. These principles are not enforceable through Court.

The labour rights are mentioned in the directive principles of state policy under Part IV of the constitution. The State has the duty to secure the right to work, right to education and right to public assistance in cases of contingencies like unemployment, old age, sickness, disablement etc.<sup>45</sup> Article 42 mandates the State to ensure just and human working conditions. There shall be

*AIR 1982 SC 1473*. An NGO filed a public interest litigation challenging the violation of labour laws including the nonpayment of minimum wages to various workers employed in Asiad projects in Delhi.

*AIR 1982 SC 1473, 1488*.

<sup>40</sup> *AIR 1984 SC 802, 850*.

(1984) 3 S CC 161, 173.

<sup>42</sup> See NCEUS, Paragraph 6.54 of the Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector 107(2007).

Art. 24 of Constitution.

<sup>44</sup> (1997) 8 S CC 114.

art.41 of the Constitution of India requires that the "State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want."



provisions for maternity relief, fixation of working hours, rest, recreation, leave with pay, sick leave, protection from occupational diseases, medical supervision, reimbursement of medical expenses, maternity leave, right to fair wages, social security and so on. Article 43 promises living wage and decent standard of life.<sup>46</sup> Article 47 imposes a duty to raise the level of nutrition, standard of living and to improve public health.<sup>47</sup>

Honourable Supreme court has elevated the status of various directive principles to fundamental rights through the creative interpretation ..Equal pay for equal work<sup>48</sup> a directive principle was interpreted as a part of right to equality under articles 14 and 16 of the Constitution.<sup>49</sup>

### III Unorganised labourers and Labour Legislations

The concept of social security has received global attention after the enactment of Social Security Act in the year 1935 by the United States of America.<sup>50</sup> India has many labour welfare legislations in her credit

#### a. The Employees State Insurance Act (1948)

A welfare State cannot be inactive when the workers suffer from dangers in workplace.<sup>51</sup> The Employees State Insurance Act (1948), popularly known as ESI Act is a welfare legislation to grant compensation to the workers for any mishap during the course of their employment. It provides for social security of workers, In *LIC of India v Consumer Education & Research Centre*<sup>52</sup>, K. Ramaswamy J., observed that “social security is a facet of socio-economic justice to people and a means of livelihood.”<sup>53</sup>

<sup>46</sup> art.43 of the Constitution of India

“State shall endeavor to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life, and full enjoyment of leisure and social and cultural opportunities, and in particular the State shall endeavour to promote cottage industries on individual or co-operative basis in rural areas.”

art 47 of the Constitution of India 47

“State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.”

<sup>48</sup> Art.39(d) of the Constitution.

*Randhir Singh v Union of India*, AIR 1982 SC 879. 49

<sup>50</sup> See Saxena, *Social Justice & Constitution*, in LAW AND CHANGING SOCIETY 190-193 (Manju Saxena & Harish Chandran ed., 1999).

<sup>51</sup> See S.K.PURI, AN INTRODUOTION TO LABOUR AND INDUSTRIAL LAWS 253 (2005).

(1995) 5 SCC 482 Court analysed the Constitutionality of certain contractual terms in LIC policies. 52  
(1995) 5 SCC 482,510. 53

In order to get the benefits provided under the Act, the workers have to take insurance.<sup>54</sup> employer has the duty to deduct the contribution and make the payment. The principal employer has to deposit his share also. The insured workers or their dependent are eligible to get the benefits like sickness benefit, maternity benefit, dependent benefit, disablement benefit, medical benefits and funeral benefits subjected to the conditions laid down under the Act.<sup>55</sup> Employees State Insurance Corporation (ESI), the statutory body under the Act establish and maintain hospitals for insured workers. The unorganised workers do not get the benefits of this Act due to their casual nature.

### **b. Employees Compensation Act (1923)**

It is the first social security legislation in India.<sup>56</sup> Before the enactment of this Act, the employer could easily escape from his liability for employment accidents with the help of doctrines like contributory negligence, common employment or voluntary assumption of risk.<sup>57</sup>

The employer becomes liable to pay compensation to the employee when a personal injury is caused to him by accident arising out of and in the course of his employment.<sup>58</sup> There is no liability if the accident is caused by an act under the influence of drug or drink of the worker, or due to the wilful disobedience to a safety order or due to wilful removal or disregard of any safety guard.<sup>59</sup> In the case of death of the worker, the liability is absolute and the employer has an additional responsibility to deposit the funeral expenses with the Commissioner.<sup>60</sup> The employee gets compensation if he contracts any occupational diseases specified under the schedule to the Act (1923).<sup>61</sup> Contracting of any of the diseases specified in Schedule III is considered as personal injury caused by the accident that has arisen out of and in the course of the employment.<sup>62</sup>

### **c. Payment of Wages Act (1936)**

<sup>54</sup> § 38 of The Employees State Insurance Act (1948).

<sup>55</sup> § 46, 49, 50, 51, 52 and 56 of The Employees State Insurance Act (1948).

*See V. KRISHNA MOORTHY & P. P. NAIR, THE WELFARE FUND FOR CONSTRUCTION WORKERS IN TAMIL NADU, ESS PAPER, No. 18, 1 (2003).*

*See S. R. SAMANT, INDUSTRIAL JURISPRUDENCE, A TREATISE ON THE THEORY AND PRACTICE OF INDUSTRIAL LAW WITH SPECIAL REFERENCE TO INDIA 79-80 (1961).*

<sup>58</sup> § 3 of Employees Compensation Act (1923).

<sup>59</sup> Schedule I, Part I lists out the injuries that are deemed to result in permanent total disablement. Schedule I, Part II lists out the injuries that are deemed to result in permanent partial disablement.

§ 4 (4) of the Employees Compensation Act (1923). <sup>60</sup>

§ 3(2) of the Employees Compensation Act (1923). <sup>61</sup>

<sup>62</sup> § 4 and Schedule IV of the Employees Compensation Act (1923) explain the principles that are relevant for fixing the compensation.



Economic security is a component of social security. Economic security of a worker depends on his wages.<sup>63</sup> The organized workers have regular employment and income security. Unorganized workers are devoid of employment security, income security and social security.<sup>64</sup> Payment of Wages Act (1936) ensure timely payment of wages and prevents unauthorized deductions. Every employer has the primary responsibility for the payment of wages to workers in time.<sup>65</sup> Employer has to fix wage period which shall not exceed one month.<sup>66</sup> Only those deductions which are permitted in the Act are allowed from wages.<sup>67</sup>

#### d. The Minimum Wages Act (1948)

The Second National Commission on Labour recommended that Minimum wages shall be prescribed for all employment.<sup>68</sup> The Minimum Wages Act (1948) empowers the Government to fix minimum rate of wages and revise it at intervals not exceeding 5 years.<sup>69</sup> The government shall consider factors like basic rate of wages, cost of living, cash value of concessions in respect of supplies of essential commodities etc in fixing minimum rate of wages.<sup>70</sup> Section 13 of the Minimum Wages Act (1948) imposes a duty on the Government to fix the number of working hours for a normal working day. Worker is entitled to double the ordinary rate of wages for overtime work.<sup>71</sup>

In *Sanjith Roy v State of Rajasthan*,<sup>72</sup> The State Government was paying less than minimum wages to the unskilled workers employed in famine relief work by relying on the provisions of The Rajasthan Famine Relief Works Employees (Exemption from Labour Laws) Act (1964). The apex court found it unconstitutional.

#### e. Contract Labour (Regulation and Abolition) Act (1970)

Majority of the unorganised workers are coming under the definition of contract labour. The worker is subjected to the exploitation of the contractor in respect of his wages. He is forced to pay commission to the contractor. "A workman shall be deemed to be employed as contract labour, when he is hired in or in connection with such work by or through a contractor, with or without

<sup>63</sup> See Renana Jhabwala, *Social Security for Unorganized Workers*, 33 EPW, No.22, L7, L8 (May 30-Jun. 5, 1998).

<sup>64</sup> See Paragraph 7.44 of Report of the National Commission on Labour 138-139(2002).

<sup>65</sup> § 3 of the *Payment of Wages Act* (1936)

<sup>66</sup> § 4 of the *Payment of Wages Act* (1936)

<sup>67</sup> § 7 of the *Payment of Wages Act* (1936)

<sup>68</sup> See Paragraph 6.114 of the Report of the Second National Commission on Labour (2002).

<sup>69</sup> § 3 of the *The Minimum Wages Act* (1948).

<sup>70</sup> § 4 of the *The Minimum Wages Act* (1948).

<sup>71</sup> § 14 of the *The Minimum Wages Act* (1948) read with Central Rule 25 (1950).

<sup>72</sup> AIR 1983 SC 328, 333.

the knowledge of the principal employer.”<sup>73</sup> The Act insists that the contractor shall be responsible for the payment of wages in time. He shall pay wages in presence of an authorized representative of principal employer.<sup>74</sup>

The Act imposes some obligations on the contractor for the welfare of the workers. The working atmosphere shall be good. There shall be hygienic rest rooms for the workers which are sufficiently lighted and ventilated<sup>75</sup>. Every contractor shall ensure fresh water, washing facilities, sufficient number of latrines and urinals in the workplace.<sup>76</sup> First aid box shall be made readily accessible during the working hours.<sup>77</sup> Canteens should be provided when the number of contract workers exceed one hundred.<sup>78</sup> In *Rohit Vasavada V General Manager IFFCO*,<sup>79</sup> Court condemned the dangerous working conditions prevailed in that industry. The workers were to handle urea manually without adequate safeguards and were not paid proper wages. They were not given passes to go out. P.N.Poti J., held that “Economic compulsion may persuade workman to work under conditions different from those envisaged in the labour laws and merely because they are working not under any physical restraint, will not make it other than forced labour.”

#### f. The Equal Remuneration Act (1976)

According to V. R. Krishna Iyer J., “The biggest minority in India is its women hood subjected to generations of gender injustice”.<sup>80</sup> Directive principles of state policy imposes a duty on the state to secure equal pay for equal work for both male and female workers.<sup>81</sup> Gender discrimination is prohibited by the Constitution.<sup>82</sup> The workers who are doing same work or work of a similar nature shall be paid equally, without any discrimination on sex. The employer shall not discriminate female workers during recruitment, promotion or transfer.<sup>83</sup>

<sup>73</sup>§ 2 (b) of the Contract Labour (Regulation and Abolition) Act (1970).

<sup>74</sup>§ 21 of the Contract Labour (Regulation and Abolition) Act 1970).

<sup>75</sup> § 17 of the Contract Labour (Regulation and Abolition) Act (1970).

§ 18 of the Contract Labour (Regulation and Abolition) Act (1970) . <sup>76</sup>

§ 19 of the Contract Labour (Regulation and Abolition) Act (1970) .The contents of first aid boxes are also listed. If there are more than 150 contract workers , a trained person should be appointed. <sup>77</sup>

§ 16 of the Contract Labour (Regulation and Abolition) Act (1970). <sup>78</sup>

<sup>79</sup>AIR 1984 Guj.102, 109.

V.R.KRISHNA IYER J., SOCIAL JUSTICE-SUNSET OR DAWN 5 (2008). <sup>80</sup>

<sup>81</sup> art.39 of Constitution..

<sup>82</sup> arts. 14,15 of Constitution.

§ 4,5 of the Equal Remuneration Act (1976). <sup>83</sup>

**g. Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act (1979)**

The migrant workers are one of the most exploited categories of unorganised workers. They have to face the language barriers, unsafe working conditions, poor living conditions, impermissible deductions from wages, lack of social protection etc. Many workers live in footpaths and open places without provision of basic services and subject to harassment especially for women.<sup>84</sup>

The High court of Kerala noticed the inhuman living conditions of migrant workers in *Jose. M. A. V Vadavukodu Puthencruz Grama Panchayath and others*<sup>85</sup>. The Court criticised enforcement authorities for the poor implementation of Act. The unhygienic labour camp made health issues to the neighbour hood also.

The legislation applies to every establishment employing five or more interstate migrant workmen<sup>86</sup> on any day of the preceding twelve months. It is immaterial that they are appointed in addition to the other workers.<sup>87</sup> The poor illiterate worker is controlled by the contractor and the principal employer for getting cheap labour. In *Salal Hydro Project V State of Jammu & Kashmir*<sup>88</sup>. Bhagavathi J., observed that “Interstate migrant workers are generally illiterate and unorganized and are by reason of their extreme poverty, become easy victims of the abuses and malpractices of contractors”.<sup>89</sup>

Majority of the employers prefer migrant workers because they are cheaper, hardworking and more obedient than local workers.<sup>90</sup> The Act imposes certain duties on the contractor and the

<sup>84</sup> See Ministry of Housing and Urban Poverty Alleviation, Paragraph 131 of Report of the Working Group on Migration 44 (2017)

<sup>85</sup> 2016 (3) KHC 498 (India). The petitioners were the owners of neighbouring property where the labour camp was situated. They were aggrieved with abysmal living conditions of workers which led to contamination of ground water in the locality. The life of petitioner became miserable by the waste and waste water ejected to his building and the constant stench from the labour camp. The labour camp was over crowded. The Commission appointed by the Court informed that about 200 workers were residing in that building.

§ 2 (1) (e) of Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act<sup>86</sup> (1979) Act. “An inter-state migrant workman means any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State, whether with or without the knowledge of the principal employer in relation to such establishment.”

<sup>87</sup> See § 1 (4) of the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act (1979) Act.

*AIR 1984 SC 177*. The main issues involved in the writ petition were the non enforcement of welfare<sup>88</sup> laws with regard to the health and safety of the workers

*AIR 1984 SC 177, 180*<sup>89</sup>

<sup>90</sup> A.K. Gupta, Arora & B.K. Aggarwal, *Sociological Analysis of Migration of Agricultural Labours from Eastern to North Western Region of India*, 123 IJIR, No.4, 436, 438 (Apr.1988).

principal.<sup>91</sup> The contractor has the duty to ensure proper working conditions because the workers are living in another State, where the conditions are totally different. The Act confers certain rights on the migrant workers with regard to wages, equality of treatment, allowances, workplace amenities, etc.<sup>92</sup> If the contractor fails to provide any facilities to the worker it becomes the duty of the employer to provide the same.<sup>93</sup>

#### **h. Unorganised Workers Social Security Act (2008).**

The organised labour enjoys the benefits of social security legislations. The unorganised workers are devoid of social protection in contingencies because of their casual nature or seasonal nature of employment. It is very difficult to identify an employer for seasonal worker.<sup>94</sup>

The Unorganised Workers Social Security Act (2008) Act provides for the constitution of Social Security Board at the State and national levels to implement social protection schemes.<sup>95</sup> The schedule I of the Act contains certain welfare schemes of the Central Government providing insurance coverage on death, total and partial disability, training programmes, educational assistance to children, infrastructure development, maternal benefits and so on.<sup>96</sup> Every unorganized worker, who is above the age of fourteen years can make a declaration that he is an unorganized worker and apply for registration and the benefits under the Act.<sup>97</sup>

#### **i. The Mahatma Gandhi National Rural Employment Guarantee Act (2005)**

According to the National Commission on Labour, the root cause of social insecurity in India is poverty. It is due to the lack of adequate, productive and remunerative employment opportunities.<sup>98</sup> The Mahatma Gandhi National Rural Employment Guarantee Act (2005) is a commendable step to ensure employment opportunities to the poor people. The Act guarantee at least 100 days of employment in a financial year to every household whose adult members are ready to do unskilled manual work.

#### **j. The Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act (1996)**

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According to § 16, of the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act (1979) the contractor has to ensure regular payment of wages, equal pay for equal work irrespective of sex, suitable conditions of work, suitable residential accommodation and medical facilities to the interstate migrant workers.

§ 12,13,14,15 and 17, of the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act (1979).

§ 18 of the Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act.

See S.Mohanan Pillai, *Social Security For Workers in the Unorganised Sector ; Experience of Kerala*, 31

EPW, No.37, 2098, 2099(Aug.3,1996).

§ 5 and 6 of The Unorganised Workers Social Security Act (2008).

<sup>96</sup> The schemes mentioned in Schedule I of the Act are Indira Gandhi National Old Age Pension Scheme, National Family Benefit Scheme, Janani Suraksha Yojana, Handloom Weavers Comprehensive Welfare Scheme, Pension to Master Craft Persons, Handicraft Artisan Comprehensive Welfare Scheme, National Scheme for Welfare of Fishermen and Training and Extension, Janasree Bima Yojana, Aam Admi Bima Yojana, and Rashtriya Swasthya Bima Yojana.

§ 10 of The Unorganised Workers Social Security Act (2008).

See Paragraph 8.444 of the Report of the National Commission on Labour (2002).

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Building and other construction workers are one of the largest and most vulnerable unorganised labour in India. Their work suffers from casual nature, temporary relationship between employer and employee uncertain working hours, lack of basic amenities and inadequacy of welfare facilities.<sup>99</sup> The women and children are employed in the construction work without any safeguards. The construction sites are often converted to their living place without any facilities.

Construction workers remain invisible, vulnerable, voiceless and ununionized.<sup>100</sup>

The Act constituted the building and other Construction Workers Welfare

Fund to provide benefits to the registered construction workers. The Building and Other Construction Workers Welfare Cess Act (1996) is enacted to regulate contribution of cess to the Welfare Fund..The major functions of Welfare Boards includes giving immediate assistance in case of accident , the payment of pension ,sanction of loans and advances for construction of a house , giving educational scholarships for children and granting medical expenses for treatment of specified diseases of a beneficiary or dependent etc.<sup>101</sup> The Act provides for the fixation working conditions of building and construction workers.<sup>102</sup> There are provisions for workplace amenities like supply of fresh water, availability of toilets.etc.<sup>103</sup> Since construction business is inherently unsafe and dangerous, there are provisions for safety measures in the Act as well as Rules.<sup>104</sup>

## 2. CONCLUSION

The Constitutional ideal of social justice can be realised only when the weaker sections of society like the unorganised workers are brought in to the main stream of the society. The unorganised workers are entitled to all the fundamental rights without any distinction. Constitution provides for distributive justice. It tries to prevent the concentration of power and resources. Benefits of welfare legislations like the Employees Provident Fund and other Miscellaneous Provisions Act (1952), The Maternity Benefit Act (1961), The Payment of Bonus Act (1965), The Payment of Gratuity Act (1972) etc are not accessible to the unorganised sector workers due to their informal nature of employment. The unorganised workers are eligible to the benefits of labour welfare legislations like The Employees Compensation Act (1923), The Payment of Wages Act (1936), The Employees State Insurance Act (1948), The Minimum Wages Act (1948), The Contract Labour (Regulation and Abolition) Act (1970), Equal Remuneration Act (1976), Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act (1979) and The Building and other Construction Workers (Regulation of Employment and Conditions of

<sup>99</sup> See the statement of objects and reasons of the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act (1996).

<sup>100</sup> See Paragraphs 7.110, 7.111, 7.113. & 7.112 of the Report of the Second National Commission on Labour (2002). See also NCEUS, Paragraph 6.17 of the Report of the Conditions of Work and Promotion of Livelihoods in the Unorganised Sector 97 (2007).

§ 22 of The Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act (1996).<sup>101</sup>

§ 28 and 29 of the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act (1996)<sup>102</sup>

§ 32 and 33 of the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act (1996)<sup>103</sup>

§ 31,36,38,39 and 33 of the Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act (1996)<sup>104</sup>

Service) Act (1996). These laws shall be implemented properly for the protection of informal sector.

Every citizen has some obligation towards society and his fellow beings. Society shall respect and safe guard the inherent rights and dignity of a casual worker. Accidents and occupational diseases are very common in the unorganised sector. Due to the poor bargaining capacity and poverty, the workers are forced to work under unsafe conditions for lesser wages. Proper implementation of laws, campaigning for workers' rights, financial empowerment of workers, vocational training, creation of more remunerative activities and free legal aid to workers are some of the methods to improve worker's conditions. There is a ray of hope that the proposed Labour Code will address the grievances of the unorganized labourers.

## REFERENCES

### Reports

1. N C E U S, Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector (2007).
2. Report of the National Commission on Labour (2002).
3. India Labour & Employment Report (2014).
4. General comment No. 18 of the U N Committee on Economic, Social, and Cultural Rights, on the Right to Work art.6 of the International Covenant on Economic, Social, and Cultural Rights, E/C.12/G C/18 dated 6/2/2006.
5. Human Development Report (2015).
6. Ministry of Housing and Urban Poverty Alleviation, Report of the Working Group on Migration (2017)

### Websites

(20Dec,2018), [www.sustainabledevelopment.un.org/post2015/transferringourworld/publication](http://www.sustainabledevelopment.un.org/post2015/transferringourworld/publication).

### Books

1. STEVE HUGHES & NIGEL HAWORTH, THE INTERNATIONAL LABOUR ORGANIZATION COMING IN FROM THE COLD (2011).
2. CHRISTIAN TOMUSCHAT, HUMAN RIGHTS BETWEEN IDEALISM AND REALISM (2008).
3. Constitutional Assembly Debates Vol. XI .
4. Constitutional Assembly Debates, Vol. VII.
5. GRANVILLE AUSTIN, THE INDIAN CONSTITUTION, CORNER STONE OF A NATION (1966).
6. DHARAM GHAI, DECENT WORK, OBJECTIVES AND STRATEGIES (2006).
7. Saxena, Social Justice & Constitution, in LAW AND CHANGING SOCIETY (Manju Saxena & Harish Chandran ed., 1999).
8. S.R. SAMANT, INDUSTRIAL JURISPRUDENCE, A TREATISE ON THE THEORY AND PRACTICE OF INDUSTRIAL LAW WITH SPECIAL REFERENCE TO INDIA (1961).
9. S.K. PURI, AN INTRODUCTION TO LABOUR AND INDUSTRIAL LAWS (2005).
10. V. KRISHNA MOORTHY & P.P. NAIR, THE WELFARE FUND FOR CONSTRUCTION WORKERS IN TAMIL NADU, ESS PAPER, No.18, (2003).



- 11.V.R.KRISHNA IYER J., SOCIAL JUSTICE-SUNSET OR DAWN (2008)
12. ANDRES SOLIMANO, INTERNATIONAL MIGRATION IN THE AGE OF CRISIS AND GLOBALISATION, HISTORICAL AND RECENT EXPERIENCE (2010).
- 13.M.P. JAIN, INDIAN CONSTITUTIONAL LAW (2006).
- 14 .V.N. SUKLA, CONSTITUTION OF INDIA (2008).
- 15 .R.C. LAHOTI J., PREAMBLE THE SPIRIT AND BACKBONE OF THE CONSTITUTION OF INDIA 10-12 ( 2004 )
16. Saxena, Social Justice & Constitution, in LAW AND CHANGING SOCIETY (Manju Saxena & Harish Chandran ed.,1999).
17. Constitution of India -Bare Act

### International Conventions

- 1.ILO Declaration on Fundamental Principles and Rights at Work (1998).
2. Universal Declaration of Human Rights (UDHR)1948.
3. International Convention on Elimination of all forms of Racial Discrimination (ICERD) (1965 )
- 4.Convention on the Elimination of Discrimination against Women (CEDAW) (1979).
- 5.International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW) (1990).
6. International Convention on the Rights of Persons with Disabilities (2006).
7. International Covenant on Economic, Social and Cultural Rights (ICESCR),1966.

### Journal Articles

1. A.K. Gupta, Arora & B.K. Aggarwal, Sociological Analysis of Migration of Agricultural Labours from Eastern to North Western Region of India, 123 IJIR, No.4, (Apr.1988).
2. S.Mohan Pillai, Social Security For Workers in the Unorganised Sector ; Experience of Kerala, 31 EPW, No.37, (Aug.3,1996).
3. S.Waseem Ahmad & M. Ashraf Ali, Social Justice and Constitution of India, 67 THE INDIAN JOURNAL OF POLITICAL SCIENCE, No.4, (Oct.-Dec.2006).

### Legislations

- 1.The Employees Compensation Act (1923).
- 2.The Payment of Wages Act (1936).
- 3.The Employees State Insurance Act (1948).
- 4.The Minimum Wages Act (1948).
- 5.The Contract Labour (Regulation and Abolition) Act (1970).
- 6.Bonded Labour System Abolition Act (1976).
- 7.Equal Remuneration Act (1976).
- 8.Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act (1979).
- 9.The Building and other Construction Workers (Regulation of Employment and Conditions of Service) Act (1996).
10. The Mahatma Gandhi National Rural Employment Guarantee Act (2005).