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# **LAWS RELATING TO UNORGANISED SECTOR** **AND IMPLICATIONS IN INDIAN** **LEGAL PERSPECTIVE**

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**RESEARCH PAPER SUBMITTED**

**TO THE SVKM'S NMIMS, NAVI MUMBAI**

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**FOR BBA LLB [HONS.]**

## **DECLARATION**

I, MAARIA LAKDAWALA, hereby declare that the paper titled submitted to the Kirit P. Mehta, School of Law represents our original work and has not been previously submitted for academic or publishing purposes. Furthermore, this paper represents my own opinions and conclusions. The materials/sources utilized in this paper are given their due credit.

Date: 22.09.2022.

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## ABSTRACT

*The prevalence of the vast majority of informal or unorganised labour employment is a defining feature of the Indian economy. Unstable profits or gains are indicative of an unorganised sector. Its production is constrained to a small geographic area. It involves less investment and labour. The unorganised sector of the Indian economy is where you can find handicrafts, artisan occupations, khadi, and village businesses like the handloom sector, beedi making, agarbatti making, hand paper creation, and match box industries, etc. The unorganised sector requires special consideration since it is essential to society. The majority of the society's socially and economically disadvantaged groups are involved in informal economic activity. The unorganised sector's crucial contribution to the economy was recognised by the government. As a result, the government starts a lot of laws and programmes to help unorganised employees. For unorganised workers, there are numerous programmes and laws that offer social security and numerous other advantages for their welfare. The issues faced by unorganised employees, the judiciary's role in defending the unorganised sector, and policies created to ensure its protection are the main topics of this research paper.*

## INTRODUCTION

About 44 crore people in India are employed in the unorganised sector as unorganised employees. Numerous issues, such as employment opportunities, employer-employee relations, low wages, etc., plague the unorganised sector. Slum neighbourhoods are home to a large number of unorganised workers, who have very poor living conditions, including poor cleanliness.

The Unorganized Workers' Social Security Act of 2008 under section 2 (m) defines an unorganised worker as a home-based employee, a self-employed individual, or a wage worker in the unorganised sector. It also includes an employee in the organised sector who is not protected by any of the laws listed in Schedule-II of the Act, including the Employees' Compensation Act of 1923 (3 of 1923), the Industrial Disputes Act of 1947 (14 of 1947), the Employees' State Insurance Act of 1948 (34 of 1948), and (39 of 1972). 90% of the workforce in India is made up of unorganised employees, who control the labour market. India has one of the largest unorganised sectors in the post-industrial world.

Workers that are belonging to unorganised sector do not receive benefits like pensions, maternity leaves, provident funds, gratuities, etc. These employees are paid on a daily and hourly basis.

Since there is an enormous amount of unorganised labour in India, it is impossible to avoid them. Because the majority of unorganised employees lack access to stable, long-term employment opportunities, the unorganised sector must deal with periods of excessive seasonality in employment. Workers who are not organised lack a formal employer-employee relationship and work in a disorganised, dispersed environment. Unorganized workers are more likely to get indebted because their pay falls short of what they need to survive. They are most likely to be discriminated, exploited, bullied, among other employees.

In India, the unorganised sector is crucial to the growth of the economy. India's population is made up of unorganised workers to a degree of 92%. The unorganised labourers don't have adequate resources to guarantee their own security. The importance of social security to workers' families and the community cannot be overstated. The majority of unorganised workers experience numerous issues, such as inadequate pay, dangerous working conditions, etc. The government passed the Unorganized Workers Social Security Act in 2008 to give unorganised workers access to social security benefits. The rights of the unorganised sector are significantly protected by the Indian judiciary.

## **ANALYSIS OF UNORGANISED SECTOR ACT 2008**

The Indian Parliament approved the Unorganized Workers Social Security Act, 2008 dated December 30. With this law, the unorganised sector will receive social security and assistance. The federal government and state governments have created a number of programmes related to life, disability, ageing, housing, job, education, etc. The Central and State Governments provide funding for these programmes. This law is relevant to the unorganised sector in India as a whole. The National Social Security Board and the State Social Security Board were established by the government to carry out the law.

### **Board of National Social Security**

The Union Government established the National Social Security Board. The Union Minister is the chairman for labour and employment. Seven individuals who represent employees and companies in the unorganised sector are chosen by the Union Government's members. The board advises the Union Government on programmes for the unorganised workforce. They provide advice to the government on issues arising from the execution of the law. The board oversees programmes designed for unorganised labour.

### **Board for State Social Security**

Each state's social security board has been established by the state government to ensure proper implementation of the legislation. The State Social Security Board's membership is identical to that of the National Social Security Board. After reviewing the registration, the board issues identity cards to the unorganised workers. The board has limited authority to carry out various tasks. Only evaluation and monitoring are possible. They are not permitted to make any independent judgments because only the government may take action on the board's recommendations.

### **Constraints of the Unorganized Workers Social Security Act, 2008**

- The statute does not mention security for unorganised workers, other from the creation of national and state level boards.
- The measure does not include a separate bill for agricultural workers or agricultural worker-specific programmes.
- Only a very minor portion of the unorganised sector is covered by this act. There are no provisions that reference reprimanding employers who break the law or officials who fail to register any unorganised workers under the programmes.

The Act lists several statutes that deal with unorganised workers, including Workmen's Compensation Act of 1923 (8 of 1923), the Industrial Disputes Act of 1947 (14 of 1947), the Employees' State Insurance Act of 1948 (34 of 1948), the Employees' Provident Funds and Miscellaneous Provisions Act of 1952 (19 of 1952), the Maternity Benefit Act of 1961 (53 of 1961), and the Payment of Gratuity Act of 1972 (39 of 1972).

## **OBSTACLES FACED BY THE UNORGANISED SECTOR**

The unorganised sector of the economy faces numerous difficulties notwithstanding its contribution:

**Less Relationship with Labor Union** - The majority of unorganised workers are unaware of the existence of labour unions and the procedures they have in place to protect their interests. They operate their businesses independently of any recognised labour union or organisation. Their interactions with their individual labour unions are less formal. By taking advantage of this uneasy relationship with their labour unions, employers in the unorganised sector frequently violate the rights of unorganised workers.

**High level of job uncertainty:** Because of employment insecurity, unorganised employees depend on a variety of jobs. Climate change, geographic location, and other factors have an impact on the employment options for unorganised people. For instance, India's agriculture industry is quite erratic and unreliable. This is due to the fact that they have access to employment. In a year, they are only employed for three months; the other nine months, they are either unemployed or looking for other work to provide bread for the family on a day to day basis and avoid starvation.

**Bare Minimum Stipends: The term "wages" is defined under Section 2(h) of the Minimum Wages Act of 1948.** It refers to compensation that can be represented in monetary terms and that would be due to an employee in exchange for his or her services, including housing rent allowance, if the conditions of the express or implied employment contract were met. Even though the laws specifies the word, the workers typically do not receive the minimum wage. The Supreme Court ruled in *Peoples' Union for Democratic Rights v. Union of India*<sup>1</sup> that, even if poverty forces someone to work for minimal pay, Article 23 forbids employers from hiring workers for salaries below the legal minimum because doing so constitutes forced labor.

**Workplace dangers, workplace safety, and living conditions:**

Unorganized workers are subjected to hazardous working circumstances, which have an impact on their health. Due to their poor nutrition and excessive physical activity, people have several health issues. They are unable to cover their medical expenditures because of their low income. Due to inhaling tobacco dust, fire powder, etc., workers in matchstick, tobacco, and fireworks manufacturers are more likely to get respiratory illnesses. Pesticide, insecticide, and fertiliser overuse has an impact on agriculture industry workers. Unorganized employees reside in unhygienic neighbourhoods and slum areas. Basic amenities like restrooms and washing stations fall short of expectations.

**Long hours at work:** Long working hours go beyond the regular labour and regulatory regulations in India in the unorganised sector. Since there are no rules governing the working hours for the agriculture sector, there are no set working hours in this industry. In the other unorganised industries, employees' wages are based on how many hours they put in for their employer and have set working hours between 12 and 15 hours. Due to their dependence on the employer's salary and the fact that the majority of workers lack literacy, the

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<sup>1</sup> AIR 1982 SC 1473.

supervisors exploit them by making them put in longer hours and work them to the bone.

**Children and women are not protected:** Equal compensation for equal effort is mentioned in Article 39(d) of the Indian Constitution. This implies that all employees, regardless of their sex, should receive equal pay. For the same number of hours worked, men receive higher pay than women and children. Numerous kids are made to work for little pay in homes, dhabas, and tea shops. Children labour long hours and are subjected to risky working circumstances, both of which have an impact on their health. Many workplaces experience sexual harassment and abuse against women. Women struggle with a variety of physical and emotional issues as they are unaware of their legal rights.

## **ROLE OF THE GOVERNMENT IN IMPLEMENTING NATIONAL POLICIES**

### **National Pension Scheme for Independent Contractors and Business Owners**

In order to safeguard Vyaparis in their senior years, the Unorganized Workers Social Security Act, 2008 section 3(1) was created.

Objective- to give shopkeepers, traders, and other self-employed individuals, known as vyaparis, between the ages of 18 and 40 who are not employed by EPFO, ESIC, or PM-SYM social security and old age protection.

They are the proprietors or owners of small or specialised businesses like real estate brokers, restaurants, and hotels.

### **Central Sector Scheme For Rehabilitation Of Bonded Labourer, 2016**

The state government was tasked with finding, rescuing, and rehabilitating the bound labourers, and the federal government would provide them with financial assistance on a 50/50 basis. This programme was originally introduced in 1975. Since then, the plan has undergone numerous changes, and it is currently in 2016.

ISSUE Following the revisions to the scheme's guidelines, the state government is no longer required to contribute financially to the rehabilitation of bonded workers; instead, the ministry of labour and employment will offer up to 4.5 lakhs in aid for each district.

They will become the beneficiary of the annuity scheme when the money is placed, for example, if it is an adult man, they will receive 1 lakh, and if it is a group of women, children, or transgender

people, they will receive 3 lakh.

**Niraman Kamgar Awasha Yojana.** The majority of construction workers are from underprivileged or rural areas of society. As a result, the majority of them lack the comfort of home. They also lack the funds to construct or purchase a home of their own.

The Uttar Pradesh Building and Other Construction Employees Welfare Board offers construction workers the "Construction Worker's Housing Assistance Scheme" in consideration of this. Under this, employees receive financial aid to build or purchase a home.

This financial aid totals one lakh rupees. Two payments are required. Along with housing construction, the UP government also provides labourers with Rs 15,000 in assistance for house repairs. However, the same beneficiary does not receive both benefits at once.

#### **Antyodaya Deen Dayal Updhyaya Yojana (Day)**

The Ajeevika scheme was superseded by DAY, whose goal is to skill people so they can be trained in both urban and rural locations. By the end of 2016 and 2017, respectively, it aimed to train 500,000 urban residents and ONE MILLION rural residents- HOWEVER NO STATISTICS ON HOW MANY HAVE BEEN ACHIEVED

The program's goal is to make people self-employed by offering them training and loan provisions that will allow them to start small businesses or self-help organisations in metropolitan areas.

#### **Rozgar Garib Kalyan Yojana**

The programme was implemented by the Indian government in June 2020 with a budget of 50,000 crore rupees to boost employment prospects for migrant workers. This programme was purchased as a result of COVID-19, a period of mass worker relocation during which many workers suffered severe economic losses due to job loss during the lockdown.

The total number of migrating employees reached 670,000 thanks to the identification of 25 different types of working places for this programme, including the PM Kusum Works, livestock, poultry, and goat sheds, the Shyama Prasad Mukherjee RURBAN mission, workers on national highways, well building, etc.

One hundred twenty-five days of employment will be provided by the plan.

#### **Gatidhara Self-Employment Program**

The West Bengal government launched a programme called Gatidhara. This programme was tied

to the department of transportation and was designed to provide jobs to young people who have declared themselves unemployed. They would find work in the state of West Bengal's transportation industry.

All individuals between the ages of 20 and 45 who have a monthly household income of less than 25,000 rupees are eligible for work under this programme. Each household could only submit one applicant.

The recipients would receive a subsidy of up to 1,00,000 rupees, or 1.5 lakhs if they were female.

**Training and Extension:** Under this programme, fisherman are given a 15-day training course along with a stipend and travel expenses. Training handbooks and manuals are also published to help advance fishing knowledge and abilities. The programme also makes it easier to hold international conferences, seminars, and symposiums.

### **National Child Labor Policy<sup>2</sup>**

The National Child Labor Policy was approved by the cabinet on August 14, 1987. This policy's primary goal was to end child labour in industries with dangerous jobs. Children under the age of 14 who worked in environments where kids had health issues were the scheme's target audience.

The policy intends to be implemented for the wellbeing of kids who are employed in places with a lot of child labour. The goal of the strategy is to rehabilitate kids who work in dangerous environments. The government engages in activities such as official and informal education, public awareness raising through campaigns and rallies, etc. to end child labour.

### **National HIV/AIDS Policy<sup>3</sup>**

To educate unorganised workers about the HIV AIDS infection, a national policy on HIV AIDS is required. Discrimination and stigma provide a significant obstacle in the battle against HIV/AIDS. The majority of public and private sector employers have not implemented workplace intervention due to a lack of awareness.

Around 10 million new jobs will be created in India over the next 10 to 12 years, with young people making up the majority of the workforce. The country's economic development would be

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<sup>2</sup> The Child Labour (Prohibition and Regulation) Act of 1986

<sup>3</sup> ILO Convention No. 111 on Discrimination (Employment and Occupation)

hampered by the spread of HIV/AIDS. Workplace policies should contain the proper services and information regarding the same to prevent this. This policy's objective is to stop the spread of HIV and AIDS among the workforce. Additionally, it strives to defend the rights of the impacted workers and give them access to treatment.

## ROLE OF JUDIARCY IN ADVANCING UNORGANISED SECTOR

The judiciary defends the rights of unorganised workers in situations where laws are not implemented correctly. In addition to laws, the Indian Constitution protects unorganised workers' fundamental rights. Anyone who works but is not paid the minimum wage for the work they accomplish is in violation of Article 21 of the Indian Constitution. According to Article 21, the government must acknowledge bonded labour. Every State Government is required to treat bonded labour with the utmost respect.

In **Sanjit Roy V. State of Rajasthan**<sup>4</sup>, the court ruled that the state must not pay any employee of the state minimum wages when they are impacted by famine or drought because this would be in violation of Article 23 of the Indian Constitution. Any labour performed by inmates that does not result in payment of the minimum wage constitutes forced labour and violates Article 23 of the Constitution<sup>5</sup>

In **Daily Rated Casual Labour v. Union of India**<sup>6</sup> the court found that classifying workers as regular and working employees violates the Constitution's Articles 14 and 16. No one has the right to refuse to perform services for a worker because they are a member of a scheduled caste. The judiciary should uphold the rights of unorganised employees and establish social security welfare programmes for their benefit.

In the case of **State v. Banwari**<sup>7</sup> is the matter at hand. "The person cannot refuse to offer the services only on the grounds that such labours belong to the Scheduled Caste," the High Court of Allahabad said. The goal of doing this is to safeguard the interests of society's weaker groups.

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<sup>4</sup> 1983 AIR 328, 1983 SCR (2) 27

<sup>5</sup> Constitution of India, 1950.

<sup>6</sup> 1987 AIR 2342, 1988 SCR (1) 598

<sup>7</sup> 28 February, 1950.

In the case of **Hubli v. Employees State Insurance Corporation v. Siddheshwar**<sup>8</sup>

The court has broadened the scope of what constitutes an employee for the purposes of this Act and further clarifies that this Act is applicable to individuals whose services are lent to the major employer.

In the Landmark case of **M.C. Mehta v. State of Tamil Nadu**<sup>9</sup>

The Government was ordered by the Indian Supreme Court to conduct a survey and to put an end to child labour in the matchstick and cracker companies. The court further ordered that the provisions of Section 21 of the Contract Labor Act, 1970 shall be followed, as well as the minimum pay paid by the subcontractors under the Minimum Wages Act.

## CONCLUSION

Unorganized labourers in India deal with a variety of issues, including inadequate pay, harsh treatment by employers, substandard living conditions, etc. In order to combat poverty in the nation, social security is one of the crucial issues that the government needs to acknowledge. In addition to the Unorganized Workers Social Security Act of 2008, there are numerous other programmes for the welfare of unorganised workers, including old age, life, and health insurance schemes.

Several sections in the Indian constitution safeguard the rights of unorganised labourers. Employers shouldn't take advantage of unorganised workers in their working environments and should educate them about their rights regarding health, living conditions, and pay.

It is well acknowledged that, although making a significant contribution to the Indian economy, unorganised labourers are the most vulnerable and insecure group in society. Unorganized workers have grown at an alarming rate, but nothing has been done to address their fundamental issues. Although the Indian government has passed a number of laws intended to provide unorganised workers with social security, these laws have not been successful in meeting their objectives. The government has implemented numerous programmes and policies to safeguard the interests of workers in the unorganised sector.

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<sup>8</sup> 4 November, 1996

<sup>9</sup> 10 December, 1996

By passing the "Unorganized Social Insurance Act, 2008," it also took a step toward providing unorganised workers who operate in unorganised sectors with basic social security. The Indian government has put in place a number of programmes in accordance with this Act, including the Aam Admi Bima Yojana (Life Insurance) and the Rashtriya Swasthya Bima Yojana (Health Insurance).

The State Government has the authority to establish the regulations for the efficient operation under the designated section and the Central Government has the authority to do so under the applicable section.

Section 11 gives the Central Government the authority to direct the State Governments and the National Board in the appropriate application of this Act's provisions.

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