

DISCRIMINATION AGAINST UN ORGANIZED LABOUR: A CHALLENGE BEFORE EQUILITY

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ABSTRACT

Introduction:

The labour in India consists of about 487 million workers, the second largest after China. Of these over 94 percent work in unincorporated, unorganized enterprises ranging from pushcart vendors to home-based diamond and gem polishing operations. The organized sector includes those employed by the government, state-owned enterprises and private sector enterprises. In 2008, the organized sector employed 27.5 million workers, of which 17.3 million worked for government or government owned entities.

The unorganised sector of the economy refers to the house-hold based manufacturing activity and small scale and tiny sector of industry. An unorganized sector is one in which there is no stability in profits or gains. Its production is limited and it is confined to limited area. It requires less man power and investment. The handicrafts, artisan professions, khadi and village industries, such as handloom sector, beedi making, agarbatti making, hand paper manufacture and match box industries etc., can be located in the unorganised sector of the Indian economy.

Amongst the characteristic features of this sector are ease of entry, smaller scale of operation, local ownership, uncertain legal status, labour-intensive and operating using lower technology based methods, flexible pricing, less sophisticated packing, absence of a brand name, unavailability of good storage facilities and an effective distribution network, inadequate access to government schemes, finance and government aid, lower entry barriers for employees, a higher proportion of migrants with a lower rate of compensation.

This Article basically highlights the nature and essential characteristics of un organized sector and further analyze the legal issues raised in the protection of unorganized sector labour.

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ARTICLE

“The poor have to labour in the face of the majestic equality of the law, which forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread.”

-Anatole France

INTRODUCTION:

The spectrum of work in India is generally divided into two broad segments, one is work in the organized sector and other in unorganized sector. While the former is characterized by its homogeneity, reasonable bargaining strength of workers, applicability of labour laws and clear visibility, and the latter lacks all these. The unorganized sector is generally recognized by its heterogeneity, employment in small scattered units, jobs involving low skills and low wages, casual nature of work, lack of unionization etc.

The term “Unorganized Sector” is used to denote the aggregate of economic units engaged in the production of goods and services with the primary objective of generating employment and income for the persons engaged in the activity. These units are typically small in size and not distinguishable from the households managing the activity. The units thus constitute part of household sector as unincorporated enterprises.¹

The contribution of these units in the economy of India has been very significant but the employment in this sector is characterized by poor employment conditions as labour and social welfare laws do not cover the informal sector, wages and working conditions often fail to meet minimal requirements, resulting in long working hours, insecure employment, irregular incomes, lack of access to proper health care and old age or retirement benefits. Moreover, labour often works in unhealthy, unsafe and unprotected working environments.

HISTORICAL BACK GROUND:

Keith Hart was the first person to introduce the term ‘Informal Sector’. He introduced it while making a presentation on “Informal income opportunities and urban employment in

¹ fedina.org/777/2011/10/UNORGANISED-SECTOR-IN-INDIA1.doc

Ghana” in Institute of Development Studies (IDS) in September 1971 at a conference co-organized by Rita Cruise O'Brien and Richard Jolly on urban employment in Africa months before International Labour Organisation (ILO) employment mission to Kenya came with its report “Employment Incomes and Equality” (Jolly, 2006). Hart distinguished formal and informal (both legitimate and illegitimate) income opportunities on the basis of whether the activity entailed wage or self-employment (Hart, 1973). Therefore the concept of informal sector used by Hart was limited to small self-employed individual workers. Although Hart's concept of informal sector had some limitations, the introduction of this concept made it possible to incorporate activities that were previously ignored in theoretical models of development and in national economic accounts (Swaminathan, 1991).

The term informal sector came in a broader sense in the academic literature only after the visit of an International Labour Organization (ILO) employment mission to Kenya in 1972. The ILO then evolved a conceptual framework and guidelines for the collection of statistics on informal sector and presented the same in the Fifteenth International Conference of Labour Statisticians (ICLS) held in February, 1993 in the form of a resolution. The resolution was then endorsed by the United Nations Statistical Commission (UNSC) and made a part of the “System of National Account (SNA) 1993” by the United Nations Economic and Social Council. Though the term „informal sector gained currency after ILO evolved a conceptual framework and guidelines for the collection of statistics on informal sector, there has not been any single definition of informal/unorganised sector in India. Informal sector is a matter of discussion among the academics, policy makers etc. from the beginning as a large chunk of workforce employed in this sector.

Different criteria are used to identify the informal sector but none of them was universally applicable in different empirical situations (Papola, 1981). A study by Mitra (2001) based on fourth economic census of India took the criteria of own account enterprises and employment establishments employing one to nine workers to identify the informal sector. The different organizations of India like National Sample Survey Organisation (NSSO), Directorate General of Employment and Training (DGET) etc used varying definitions of informal/unorganised sector depending on the specific requirements of each organisation. Keeping in view the absence of a uniform definition of informal/unorganised sector in India the National Commission for Enterprises in the Unorganised Sector (NCEUS) set-up a Task Force to review the existing definition of Informal Sector International Definition As per SNA

(1993), the informal sector consists of units engaged in the production of goods or services with the primary objective of generating employment and income to the persons concerned.

These units typically operate at a low level of organization, with little or no division between labour and capital as factors of production and on a small scale. Labour relations - where they exist - are based mostly on casual employment, kinship or personal and social relations rather than contractual arrangements with formal guarantees. The informal sector forms part of the household sector as household enterprises or, equivalently, unincorporated enterprises owned by households.²

DEFINITIONAL PELL-MELL FOR 'UNORGANIZED' LABOUR:

The First Indian National Commission on Labour (1966-69) defined "un organised sector workforce" as –

"those workers who have not been able to organize themselves in pursuit of their common interest due to certain constraints like casual nature of employment, ignorance and illiteracy, small and scattered size of establishments".

The National Sample Survey Organization (NSSO), which has been conducting surveys of un-organized enterprises at periodical intervals, generally adopted the following criteria for the identification un-organized sector:

1. In the case of manufacturing industries, the enterprises not covered under the Annual Survey of Industries (ASI) are taken to constitute the un-organized sector.
2. In the case of service industries, all enterprises, except those run by the Government (Central, State and Local Body) and in the corporate sector were regarded as un-organized. The NSSO also conducted a separate informal sector survey in 1999-2000 and all non-agricultural enterprises, excluding those covered under the ASI, with type of ownership as either proprietary or partnership were treated as informal non-agricultural enterprises for the purpose of the survey.

In the compilation of National Accounts, the term un-organized sector is used to represent the residual enterprises, which are not included in the „organized sector. The coverage under organizational sector, however, differed across different segments of the economy depending on regular data availability from various administrative sources. The

² <http://www.yourarticlelibrary.com/essay/essay-on-the-unorganised-sector-in-india/40436/>

Directorate General of Employment and Training (DGET) considers all establishments employing ten workers or more as organized sector, though Employment Exchange (Compulsory Notification of Vacancies) Act, 1959, makes it mandatory to submit employment returns only for those units ordinarily employing twenty five or more persons.

Definition proposed by NCEUS Informal Sector Worker As per international definitions, informal sector enterprises are owned by individuals or households that are not constituted as separate legal entities independent of their owners.

In the Indian context, the enterprises can be of ownership categories of (i) Proprietary (ii) partnership (iii) registered under Companies Act as Companies (iv)co-operative societies registered under Societies Registration Act and (v) Government or Public Sector Undertakings. Out of these ownership categories, the enterprises operated on proprietary and partnership basis do not constitute as separate legal entities independent of their owners ie the liabilities of the enterprise fall entirely on the owners.

In view of the above, the following definition of unorganized/informal sector has been recommended:

“The informal sector consists of all unincorporated private enterprises owned by individuals or households engaged in the sale and production of goods and services operated on a proprietary or partnership basis and with less than ten total workers”.

The word enterprise in the above definition has the same meaning as defined in the SNA 93 and refers to an institutional unit in its capacity as a producer of goods and detailed analysis has done by NCEUS on 55th Round Survey of Informal Non-agricultural Enterprises (1999-2000), 56th Round Survey of Unorganised Manufacturing (2000-01), 57th Round Survey of Unorganised Service Sector (2001-02), Third All India Census of Small Scale Industries (2002-03) and Fifth Economic Census (2005) by size of employment and found that about 99 percent of workers employed in the enterprises working less than nine workers³

CLASSIFICATION OF UNORGANIZED WORKERS (UW):

³ Paper Prepared for the Special IARIW-SAIM Conference on “Measuring the Informal Economy in Developing Countries” Kathmandu, Nepal, September 23-26, 2009 Informal Sector and Informal Workers in India Ajaya Kumar Naik, Jawaharlal Nehru University, New Delhi This paper is posted on the following website: <http://www.iariw.org>

According to statistics of Ministry of Labour (2008), UW is classified into four groups:

1. By Occupation:

Small and marginal farmers, landless agricultural laborers, share croppers, fishermen, those engaged in animal husbandry, beedi rolling, labeling and packing, building and construction workers, leather workers, weavers, artisans, salt workers, workers in brick kilns and stone quarries, workers in saw mills, oil mills, etc. come under this category.

2. By nature of employment:

Attached agricultural laborers, bonded laborers, migrant workers, contract and casual laborers come under this category.

3. Service Category:

Midwives, Domestic workers, Fishermen and women, Barbers, Vegetable and fruit vendors, News paper vendors etc. belong to this category.

4. Special Category:

Toddy tappers, scavengers, carriers of head loads, drivers of animal driven vehicles, loaders and unloaders come under this category

In addition to these four categories, there exists a large section of unorganized labour force such as cobblers, Hamals, Handicraft artisans, Handloom weavers, Lady Tailors, Physically handicapped self employed persons, Rikshaw pullers, Auto drivers, Sericulture workers, Carpenters, Tannery workers, Power loom workers and Urban poor.⁴

CHARACTERISTIC FEATURES OF INFORMAL / UNORGANIZED SECTOR:

The basic characters of unorganized sector can be summarized as:

- Low productivity compared to formal sector
- Lower wages to workers
- Poor working conditions
- Excessive seasonality of employment
- Absence of social security measures
- Negation of social standard

⁴ <http://vikaspedia.in/social-welfare/unorganised-sector-1/categories-of-unorganised-labour-force>

Source: *Ministry of Labour and Employment*

- Poor human capital base (in terms of education, skill and training) as well as lower mobilization status of the work force
- Any effective legal action against it is seen as a step of impairing

CHARACTERISTICS OF UNORGANIZED WORKERS (UW):

The workers of this section can be explained as:

- Have limited or no education or other skills.
- Are hugely scattered and don't have political pressure groups
- Don't have fixed jobs i.e. have seasonality as compared to formal sector workers.
- Social stratification is more in them in rural areas on the basis of Caste and sub-castes.
- Still today, they act as "bonded labour" in some cases due to low incomes & permanent indebtedness.
- Have insufficient labour laws relating to them.
- Work in very poor working environment.

Amongst the characteristic features of this sector are ease of entry, smaller scale of operation, local ownership, uncertain legal status, labour-intensive and operating using lower technology based methods, flexible pricing, less sophisticated packing, absence of a brand name, unavailability of good storage facilities and an effective distribution network, inadequate access to government schemes, finance and government aid, lower entry barriers for employees, a higher proportion of migrants with a lower rate of compensation⁵

Predominance of informal employment has been one of the central features of the labour market scenario in India. While the sector contributes around half of the GDP of the country, its dominance in the employment front is such that more than 90% of the total workforce has been engaged in the informal economy. As per the latest estimation of a Subcommittee of the National Commission for Enterprises in the Unorganized Sector (NCEUS), the contribution of unorganized sector to GDP is about 50% (NCEUS 2008).

This national level pattern of informal workers occupying around 90% of the workforce is more or less similar in the case of most of the prominent states in the country. Among the unorganized sector workers, a considerable proportion (about 65%) is engaged in agricultural sector, which in turn indicates the prominence of rural segment in the informal economy.

⁵ Rapaka Satya Raju (1989). *Urban Unorganised Sector in India*. Mittal Publications. pp. 11–17. GGKEY:J0UK90X1FYN. Retrieved 26 March 2013.

The growth of formal employment in the country has always been less than that of total employment, indicating a faster growth of employment in the informal sector. Available data suggests that within the formal sector also the proportions of informal / unorganized workers are on the increase. For instance, by providing a comparison of the NSSO Employment Data for 55th and 61st Rounds (for 1999-2000 and 2004-05 respectively) the NCEUS (2007) explains that the country is currently in a state of “informalisation of the formal sector”, where the entire increase in the employment in the organized sector over this period has been informal in nature.

It is widely acknowledged that the informal sector in India suffers from a low productivity syndrome, compared to the formal sector.

The prominent features of the sector are lower real wages and poor working / living conditions. Further, the sector is characterized by excessive seasonality of employment (especially in the farm sector), preponderance of casual and contractual employment, atypical production organizations and work relations, absence of social security measures and welfare legislations, negation of social standards and worker rights, denial of minimum wages and so on. Poor human capital base (in terms of education, skill and training) as well as lower mobilization status of the work force further add to the vulnerability and weaken the bargaining strength of workers in the informal sector.

Thus, the sector has become a competitive and low cost device to absorb labour, which cannot be absorbed elsewhere, whereas any attempt to regulate and bring it into more effective legal and institutional framework is perceived to be impairing the labour absorbing capacity of the sector.

With the advent of globalization and resultant reorganization of production chains led to a situation where production systems are becoming increasingly atypical and non-standard, involving flexible workforce, engaged in temporary and part-time employment, which is seen largely as a measure adopted by the employers to reduce labour cost in the face of stiff competition. No doubt, it obviously indicates that these flexible workers in the new informal economy are highly vulnerable in terms of job security and social protection, as they are not deriving any of the social protection measures stipulated in the existing labour legislations. The insecurities and vulnerabilities of this modern informal sector labour are on the rise, as there is a visible absence of worker mobilization and organized collective bargaining in these segments owing to a multitude of reasons.

The alarming expansion of informal sector, in recent times, has adversely affected employment and income security for the larger majority of the workforce, along with a marked reduction in the scale of social welfare / security programme.⁶

PROBLEMS OF UNORGANIZED SECTOR:

The problems faced by the un-organized sector may be categorized as

I. Problems of the workforce-

90% of workforce in vast informal sector, little awareness of workplace hazards, living areas close to work areas, extended work hours, exploitation, no concept of occupational safety/services, lack of implementation of Health & Safety legislation, no concept of Trade/Labour Union.

II. Problems of women workers and ‘beedi’ workers-

Desperately poor low wages, fraudulent contractors, disease causing environments, child labour, and >50% women Deplorable social conditions

III. Problems faced by Govt. –

Problem of definition and identification, workforce uneducated about the benefits of organized sector, scattered nature of sector, employers avoid any form of regulation, unorganized sectors contribute to almost 60% of GDP (apart from providing livelihood to population), same labour laws cannot be applied

IV. Problems from the Organized Sector-

Unfair competition (Walmart, Reliance), loss of employment Legal “bullying”, buyer preference for the “cleaner” retail stores, financial aid not available to the un organised sector easily to compete.

Key Labour Issues:

- Lack of quality employment or under employment
- Lack of employment
- Large in Number:
- Seasonality of work:

⁶ http://www.erewise.com/current-affairs/problems-of-unorganised-sector/workers_art5253e5adee10f.html#.Vk2Q0NIrLGg

- Work Place:
- Working Environment
- Caste and Class Difference:
- Poor Skill and Technology
- Lack of Political Support
- Inadequacy of laws and legislation
- Migration
- Unequal distribution of money
- Low wage rate
- Gender discrimination in wage
- Gender specific work
- Lack of security
- Indebtedness
- Bonded labor (Dadan)

SOCIAL SECURITY AND MEASURES:

It is rightly true that when independent India's constitution was drafted, social security was specially included in List III to Schedule VII of the constitution and it was made as the concurrent responsibility of the central and state governments. The current mosaic of Indian laws on employment are a combination of India's history during its colonial heritage, India's experiments with socialism, important human rights and the conventions and standards that have emerged from the United Nations.

The laws cover the right to work of one's choice, right against discrimination, prohibition of child labour, fair and humane conditions of work, social security, protection of wages, and redress of grievances, right to organize and form trade unions, collective bargaining and participation in management.

Labour laws in India:

Workmen's Compensation Act of 1923

Trade Unions Act of 1926

Payment of Wages Act of 1936

Industrial Employment (Standing orders) Act of 1946

Industrial Disputes Act of 1947

Minimum Wages Act of 1948

Industries (Regulation and Development) Act of 1951

Employees Provident Fund and Miscellaneous Provisions Act of 1952

Maternity Benefit Act of 1961

Payment of Bonus Act of 1965

The Building and Construction Workers Act (1996)

Payment of Gratuity Act of 1972

National Rural Employment Guarantee Act -2005 (MGNREGA)

CENTRAL GOVERNMENT SCHEMES:

The central government has, over the years, taken a number of initiatives to extend social security cover to workers in the un-organized sector. However, the social security entitlements backed by legislation have been mainly for workers in the organized sector. The legislation-backed entitlements for the un-organized sector are limited for workers in certain occupations. Their coverage would roughly be around 15 million (around 5 million covered by central government schemes and the remaining by the state government schemes).

To this, we may add the

National Family Benefit Scheme (NFBS)

National Maternity Benefit Scheme (NMBS)

Central Welfare Funds

The Funds have been created by the following Acts

- (a) The Mica Mines Labour Welfare Fund Acts (1946).
- (b) The Limestone and Dolomite Mines Labour Welfare Fund Act (1972).
- (c) The Iron ore, Manganese ore and Chrome ore Mines Labour Welfare Act (1976).
- (d) The Beedi Workers Welfare Fund Act (1976).
- (e) The Cine Workers Welfare Fund Act (1981).

Apart from NSAP and welfare funds, a number of Central Government schemes for social security have been in operation over a period of time. These have been targeted at the poorer sections of the society and selected occupational groups, and are mostly contributory in nature. Some of these schemes are:

Varishta Pension Bima (2003)

Janshree Bema Yojna (2000)

Unorganised Sector Workers Social Security Scheme (2004)

Old Age Pension Scheme

Personal Accidental Insurance

Medical Insurance

Universal Health Insurance Scheme (UHS), 2004⁷

The Unorganized Sector Workers' Social Security Act, 2008:-

The Ministry of Labour & Employment drafted the Unorganized Sector Workers Bill, 2004 which, inter-alia, envisages to provide for safety, social security, health and welfare matters. The National Advisory Council (NAC) has forwarded a draft Bill namely, The Unorganised Sector Workers Social Security Bill, 2005. In the meantime, the National Commission for Enterprises in the Unorganised Sector (NCEUS) on the request of Ministry of Labour & Employment has also drafted two bills i.e.

- i. Unorganised Sector Workers (Conditions of Work & Livelihood Promotion) Bill, 2005 and
- ii. Unorganised Sector Workers Social Security Bill, 2005.

All the four draft Bills were examined in consultation with all stakeholders. In August 2005 and May 2006, the NCEUS submitted two reports to the Prime Minister containing draft legislation on securing the conditions of work and creating a social security scheme for unorganised sector workers. The various draft legislative proposals were consolidated by the NCEUS in July 2007. In its deliberations, the NCEUS found the need for separate laws to differently protect agricultural workers and non-agricultural workers within the unorganised sector.

In 2005, the National Advisory Council (NAC), formerly chaired by Sonia Gandhi, also submitted a draft Bill based on the recommendations of the Second National Labour Commission and the ongoing deliberations of the NCEUS. This draft Bill which was titled "The Unorganised Sector Workers Social Security Bill" was tabled in the Rajya Sabha in September, 2007.

⁷ shodhganga.inflibnet.ac.in/bitstream/10603/3534/.../12_chapter%205.pd...by N Gupta - 2012

This draft Bill received the assent of the President of India on 23rd December, 2008 and has now become an Act. This Act titled “The Unorganised Workers Social Security Act, 2008” has been brought into force with effect from 16. 05. 2009.

The main features of this Act are:- Enabling Framework for Social Security Schemes: The Act enables the central government to formulate welfare schemes for unorganised sector workers regarding

- (1) Life and disability cover.
- (2) Health and maternity benefits.
- (3) Old age protection.
- (4) Any other benefit decided by the government.

Eleven existing social security schemes for the unorganised sector workers are listed in this Act e.g. (a)National Old Age Pension Scheme (b)National Family Benefit Scheme (c) National Maternity Benefit Scheme (d) Mahatma Gandhi Bunkar Bima Yojana;(e) Health Insurance Scheme for Handloom Weaver;(f) Scheme for Pension to Master Crafts Persons;(g) Group Accident Insurance Scheme for Active Fishermen;(h) Saving-cum-Relief for fishermen;(i) Janshree Bima Yojana;(j) Aaam Admi Bima Yojana;(k) Swasthya Bima Yojana. The central government may modify this list by notification.

The Act also enables state government to formulate welfare schemes related to the provident fund, employment injury benefits, housing, educational schemes for children, and skill up gradation of workers, funeral assistance and old age homes.

Any notified scheme may be wholly funded by the central or state government or both, and could require contributions by the beneficiaries of the schemes or their employers. Welfare schemes introduced under this Act will not affect existing welfare schemes of any state that may be more beneficial to unorganized sector workers.⁸

CONCLUSION:

Informal Sector which is productively prevalent has been the cursed victim of capitalism, Pseudo-welfare State and stagnantly complacent society. The definitional complacency and uncertainty proves the care of the society and state towards this gullible lot. The traditional community of unorganised or informal lot is predominantly represented by rural

⁸ <http://www.visva-bharati.ac.in/InstitutionsCentresSchools/Contents/cjmc-report-080413.pdf>

sector and the vibrant urban sector lures this informal segment for temporary employment. But this ratio of informal sector employment, driven by poverty, illiteracy and ignorance, is now showing interesting fluctuations in rural as well as urban regimes. The proportion of informal sector workers in the agriculture sector declined over the years but in industry and services sector the proportion of informal sector workers increased between 1999-2000 and 2004-05.

The statistical reality declare that 52% if total workers of informal sector is evidenced in agricultural workers, 30 million workers are constantly on the move (migrant labour) and 25.94 million women workforce has been added in the labour market from the year 2000 onwards, and the existing social security legislations cover only 8% of the total work force of 459 million in India.

The report of the NSSO as of May 2011 clearly shows that there is significant increase in the number of casual workers, who do not enjoy the same benefits and security as tenured employees, and decline in the number of regular workers.

The apparition of new International Economic Order succeeded in weakening of worker organizations and collective bargaining institutions, and sharp decline in social security etc.

To a greater extent, these transformations suggest the growing informalisation of labour market and growth of unorganized sector in India with perilous implications.

Statutes became statutes for offering prayers by the hapless unorganised workers, and promises of pretentious legislators and evasive executive are seen as mirages. If our so-called 'People Oriented Governments' intend to prove their chastity of integrity, at least one small change suggested here may be considered –

“The definition of ‘Workman’ in all labour laws has to be amended to incorporate every labourer in unorganised sector.”