
LABOUR PROTECTION MEASURES AND SOCIAL SECURITY FOR WOMEN IN THE UNORGANIZED WORKFORCE

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ABSTRACT

This paper examines the precarious condition of workers in India's unorganised sector, which constitutes more than 92% of the country's workforce yet remains largely excluded from labour law protections and social security benefits. It highlights the structural vulnerabilities faced by unorganised workers, particularly women employed in the construction industry, who experience low wages, job insecurity, hazardous working conditions, and lack of formal employer-employee relationships. The paper analyses how globalisation, casualisation of labour, and absence of collective bargaining have intensified exploitation and disguised unemployment in this sector. It critically evaluates the limitations of the Unorganised Workers' Social Security Act, 2008, especially its inadequate implementation, exclusionary classification criteria, and failure to address gender-specific concerns such as wage disparity and workplace harassment. The paper further explores the constitutional framework and judicial interventions that recognise social security and dignity of labour as integral to the right to life under Article 21 of the Constitution. It discusses the role of the judiciary in expanding labour rights and ensuring accountability of the State toward marginalised workers. The paper concludes by proposing reforms relating to social security, healthcare access, insurance coverage, unionisation, and enforcement mechanisms to ensure dignity, equality, and economic security for workers in the unorganised sector.

The unorganised sector constitutes vast majority of workforce in India. Out of the total working population of 317 million, approximately 290 million or more than 92% are in the unorganised sector.¹ Nonetheless, the social security system provides little assistance to this sector. Only about 8% of the workforce are protected under the labour law legislations, and receives subsequent benefits. The rest 92% are uninsured labours, who are ineligible to be covered under these existing laws and regulations and thus experience precarious employment, low income and substandard working conditions.² The first National Commission on Labour, chaired by Justice Gajendragadkar, defined the unorganised sector as, “the segment of workforce who have not been able to organise in pursuit of a common objective because of constraints such as (a) temporary/casual nature of employment, (b) lack of knowledge and education (c) small scale of businesses with minimal capital investment per worker, (d) scattered nature of establishments and (e) superior strength of the employer operating either individually or collectively”.³

Data suggests that more women are employed in the unorganised sector and those working in the construction industry are often placed at the bottom of the labour hierarchy. They perform physically taxing jobs that demands skills, but are dismissed as “unskilled labours”.⁴ They are represented disproportionately and hold substandard and underpaying jobs. They are often exploited and encounters lots of hardships and constraints at work including wages disparity, job insecurity and irregular work schedule.⁵ One of the most significant problem of this sector is the absence of a formal employer- employee relation, which makes it difficult to hold any individual accountable for their duties and obligations. Women in this sector find it extremely challenging to find a steady job for even a year since the employers keeps on changing frequently. In many cases, these workers don’t even have direct contact with the primary employers since they find work via middlemen who might be agents or sub-contractors employing them for a short period.

This industry is home to a large number of people employed in a temporary, casual or part-time basis. This makes it difficult to classify the workers as they are scattered all across.

¹ Renana Jhabvala, *Social Security for Unorganised Sector*, 33 Economic and Political Weekly 22 (1998).

² *Id.*,

³ Debnath Dipankar, *Way Forward For Empowering Of Unorganized Workers In India: Review Of The Unorganised Workers Social Security Act*, Indian Journal of Law and Justice (2008).

⁴ G. Ravindran Nair, *Law and Women in Unorganised Sector*, 28 Economic and Political Weekly 20 (1993).

⁵ Devanshi Singh, *Plight of Women Workers in the Unorganised Sector*, 4 International Journal of Law Management & Humanities 2733 (2021).

Moreover, with the rise of globalisation the nature of work has also altered and has given rise to unconventional production systems. More and more employee takes on temporary positions and in a market where labour costs are quite competitive, employers view this as an opportunity to save costs.⁶ But this situation puts many workers at risk since these informal unorganised sector are not protected under the social security established by labour laws. Moreover, lack of unions and organised collective bargaining further exacerbates the situation.⁷

This industry is characterized by extreme seasonality, the nature of work and production is erratic. Most workers, therefore, struggle to find secure and long term job opportunities. Notably, those who appear to be employed often find themselves at jobs that do not provide them sufficient income or stability and gives rise to the problem of “disguised unemployment”.⁸ Moreover, many workers have limited access to training and skill development which renders them vulnerable and weakens their ability to demand for their rights. Unfortunately, this industry has emerged as a low cost way for absorbing excess demand of labour.⁹ Furthermore, COVID-19 pandemic severely impacted women in this sector, making their volatile working conditions even worse. The constant lockdowns and economic disruptions led to sudden income loss and job insecurity. Many workers found themselves trapped in a debt cycle with no income to cover the inevitable expenses looming over them.

The Unorganised Worker’s Social Security Act, 2008 is a key legislation designed to protect the needs and interests of unorganised workers. However, this act lacks clarity, proper implementation and practicality. It unjustly divides the workers into two categories – those below the poverty line and those above it, thereby neglecting the actual hardships faced by all the workers.¹⁰ It fails to address crucial issues for women like income inequality, workplace harassment or national minimum wage¹¹. Many businesses are incorrectly classified because of Section 2(1) of the Act¹², which prohibits enterprises with less than ten employees from being included in the unorganised sector. This requirement also infringes upon Article 14 of

⁶ Babu P. Remesh, *Rethinking Social Protection for India’s Working Poor in the Unorganised Sector*, available at https://welfareacademy.umd.edu/pubs/international/policy_exchanges/asp_papers/1931.pdf (last visited on 30 September, 2024).

⁷ *Id.*,

⁸ Albert Christopher & Helen, *Social Security For Unorganised Workers In India Dhas*, available at <https://mpira.ub.uni-muenchen.de/9247/>. (last visited on 30 September, 2024).

⁹ *Supra* note 6

¹⁰ Paromita Goswami, *A Critique of the Unorganised Workers’ Social Security Act*, 44 *Economic and Political Weekly* 11 (2009).

¹¹ *Id.*,

¹² The Unorganised Workers Social Security Act, 2008, § 2 (1)

the Constitution. Indian labour laws are predominantly based on the Constitution.¹³ Fundamental rights, such as the freedom of speech and expression, right to form a union, the prohibition of child labour, right to employment, right to equal pay for equal work, the provision for favourable working conditions, and right to maternity benefits for employees are given in the Constitution. But legal enforcement exists for some rights such as the freedom to form a union and the prohibitions against child labour and forced labour but not for others.

However, according to the National Commission for Enterprises in the Unorganised Sector (NCEUS), the current legislations do not adequately assist the unorganised workers. As a result, India's unorganised labour force continues to be primarily exempted from these constitutional safeguards. The current act overlooks the needs of women as workers and priorities their roles as mothers or widows. This legislation failed to incorporate the suggestions made by the Shramshakti report and in a similar vein did not take into account the Vishaka V. State¹⁴ ruling, which dealt with sexual harassment at workplace.

The Judiciary being the cornerstone of governance has made efforts to address issues related to unorganised labour. However, it has been occasionally held liable for exacerbating social issues. This paper aims at highlighting landmark rulings and potential reforms required to ensure the protection of this sector.

The Supreme Court made a significant ruling in *C.E.S.C. Ltd. vs. Subhash Chandra Bose*¹⁵ acknowledging the “right to social justice as a fundamental right”.¹⁶ It emphasised that right to life not only includes human dignity and opportunity for individual growth but also fundamental aspects such as social security and protection which are essential for leading a meaningful life. Moreover, the court held that worker’s rights to medical care and protection from illness are fundamental rights that must be safeguarded, along with ensuring social and economic justice.

In *LIC of India and Anr. vs. Consumer Education and Research*¹⁷ held that, “right to social security is a part of the right to life”. The court cited Article 25 of the Universal Declaration of

¹³ Dipankar Debnath, *Way Forward for Empowering of Unorganized Workers in India: A Review of the Unorganised Workers Social Security Act, 2008*, 5 Indian Journal of Law and Justice 1 (2014).

¹⁴ AIR 1997 SC 3011

¹⁵ 7 (1992) 1 SCC 44

¹⁶ Jayna Kothari, *A Social Rights Model for Social Security: Learnings from India*, 47 *Verfassung und Recht in Übersee / Law and Politics in Africa, Asia and Latin America* 1 (2014)

¹⁷ 1995 SCC (5) 4

Human Rights, which states that every individual has the right to adequate standards of living. This standard of living encompasses necessities such as food, clothing, housing, healthcare, and essential social services. It also emphasised the significance of security in circumstances such as unemployment, disability, old age, illness and other unforeseeable events.¹⁸ The court also referred to The International Covenant on Economic, Social, and Cultural Rights (ICESCR), which ensures equitable pay, just and fair living and working conditions for workers and their families. It emphasised that the Constitution strives to guarantee adequate standard of living for all individuals, particularly through creation of social security as a component of a welfare state.¹⁹

The Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers²⁰, demonstrated how the legislators failed to provide fundamental safeguards to construction workers, especially when the state agencies had employed them to carry out hazardous tasks. According to Article 21 of the Constitution, the government is obligated to acknowledge bonded labour and ensure their complete rehabilitation.²¹ The Directive Principles of State Policy also emphasises the need for addressing workers with human dignity and safeguarding their rights. In light of these obligations, the judiciary has taken a proactive role in ensuring that unorganised workers benefit from social security schemes and are also protected under various welfare legislations.

Thus, it can be seen that the courts have intervened in various circumstances, to prevent exploitation and protect the rights of the workers. Courts have also expanded the definition of what constitutes an employee in order to better serve the interests of the employers and workers. For instance, in Siddheswar Hubli v. Employees State Insurance Corporation²² the courts included contractors who operated the movie theater's cafe and bike stand, and recognised them as employees under the Employees State Insurance Act.

The court even mandated the ministry to collect data on construction workers, domestic workers, and women in the unorganized sector in Vandana Prasad vs. Ministry of Labour &

¹⁸ Supra note 13

¹⁹ Tina Dutta And Parthapratim Pal, *Politics Overpowering Welfare: Unorganised Workers' Social Security Act 2008*, 47 Economic and Political Weekly 7 (2012)

²⁰ 8 SCC 568

²¹ Siddhant Patra, *An Analysis of the Unorganised Sector Workers and Their Rights*, 4 Indian Journal of Law and Legal Research 1(2022)

²² (1998) Lab IC 212.

Employment²³. It also emphasised how crucial it is to uphold accountability and transparency and it is the duty of the ministry to ensure that this data is updated on a regular basis on the official website.

The Judiciary has rendered several significant judgements concerning the unorganised sector and the Legislature has also drafted Acts regarding the same. However, it has still failed to safeguard the rights and interests of these marginalised workers. Through this article, I essentially aim to suggest reforms concerning the care work and protection needed for such workers.

Social protection is a fundamental requirement for every individual regardless of their employment status.²⁴ It is a crucial form of support which is ought to present from the moment we are born and continue throughout our lives. Social security is the outcome of the government and the society working together to ensure that they can assist the citizens through their highs and lows. Unfortunately, challenges can emerge at any phase of life, from sickness to unemployment. Therefore, it is necessary to ensure that each and every individual is protected. However, the existing social security schemes does not cover the unorganised sector. Majority of people working in the unorganised sector especially women are in dire need of social security. Women in this sector must also form unions to ensure that their complaints are heard and addressed by the appropriate forums and their rights are safeguarded. In case of construction workers also there exists a gap which needs to be addressed. This can be only achieved with the combined efforts of governmental and non-governmental organisations that can ensure that every worker live with dignity and security. Maintaining human dignity and advancing social justice are the primary goals of social security. It represents the notion that individuals who positively contribute must be protected. Furthermore, increasing the number of mutual benefit funds can provide safety net to people employed in this sector. In the rural areas, local governing bodies can be tasked with overseeing schemes related to social protection of the marginalised workers. This can increase accountability, better guarantee the benefits reach the workers in need of them the most and fortify ties within the local community. This strategy not only provides them with security but also cultivates a feeling of community support in times of difficulty.

²³ AIR 1984 SC 1099.

²⁴ Supra note 19

Construction workers especially performs tasks which include physical labour and are subjected to severe hazards while working with raw materials, such as coal or lime dust. Unfortunately, majority of these workers have no knowledge about basic health and safety measures which puts them at a greater risk. These workers often face accidents at their workplace, but the employer simply refuses to compensate for the injuries suffered. As a result of which workers are forced to sell their assets to cover their bills.²⁵ This further demonstrates the financial hardships they experience due to accidents and injury. Even during times of pandemic the health of these workers were compromised. Schemes must be designed to ensure that these workers are provided with affordable health care facilities and educated about safety norms.

Many studies highlight that medical facilities are either too expensive or inaccessible for the workers. In rural areas, there is a lack in the infrastructure for healthcare. Even, in the metropolitan cities the cost of treatment is so high that workers cannot afford it and in many cases serious diseases can go undiagnosed which can impact the life of the workers and their families. It may be impossible for the workers to handle the financial burden if an injury or disease causes permanent or partial disability. Moreover, due to the frequent lack of access to necessary nutrients pregnant women, young children, and the elderly experience illness, malnourishment, and poor health, which shortens their lives and increases their vulnerability to diseases, reduces their productivity, and shortens their lifespans.²⁶ Therefore, policies must be designed to ensure that these vulnerable communities receive the care that they need. It is also imperative to provide these workers and their families with medical and life insurances since it can offer them a sense of security and belonging during the difficult times.

Despite the rapid growth of the insurance market in India, majority of these companies fail to recognise the unorganised sector as a potential market. For instance, the General Insurance Corporation once noted that, “The economically poor section of the society aren't very attracted to insurances, which relies on probabilities. They seek immediate benefits rather than long-term ones.”²⁷ However, this is an incorrect perspective due to which millions of workers are unable to access policies that could be beneficial to them. In reality, the concept of insurance

²⁵ V. M. Rao, D. Rajasekhar and J. Y. Suchitra, *Unorganised Workers: Deprivation, Social Security Needs, Policy Implications*, 41 Economic and Political Weekly 19 (2006).

²⁶ Supra note 6.

²⁷ Renana Jhabvala, *Social Security for Unorganised Sector Author*, 33 Economic and Political Weekly 22 (1998).

is not new to the weaker section of the society. They frequently use assets like gold, land and savings as a form of insurance and use them during times of need. Many of their strategies are centred around overcoming obstacles like sickness, death, or natural disaster. It is evident that these workers are more vulnerable to casualties, any serious accident or illness can push entire families toward destitution, primarily because they lack savings to cover the high costs associated with these emergencies. Therefore, it is necessary to ensure that people working in this industry have access to insurances so they can manage the financial risks they face by spreading the costs over time. This would prevent them from being overwhelmed by the unforeseen costs in an emergency by enabling them to pay for their insurance during their period of employment. Thus, insurance might act as a safety net for them, distributing the risks and vulnerability over a longer time frame and ensuring a more financially secure future.

It can be concluded that the unorganised sector is the backbone of the labour workforce in India, but still continues to be left vulnerable by the existing legal frameworks and social security schemes. Most workers specially women deal with precarious employment, low wages, and a dearth of fundamental rights like job security, safety, and healthcare even while working in jobs like construction. Although, the Unorganised Workers Social Security Act is a positive step, it does not adequately address the day to day hardships and challenges faced by these workers, particularly in relation to gender-based issues like sexual harassment and unequal pay.

Reforms are necessary to bridge this gap. Enforcing fair wages, expanding social security to cover unorganised sector and improving health and life insurance are important reforms that can positively impact these workers. Access to affordable healthcare and protection from hazardous working conditions are crucial to improve their livelihood. To ensure accountability, local governments and non-governmental organisations must increase their efforts, and more unions must be formed so that employees can have a forum to put forward their complaints. The civil society and the government must work together to build a more equitable and secure future, one in which their worth as humans are acknowledged and their economic contributions are fully appreciated.