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## LABOUR RIGHTS IN THE INFORMAL SECTOR

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### ABSTRACT

The informal sector is the backbone of India's labour market, employing over 90% of the total workforce. Yet, there is still a lot left outside the protective ambit of formal labour legislation. Workers in this sector are mainly the domestic workers, street vendors, construction labourers, home based workers and the agricultural workers who endure unstable or uncertain working conditions, exploitative wages and a near total absence of social security coverage. Despite having an extensive statutory framework, which includes the Minimum Wages Act 1948, the Contract Labour (Regulation and Abolition) Act 1970, and the Building and other construction workers act 1996, the implementation is deeply fragmented, and the enforcement is very weak. The SC, through the landmark judgements from the *People's Union for democratic rights v. Union of India* and *Bandhua Mukti Morcha v. Union of India* and *Municipal Corporation of Delhi v. Female Workers (muster roll)* have progressively expanded the constitutional protection available to the informal workers, holding the minimum wage denial will constitute a forced labour, the maternity benefits extend to the casual employees too and the right to livelihood is ingrained in article 21. The enactment of the 4 labour codes represents a legislative effort to refine these protections; yet, critical gaps in enforcement and definition persist.

**Keywords:** informal sector, labour rights, judicial activism, labour codes, enforcement deficit.

## INTRODUCTION

India's workforce reveals a striking contradiction because while the country enjoys a rapid economic growth, it also has a high level of informal employment, where many people work in unrecognised jobs. According to the periodic labour force survey 2022- 2023, approximately around 90.7% of India's workforce is engaged in the informal or unorganised sector.<sup>1</sup> It includes the agricultural workers, domestic helpers, street vendors, construction workers and circular migrants who collectively produce a significant share of the gross domestic product, yet they are excluded from the welfare architecture that formal employment provides.

The term "informal sector" was first given by an economist, Keith hart in 1971, and since then it has been widely recognised by the International Labour Organisation.<sup>2</sup> In the Indian legal context, the term "unorganised worker" is defined under unorganized worker's Social Security Act 2008 as a home based worker, self-employed worker or a daily wage worker in the unorganised sector.<sup>3</sup> In the case of *Olga Tellis v. Bombay Municipal Corporation*,<sup>4</sup> The SC emphasised that the right to livelihood is a part of Article 21. Also, this ruling supported the claims of pavement dwellers and informal workers by connecting their struggles to fundamental legal protections.

## UNDERSTANDING THE INFORMAL SECTOR

The 2007 report by the National Commission for Enterprise in the unorganised sector (NCEUS) found that over 836 million Indians were living in economic instability within the informal sector.<sup>5</sup> What brings these different groups together is their shared experience of three main concerns, namely a lack of job security, not having written contracts for their work and being left out of social security benefits. The ILO's 2019 flagship report highlighted how informal work can keep people stuck in a continuous cycle of low productivity and financial

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<sup>1</sup> Ministry of statistics and programme implementation, periodic labour force survey annual report 2022-2023(MOSPI, Government of India,2023)

<sup>2</sup> Keith Hart, "Informal Income Opportunities and urban employment in Ghana"11 Journal of modern African studies 61 (1973); International Labor Organization, Employment, income and equality; A strategy for increasing productive employment in Kenya (ILO, Geneva 1972)

<sup>3</sup> The unorganized worker's social security act 2008, s.2(m)

<sup>4</sup> *Olga Tellis v. Bombay Municipal Corporation* AIR 1986 SC 180. In this case, the court held that the right to livelihood is a part of Article 21, and any law depriving a person of their livelihood must give a reasonable justification under Articles 14 and 21

<sup>5</sup> National commission for enterprise in the unorganized sector, "report on conditions of work and promotion of livelihoods in the unorganized sector," 1-3 (government of India, 2007)

instability. To break this cycle and help workers gain a more secure footing in the economy, the legal measures must be thoughtfully implemented.<sup>6</sup>

The constitution places clear responsibilities on the state to protect individuals from exploitation. Article 23 explicitly bans human trafficking and forced labour. Moreover, the SC in the case of *People's Union for democratic rights v. Union of India* extended the protection to situations where workers are not paid the minimum wages.<sup>7</sup>

The court made a significant shift by declaring that paying less than the minimum wage is forced labour. This ruling turned what was once just a directive principle into a constitutional right that can be enforced, which laid the base for the future legal decisions regarding wages in the informal sector. This stance was further strengthened in the case of *Sanjit Roy v. State of Rajasthan*.<sup>8</sup>, where the court clearly stated that paying workers below the minimum wage is a violation of Article 23.

## LEGISLATIVE FRAMEWORK AND ITS GAPS

India's labour laws consist of more than 40 central statutes, along with numerous state regulations. At the heart of these protections are the key laws such as the minimum wages act 1948, the payment of wages acts 1936, the contract labour (regulation and abolition) act 1970, the interstate migrant workers act 1979, the building and other construction workers act 1996, the unorganized workers social security act 2008 and the street vendors (protection of livelihood and regulation of street vending) act 2014. However, despite the extensive range of legislation, significant gaps in coverage still exist, highlighting the ongoing challenges in labour protection.

The Contract Labour (Regulation and Abolition) Act of 1970 applies only to the business that have 20 or more contract workers.<sup>9</sup> This means it overlooks a significant number of the decentralised contracting structures commonly found across India. In the case of *Steel Authority of India Ltd. V. national union waterfront workers*,<sup>10</sup> The SC clarified that just

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<sup>6</sup> International Labor Organization, "World Employment and social outlook: the changing nature of work" 15-18 (ILO Geneva 2019)

<sup>7</sup> *People's Union for democratic rights v. Union of India*, AIR 1982 SC 1473. The SC held that non-payment of minimum wages to the workers engaged in the Asian game project amounted to forced labour under art.23 and established minimum wage as a fundamental right

<sup>8</sup> *Sanjit Roy v. State of Rajasthan* AIR 1983 SC 328. The SC held that paying less than the minimum wage violates article 23 and it amounts to forced labor as stated in the Minimum Wages Act 1948(Act 11 of 1948), ss.2(g)

<sup>9</sup> The Contract Labor (Regulation and Abolition) Act 1970(Act 37 of 1970), s. 1 (4)

<sup>10</sup> *Steel Authority of India Ltd v. National Union of Waterfront Workers*, (2001) 7 SCC 1, in this case, the SC held that ending contract labor under s. 10 doesn't guarantee contract workers a permanent position

because the contract labour is abolished, it doesn't mean that these workers are entitled to permanent positions. Even more importantly for those in informal jobs, the court also held in the case of *Paramjit Kaur v. state of Punjab*.<sup>11</sup> that workers who carry out ongoing and essential tasks through contractors shouldn't be classified as contract labour. This ruling emphasised that the right to equality outlined in article 14 and the protection against exploitation mentioned under article 23, apply to informal workers who are consistently fulfilling regular ones.

In the case of *Mangalore Ganesh Beedi Works v. Union of India*,<sup>12</sup> The SC highlighted the rights of the home-based workers by affirming that labour welfare laws apply to them as well. The court ruled that a manufacturing contract does not sever the employment relationship when it comes to the protective legislation. This decision is significant as it supports the rights of the countless individuals working in industry like bidi, garments and handicraft, workers who may toil away from the factory premises but are still integral to the larger enterprises they support.

The interstate migrant workmen act of 1979 was designed to be thorough and effective, but in reality, it has seen little to no implementation.<sup>13</sup> Similarly, the Unorganised Worker's social security act of 2008 was meant to provide a solid base for protecting the informal workers, but it faced criticism right from the start because many viewed it more as a statement of intent than as a law that could be actively enforced. While it created welfare boards to help with the actual delivery of benefits, which depended on government notifications, which are often used at the discretion of authorities, leading to long delays and denials in providing support.<sup>14</sup>

## JUDICIAL DEVELOPMENT OF INFORMAL WORKER RIGHTS

Over the past 50 years, India's courts have significantly shaped the rights of the informal workers by stepping in where legislative measures have been lacking. This has been achieved

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<sup>11</sup> *Paramjit Kaur v. State of Punjab*, (1999)2 SCC 13. The SC held that workers engaged through contractors for ongoing works cannot be deemed contract labor.

<sup>12</sup> *Mangalore Ganesh Beedi Works v. Union of India* (1974) 2 SCC574. In this case, the SC upheld that the labor welfare laws apply to workers who do home based works, stating that having a contract for home-based workers are still considered as employees for protective legislation

<sup>13</sup> Second national commission on labor, "Report of the second national commission" 212-215 (Ministry of Labor, Government of India,2002) Ravi S. Srinivasan, "structural change and non -standard forms of employment in India" ILO conditions of work and employment series no.68,24(ILO,2016)

<sup>14</sup> Kamala Sankara, "informal economy, own account workers and the law" 45 Indian Journal of Industrial Relations 3, 1-14 (2009)

mainly through five key approaches: broadening the scope of Article 21, which focuses on the right to life and personal liberty; using Article 23 to combat the below minimum wage practices; extending Article 14's equality protections to casual and contract workers; establishing constitutional backing for occupational health safeguards; and implementing the directive principles as enforceable obligations.

A landmark case in this area is *Bandhua Mukti Morcha v. Union of India*.<sup>15</sup> In this case, the SC addressed the issue of bonded labourers in stone quarries through a PIL. The court determined that the ongoing practice of bonded labour is a violation of articles 21 and 23. It established that the government has the duty not only to ban this practice but also to take necessary measures towards the rehabilitation of the workers. The court also provided specific guidelines, such as ensuring minimum wage payments, access to medical care and the construction of schools. These measures have created a lasting framework for how the judiciary engages with issues of poverty in the informal sector today.

The SC established that the right to occupational health is an important part of the right to life under Article 21, as seen in the case of *Consumer Education and Research Centre v. Union of India*.<sup>16</sup> The court emphasised that workers, especially in hazardous industries, are entitled to health care, medical assistance and protection from workplace dangers. If these safeguards aren't provided, it constitutes a violation of their right to live with dignity. This ruling particularly affects the workers in sectors like construction, chemical processing and domestic service who often face serious risk without proper medical support.

The role of women in informal employment gained significant judicial recognition through two important court rulings. In the case of *Municipal Corporation of Delhi v. female workers (muster roll)*,<sup>17</sup> The SC ruled that women employees working on a casual or muster roll basis are entitled to maternity benefits as outlined in the Maternity Benefits Act of 1961. This decision was vital for the informal sector because many women were employed under such conditions, challenging the notion that only regular employees should receive these

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<sup>15</sup> *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802. The SC, in this case, determined that bonded labour violates articles 21 and 23 and mandated the state to rehabilitate released workers by issuing a detailed supervisory direction

<sup>16</sup> *Consumer education and research centre v. union of India*, (1995) 3 SCC 42. In this case, the SC held that workers have a fundamental right to health, access to medical care and protection from dangers in the workplace as outlined in Article 21.

<sup>17</sup> *Municipal Corporation of Delhi v. female workers (muster roll)*, (2000) 3 SCC 42. In this case, the SC held that the maternity benefits extend to the muster roll (casual) women workers too.

benefits. In another case, *B. Shah v. presiding officer*,<sup>18</sup> The court took a broad approach to calculate maternity benefits, ensuring that Sundays and holidays are included. This interpretation highlighted that the main goal of the legislation is to support the welfare of women, rather than simply limiting the employer's responsibilities.

The issue of workplace harassment for domestic workers was addressed in the case *Vishaka v. State of Rajasthan*<sup>19</sup> where this case established that all employers have a constitutional responsibility, which is rooted in articles 14, 19(1)(g) and 21, which is to ensure a safe working condition that is free from sexual harassment. However, applying the principles from the Vishaka case to employers in private households poses a significant challenge. The concept of equality in the informal labour rights was given in the case of *Delhi Development Horticulture Employees v. Delhi Administration*.<sup>20</sup> In this case, the SC determined that the casual workers who regularly perform duties for the government department deserve to receive minimum wages and equal pay for equal work. This principle was further reaffirmed in the case of *Employers in relation to the management of Reserve Bank of India v. their workmen*,<sup>21</sup> where the court highlighted that the right to equal pay for equal work stems from a combined interpretation of articles 14 and 16. This means it applies to all workers, whether they are classified as casual, contractual or temporary, regardless of their job titles.

The wellbeing of home-based workers in the traditional industries received a significant boost from the SC ruling in the case *Rajangam v. State of Tamil Nadu*.<sup>22</sup> In this case, concerning the beedi workers, the court highlighted that it is the state's responsibility under Article 43 to promote the welfare of those in cottage and home-based industries. However, in the subsequent ruling in the *state of Karnataka v. Umadevi*<sup>23</sup> added some complexity to this as the court

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<sup>18</sup> *B. Shah v. presiding officer*, Labor Court, AIR 1978 SC 12. In this case, the SC held that maternity benefits must include the Sundays and the holidays. This reaffirms the substantive purpose of the Maternity Benefit Act 1961

<sup>19</sup> *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011. In this case, the SC gave guidelines against sexual harassment at the workplace by making every employer under the constitutional responsibility to provide a safe working environment.

<sup>20</sup> *Delhi development horticulture employees' union v. Delhi administration*, (1992) 4 SCC 99. In this case, the SC held that the casual workers who are all employed continuously by the government department are entitled to minimum wages and equal pay for equal work

<sup>21</sup> *Employers in Relation to the Management of Reserve Bank of India v. their workmen*, AIR 1996 SC 1241. In this case, the SC held that the concept of equal pay for equal work is derived from articles 14 and 16, and it applies to the workers performing similar duties regardless of the label attached to their employment

<sup>22</sup> *Rajangam v. State of Tamil Nadu*, (1992) supp 1 SCC 221. In this case, the SC held that under Article 43, the Constitution of India ensures the welfare of the workers who work in cottage and home-based industries

<sup>23</sup> *State of Karnataka v. Umadevi* (2006) 4 SCC 1. In this case, the SC declined the automatic regularisation of the contract or casual labourers.

decided against granting automatic regularisation rights to all contract or casual workers. Despite this, it acknowledged that long term employment without proper legal standing raises important fairness issues that need to be addressed.

## **ENFORCEMENT CHALLENGES**

The recognition of informal workers' constitutional rights by the judiciary starkly contrasts with the challenges of enforcing those rights in reality. In India, there is about one labour inspection for every 3,00,00 workers,<sup>24</sup> making it nearly impossible to maintain consistent oversight. The 2<sup>nd</sup> national commission on labour highlighted problems like overlapping jurisdiction, insufficient staffing and weak penalties with the inspection system. Furthermore, the interplay of informality with social disparities related to caste, gender and migration exacerbates the difficulties in enforcement. Research shows that Dalit and Adivasi workers are often found in the most dangerous and lowest paying jobs within the informal sector, reflecting the ongoing social inequalities, yet the formal labour laws have failed to change.

## **LABOUR CODES 2019 -2022: REFORM OR REPACKAGING?**

Between 2019 and 2020, India implemented 4 new labour codes, merging 29 existing laws into a more cohesive system. These are:

1. Code on wages 2019<sup>25</sup>
2. Industrial Relations Code 2020<sup>26</sup>
3. The code on the Social Security Code 2020<sup>27</sup>
4. The Occupational Safety, Health, and Working Conditions Code 2020<sup>28</sup>

The code on wages introduces a universal minimum wage, which fills the major gap; left by the earlier legislation, especially benefitting the informal sector. The code on social security

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<sup>24</sup> 2<sup>nd</sup> national commission on labor, supra note 10 at 190-198; Ministry of labor employment, Annual Report 2021-2022 (Government of India 2022) ch.4

<sup>25</sup> The code on wages 2019 (act 29 of 2019)

<sup>26</sup> The industrial relations code 2020 (act 35 of 2020)

<sup>27</sup> The code on social security 2020 (act 36 of 2020)

<sup>28</sup> The Occupational Safety, health and Working Conditions Code 2020 (act 37 of 2020)

acknowledges the rise in the gig and platform workers, giving social security benefits and creating a national social security board for the unorganised sector, but its success depends on the government's ability to implement and develop specific schemes, which can create uncertainty.

The critics have raised concerns about the industrial relations code, which reduced the protections by increasing the threshold, leaving many without the necessary safeguards. The Occupational Safety Code extends protection to contract workers in large establishments, but it still overlooks the smallest and often most dangerous workplace.

Currently, these codes have not been fully implemented due to delays in state level regulations, reflecting challenges in modernising India's labour laws.

## **RECOMMENDATIONS FOR SUBSTANTIVE REFORM**

India should introduce a comprehensive federal law for domestic workers that establishes minimum wages, regulated working hours, mandated rest periods, social security benefits and an accessible complaint mechanism, drawing on ILO Convention No. 189 as a framework. It's essential to codify the principle of equal pay for equal work, ensuring it applies to all employment types. Additionally, informal workers' collectives should be recognised as legitimate bargaining agents, allowing them to effectively voice their rights in labour mechanisms.

## **CONCLUSION**

The labour rights of informal workers in India highlight a critical gap in the country's social justice commitments. The Constitution's directive principles (art. 39,41,42 and 43) mandate that the government ensure fair livelihoods and working conditions. Although the Labour Codes 2019-2020 aim to protect the informal workers by expanding minimum wages coverage and social security, effective implementation is still lacking.

Without proper enforcement and political commitment to recognise informal workers as rights holders, these legal advancements won't lead to real change. India's goal of becoming a developed economy is hindered as long as the majority of its workforce remains unprotected by labour laws. Addressing these issues is both an economic and constitutional necessity.