

# **The Bill Proposed by the Ministry of Labour, 2004**

## **The Unorganised Sector Workers' Bill, 2004**

The serious attempts have been made by the government when it brought a bill for unorganised workers namely 'The Unorganised Sector Workers Bill, 2004'. This bill of Ministry of Labour was intended to regulate the employment and conditions of service of unorganised sector workers and to provide for their safety, social security, health and welfare and matters connected therewith or incidental thereto.

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### **The Unorganised Sector Workers' Bill, 2004**

A BILL to regulate the employment and conditions of service of unorganised sector workers and to provide for their safety, social security, health and welfare and matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-fourth year of the Republic of India as follows:

#### **CHAPTER I PRELIMINARY**

1. (1) This Act may be called the Unorganised Sector Workers' Act, 2004.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
2. In this Act, unless the context otherwise requires,-
  - (i) "appropriate Government" means,-
    - (a) in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947, is the Central Government, the Central Government;
    - (b) in relation to any such establishment, being a public sector undertaking, as the Central Government may, by notification in the Official Gazette, specify, which employs workers either directly or through a contractor, the Central Government;
    - (c) in relation to a self-employed worker or any other establishment which employs workers either directly or through a contractor, the Government of the State in which that other establishment is situate;
  - (ii) "Board" means the Unorganised Sector Workers' Welfare Board established under section 3 or section 20;
  - (iii) "Chairperson" means the Chairperson appointed under section 5;
  - (iv) "Dispute" means any dispute or difference between employers and employees or between employers and workers, or between workers, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of workers.
  - (v) "employer" means in relation to a person by whom a worker is employed, whether for any remuneration or otherwise and in relation to an establishment, the owner of the establishment or any other person who has the ultimate control over the affairs of the establishment.
  - (vi) "establishment" means any office or place where any industry, trade, business or occupation is carried on and includes any technical institution or training center including any Deptt/Ministries of Central/State Government/UTs or local authorities, directly without any contractor, the authority specified in this behalf, or where no authority specified, the HOD or the Chief Executive as the case may be.
  - (vii) "family" in relation to a worker, means his or her spouse and dependent children and includes dependent parents;
  - (viii) "financial year" means the year commencing on the 1<sup>st</sup> day of April;
  - (ix) "Fund" means the Unorganised Sector Worker's Welfare Fund constituted under section 24;

- (x) “member” means a member of the Board appointed under section 5;
- (xi) “notification” means a notification published in the Official Gazette and the word notified shall be construed accordingly;
- (xii) “prescribed” means prescribed by rules made under this Act;
- (xiii) “record” means the records maintained in the form of books or registers or stored in a computer or in such other form as may be specified, by notification, by the appropriate Government ;
- (xiv) “Schedule” means the Schedule to the Act;
- (xv) “Scheduled employment” means an employment in the unorganised sector as specified in the Schedule;
- (xvi) “scheme” means a scheme notified under section 23;
- (xvii) “worker” means a person engaged in the Scheduled employment directly or through any agency or otherwise for one or more employers whether simultaneously or otherwise and includes:
  - a casual or temporary worker
  - a migrant worker
  - a home based worker whether self-employed or employed for wages and drawing pay/income not exceeding Rs. 5000/- per month.
- (xviii) “Workers’ Facilitation Centre” means an unit established under section 21.

## CHAPTER II UNORGANISED SECTOR WORKERS’ WELFARE BOARD

3. (1) With effect from such date as the Central Government may, by notification appoint, there shall be established for the purposes of this Act, a Board to be called the Central Unorganised Sector Workers’ Welfare Board.
- (2) The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.
- (3) The office of the Board shall be at Delhi.
4. The Board shall perform the following functions, namely:-
  - (i) to advise the Central Government on policy matters relating to employment, social security, safety and welfare of workers;
  - (ii) to formulate schemes and review their implementation and recommend to the Central Government, the changes required from time to time in such schemes;
  - (iii) to create public awareness about schemes available for workers;
  - (iv) to collect statistics and information of workers engaged in the scheduled employments under the Central Government;
  - (v) to collect statistics and information of employers who seek to engage workers;
  - (vi) to guide workers in respect of social security, safety and welfare activities undertaken by the Central Government and non-governmental organisations or associations.
  - (vii) organizing the unorganised workers and guide them in forming the association/cooperatives/ self-

help groups etc.

(viii) to supervise the functioning of Workers Facilitations Centres

5. (1) The Board shall consist of the following (persons as members) namely:-
- (a) a Chairperson to be appointed by the Central Government;
  - (b) the Director General(Labour Welfare), ex-officio member secretary;
  - (c) five members not below the rank of Joint Secretary to the Government of India, to be appointed by rotation to represent the Central Government and Union territories in such manner, as may be prescribed;
  - (d) five members to represent the employers of unorganised sector workers of scheduled employments under the Central Government appointed in such manner, as may be prescribed;
  - (e) five members to represent the unorganised sector workers of scheduled employments under the Central Government appointed in such manner, as may be prescribed;
  - (f) five members to represent non-governmental organisations or associations which are concerned with or are engaged in the welfare activities of the unorganised sector workers of scheduled employments under the Central Government appointed in such manner, as may be prescribed; and
- (2) The members shall be appointed by the Central Government by a notification:  
Provided that an appointment under clause (c) shall be made on the recommendation of the Central Government/ the Union territory concerned, as the case may be.
- (3) The terms, conditions and qualifications of the Chairperson, and members shall be such as may be prescribed.
6. (1) Every member shall hold office for a term of five years from the date of notification under sub-section (2) of section 5 and shall be eligible for re-appointment:  
Provided that no person shall hold office as a member after he has attained the age of sixty-five years.
- (2) Notwithstanding anything contained in sub-section (1), a member may,-
- (a) relinquish his office by giving in writing under his hand to the Central Government a notice of not less than ninety days; or
  - (b) be removed from his office in accordance with the provisions of section 9:  
Provided that a member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of ninety days from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of term of office, whichever is the earliest.
- (3) A casual vacancy of a member in the Board shall be filled in accordance with the provisions of section 5 and the person so appointed shall hold office only for the remainder of the term for which the member in whose place he was appointed would have held that office.
- (4) A member shall receive such allowances as may be prescribed.
7. The Chairperson shall have powers of general superintendence over the affairs of the Board established under section (3) of the Act.
8. If a member-
- (a) relinquishes his office under clause (a) of sub-section (3) of section 6; or
  - (b) becomes subject to any of the disqualifications mentioned in section 9; or

- (c) is in the opinion of the Board absent, without sufficient excuse, from three consecutive meetings of the Board, his seat shall there upon become vacant.
9. (1) The Central Government may, remove from office, any member who-
- (a) is adjudged an insolvent; or
  - (b) is of unsound mind and is so declared by a competent court; or
  - (c) has become physically incapable of acting as a member; or
  - (d) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
  - (e) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member; or
  - (f) has so abused his position as to render his continuation in office detrimental to the public interest.
- (2) No member shall be removed under clauses (c) to (f) of sub-section (1) unless he has been given a reasonable opportunity of being heard in the matter.
- (3) A member who has been removed under this section shall not be eligible for re-appointment.
10. (1) The Board shall meet at least once in every six months and shall observe such procedure in regard to transaction of business at its meetings, including quorum at such meeting, as may be prescribed.
- (2) If, for any reason the Chairperson is unable to attend a meeting of the Board, any other member chosen by the members present from amongst themselves at the meeting shall preside, at such meeting.
- (3) All questions which come up before any meeting of the Board shall be decided by a majority of votes by the members present and voting, and in the event of an equality of votes, the person presiding at the meeting, may exercise a second or casting vote.
11. No act or proceeding of the Board shall be invalid merely by reason of-
- (a) any vacancy in, or any defect in the establishment of, the Board; or
  - (b) any defect in the appointment of a person as a member of the Board; or
  - (c) any irregularity in the procedure of the Board not affecting the merits of the case.
12. (1) The Central Government shall provide the Board with such officers and employees as it may deem fit.
- (2) The officers and employees of the Board shall discharge their functions under the general superintendence of the Chairperson.
- (3) The salaries and allowances and other conditions of service of the officers and other employees of the Board shall be such as may be prescribed.
13. All orders, decisions and other instruments issued or made by the Board shall be authenticated by the signature of the Member-Secretary or any other officer of the Board authorised in this behalf.
14. The Board shall furnish, from time to time, to the Central Government, such returns in such form, as may be prescribed.
15. The members, officers and other employees of the Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.
16. The Board shall, in each financial year, prepare in such form and at such time, as may be prescribed, its

budget for the next financial year and forward the same to the appropriate Government at least three months prior to the commencement of the next financial year.

17. (1) The Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.
  - (2) The accounts of the Board shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Board to the Comptroller and Auditor-General.
  - (3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the Board under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Board.
18. The Board shall prepare, in such form and at such time, for each financial year, as may be prescribed, its annual report, giving a full account of its activities during the previous financial year and forward a copy thereof to the Central Government.
19. The Central Government shall cause the annual report together with a memorandum of action taken on the recommendation contained therein, and the reasons for the non-acceptance, if any, of any of such recommendations and the audit report to be laid as soon as may be after the reports are received, before each House of Parliament.
20. (1) A State Government may, by notification, establish for the purposes of this Act, a Board to be called the ——(Name of the State) Unorganised Sector Workers' Welfare Board.
  - (2) The State Board shall consist of the Chairperson, Member Secretary and such other members to be appointed by the appropriate State Government not exceeding twenty representing State Government concerned, employers of the unorganised workers, the unorganised workers, non-governmental organizations or association which are concerned with or engaged in the welfare activities of the unorganised sector workers of scheduled employments and as may be specified, by notification.
  - (3) The terms conditions and qualifications of the Chairperson, Member Secretary and the members shall be such as may be specified, by notification.
21. The state Board shall perform the following functions, namely:-
  - (i) to advise the State Government on policy matters relating to employment, social security, health, safety and welfare of workers;
  - (ii) to formulate schemes and review their implementation and recommend to the State Government, the changes required from time to time in such schemes;
  - (iii) to create public awareness about schemes available for workers;
  - (iv) to collect statistics and information of workers engaged in the scheduled employments under the State Government;
  - (v) to collect statistics and information of employers who seek to engage workers;
  - (vi) to guide workers in respect of social security, health care, safety and welfare measures undertaken by the State Government and non-governmental organisations or associations.
22. (1) The appropriate Board shall establish Workers' Facilitation Centre at such places as considered

necessary for the purposes of this Act.

- (2) A Workers' Facilitation Centre shall consist of,-
    - (a) an officer not below the rank of Section Officer in the Government of India
    - (b) such other employees as may be considered necessary, to be appointed by the appropriate Government on such terms as may be prescribed.
  - (3) The Workers' Facilitation Centre shall be responsible for, -
    - (a) registration of workers;
    - (b) registration of the employers of the unorganised sector workers;
    - (c) guide the workers in resolution of disputes by conciliation;
    - (d) guide the workers about self-help groups;
    - (e) guide the workers about the schemes available for their benefits; and
    - (f) create awareness about contribution towards Fund.
  - (4) The Workers' Facilitation Centre shall maintain a register and other records, in such form as may be prescribed, of all workers who have made an application under section 22.
- 23.** (1) Every worker shall make an application, in such form and manner as may be prescribed, to the Workers' Facilitation Centre for registration under the provisions of this Act.
- (2) Every worker whose name has been entered in the register under the provisions of sub-section (1), shall be provided by the Workers' Facilitation Centre a social security number and identity card in such form and shall be entitled to such benefit, as may be prescribed.
- 24.** The appropriate Government shall, on the recommendations of the Board, by notification, formulate schemes for ensuring safety, social security and welfare of workers employed in scheduled employments or establishment and other schemes providing for-
- (a) the welfare of workers;
  - (b) regulation of the employment in unorganised sector;
  - (c) health and medical care, employment injury benefit, maternity benefit, group insurance, housing safety measures and provision and improvement of such other welfare measures;
  - (d) frame a pension scheme for the registered workers to be called Unorganised Sector Workers Pension Scheme for the purpose of providing for-
    - (i) superannuation pension, retiring pension or permanent total disablement pension to the registered workers; and
    - (ii) widow or widower/s pension, children pension or orphan pension payable to the beneficiaries of such workers.
  - (e) The manner in which and the persons by whom the cost of operating the schemes is to be defrayed; and
  - (f) administration of the schemes generally.

### **CHAPTER III**

#### **Unorganised Sector Workers' Welfare Fund**

- 25.** (1) With a view to providing safety, social security and welfare of workers, the appropriate Government shall constitute a Fund to be called the Unorganised Sector Workers' Welfare Fund and there shall be cred-

ited thereto-

- (a) all grants or loans made to the Board by the Central Government or any State Government
  - (b) all sums received by the Board from such other source as may be decided upon by the appropriate Government; and
  - (c) contributions by the registered employers/establishment and registered worker in such form and in such manner, as may be prescribed.
- (2) The Fund shall be applied for meeting-
- (a) the salaries, allowances and other remuneration of the members, officers and other employees of the Board;
  - (b) the expenses towards schemes formulated under section 23 of the Act for the registered workers, or such other just and reasonable cause, as may be prescribed; and
  - (c) any other expenses of the Board in connection with the discharge of its functions or for the purposes of this Act.
  - (d) There shall be established as soon as may be after framing the pension scheme, a Pension Fund out of the Unorganised Sector Workers Welfare Fund
  - (e) that all sums received as the contribution of the Central Government shall be credited to the Pension Fund.
- (3) No Board shall, in any financial year, incur expenses towards salaries, allowances and other remuneration to its members, officers and for meeting the other administrative expenses exceeding five percent of the contribution received during that financial year.
- 26.** Notwithstanding provisions contained under any other law, the Appropriate Government may merge any existing Welfare Board/Boards and Welfare fund/funds constituted under any other law into the Board and the Fund constituted under Sections (3) and (24) respectively of this Act.
- 27.** (1) The appropriate Government shall, after due appropriation made by Parliament, or the State legislature, as the case may be, by law in this behalf, pay to the Board by way of grants such sums of money as the appropriate Government may think fit for being utilised for the purposes of this Act.
- (2) The Board may spend such sums as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).
- 28.** The rate of the contribution shall be
- (a) the contribution of registered worker shall not exceed 5% of the monthly wages.
  - (b) the employers' contribution @ 5% of the monthly wages of the registered worker.
  - (c) in case where employers are not identifiable, the appropriate State Government shall make a matching contribution @ the contribution made by the registered worker not exceeding 5% of the monthly wages of the registered worker.
  - (d) the contribution of the Central Government shall be @ not exceeding 2.5% of the monthly wages of the registered workers in all cases.
- 29.** (1) When any registered worker has not paid his contribution under section 27 for a continuous period of not less than one year, he shall cease to be a beneficiary of the Fund.
- (2) Where the registered worker is in a position to prove to the satisfaction of the Workers' Facilitation Centre that the reasons for non-payment of contribution were beyond his normal control, he may be allowed to deposit the arrears of contribution and his registration may be restored on such deposit and on making an application in such form as may be prescribed.

30. Any arrear of amount due under the provisions of this Act from the employer, towards contribution to the Fund, shall be recovered as an arrear of land revenue.

#### **CHAPTER IV** **Conditions of Service of Workers**

31. No worker shall be required to work for more than eight hours in a day with half an hour break.
32. (1) Every worker shall be paid such wages within such time as may be prescribed but such wages shall in no case be less than the wages fixed under the Minimum Wages Act, 1948.
- (2) Where an unorganised worker is required by the employer to work for more than the hours of work fixed, he shall be entitled in respect of each hour of such over-time work to wages at the rate of twice his ordinary rate of wages for one hour
- (2a) For the purposes of this section, “ordinary rate of wages” means the basic wages plus such allowances as the unorganised worker is for the time being entitled to but does not include any bonus.
- (3) No employer shall pay to any worker, remuneration, whether payable in cash or kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex for performing same work or work of a similar nature.
33. Every employer of the worker shall be bound to pay to every worker a minimum bonus @ 8.33% of the salary or wage earned by the worker during the preceding year or Rs. 100 whichever is higher.
34. For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to a worker at the rate of fifteen days’ wages based on the rate of wages last drawn by the worker concerned after completion of the years of the service as prescribed.
35. A woman worker shall be permitted to be absent from work for a period of 30 days and during this period to ex-gratia payment of minimum wages payable to her in the month immediately preceding the date from which she absents herself on account of the delivery of the child.
36. If personal injury is caused to a worker by accident arising out of and in course of his employment, the employer shall be liable to pay compensation in accordance with the provisions of the Workmen’s Compensation Act, 1923.
- 36(a) If five or more unorganised workers employed, the employer shall provide and maintain a room of reasonable dimensions for the use of their children under the age of six years.
- 36(b) the worker shall be entitled to such basic necessities at work place like first-aid, drinking water, latrines, urinals and washing facilities and rest rooms.
- 36(c) The worker shall be entitled to free legal aid in the matters connected with the denial of benefits available under the Act.
37. Whoever contravenes the provisions of this Act or of any rules made thereunder shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two thousand rupees, or with both.

#### **CHAPTER V** **Miscellaneous**

38. (1) The Central Government may give directions to State Government or the Board established under sections (3) for carrying out the provisions of this Act.

- (2) The State Government may give directions to the State Board for carrying out the provisions of this Act.
- 39.** The appropriate Government may, if it considers necessary, amend, by notification, the Schedule by including therein or excluding therefrom any employment.
- 40.** (1) The appropriate Government may, after previous publication, by notification, make rules to carry out the provisions of this Act.
- (2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
- (a) the manner in which the members may be appointed under clauses (c), (d), (e) and (f) of sub-section (1) of section 5;
  - (b) the allowances and remunerations payable to the members under sub-section (5) of section 6;
  - (c) the procedure to be followed in the meetings of the Board under sub-section (1) of section 10;
  - (d) the allowances and remunerations payable to the officers and employees of the Board under sub-section (3) of section 12;
  - (e) form of accounts, records and annual statement of accounts to be maintained under sub-section (1) of section 17;
  - (h) the form and the time of preparation of annual report under section 18;
  - (i) the allowances and remuneration payable to the members of the Workers Facilitation Centres and other employees under section 21;
  - (j) the form of application for registration under sub-section (1) of section 22;
  - (k) the form of identity card, social security number and benefits for which a worker may be entitled under sub-section (2) of section 22.
  - (l) the form and the manner of contribution by the employer and registered worker under section 26;
- (3) Every rule made by the appropriate Government under sub-section (1) and every scheme notified under section 23, shall be laid, as soon as may be after it is made, before each House of Parliament, or the State legislature, as the case may be, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses, or the State legislature, as the case may be, agree in making any modification in the rule or scheme, or both Houses, or the State legislature, as the case may be, agree that the rule or scheme should not be made, the rule or scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or scheme, as the case may be.
- 41.** Nothing contained in this Act shall affect the operation of any other Act or Acts providing for the regulation of the conditions of service or work, welfare and social security measures which are more beneficial to the workers than those provided for them by or under this Act.

**SCHEDULE OF EMPLOYMENT**

<b>Sr.No.</b>	<b>Employment</b>
1.	agriculture and allied activities
2.	construction and other works under Rural Employment schemes
3.	beedi manufacture
4.	brick-kiln work
5.	carpet weaving
6.	cine service
7.	coir processing/manufacture
8.	domestic work
9.	electronics and electrical goods repairs
10.	fire work/crackers production
11.	fishing and allied activities
12.	garment manufacture
13.	gem cutting and gold smithy
14.	glassware manufacturing including bangles making
15.	hair dressing
16.	handloom weaving
17.	hawking and Vending
18.	headload work including coolies/porters
19.	laundry work
20.	leather works
21.	matches manufacture
22.	manufactured of locks/brass ware and other metal works
23.	petrol bunk/pump and allied services
24.	plantation (other than those covered under Plantations Labour Act, 1951 (Act No. 69 of 1951).
25.	plastic manufacture
26.	pottery
27.	powerloom weaving
28.	printing press work
29.	rag picking
30.	rickshaw Pulling
31.	salt pan work
32.	security services
33.	shops & establishments service
34.	stone and sand quarries and allied activities
35.	tailoring.
36.	timber Industry (furniture manufacturing, etc.)
37.	toddy tapping
38.	transport services (driving, conducting, cleaning, etc.)
39.	wayside Mechanics and workshop services
40.	weavers