

# **The Bill Proposed by the Second National Commission on Labour, 2002**

## **UNORGANISED SECTOR WORKERS (EMPLOYMENT AND WELFARE) BILL**

This is the first draft bill proposed by the Second National Commission on Labour in 2002. The commission projected it as the Umbrella legislation for the unorganised sector workers' employment and welfare and it is an enabling legislation which was intended to lead to the growth of the economy, improve the quality of employment, provide a decent life to the workers and integrate them with the growing opportunities in the country.

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### **UNORGANISED SECTOR WORKERS (EMPLOYMENT AND WELFARE) Bill**

The Umbrella legislation for the unorganised sector workers' employment and welfare should be seen as an enabling legislation that will lead to the growth of the economy, improve the quality of employment, provide a decent life to the workers and integrate them with the growing opportunities in the country.

The proposed Umbrella legislation has to be seen in a holistic way. The unorganised sector is in no way a homogeneous, independent and exclusive sector. It is dependent and linked to the organised sector and the rest of the economy.

The proposed Umbrella legislation is different from the earlier labour laws as they defined 'industries' and those working in the 'industries' were 'workers', hence covered by protective labour legislation. In the proposed Umbrella legislation, the basic approach of the legislation is recognition and protection for all types of workers regardless of industry, occupation, work status, and personal characteristics. While the unorganised sector workers are economically engaged all over the economy of India - in fields, in homes, on streets, underground, in small workshops, in forests, on coasts, on hills - everywhere.

Worker in the unorganised sector is an apprentice, casual or contract worker, home worker, service provider, or self employed person (who is economically dependent) engaged in any industry/agriculture/service directly or indirectly through a contractor, to do any manual, unskilled, skilled, technical, operational, teaching, sales promotion, clerical, supervisory, administrative or managerial work for hire or reward, whether the terms of employment are expressed or implied or none.

It needs to be recognised that the Umbrella legislation cannot be effective without integrating it into other existing laws, policies and schemes that basically control the economies of these sectors.

The essence of the proposed Umbrella legislation is removal of poverty of the working population of India through improving their productivity, quality of work, enhancing income earning abilities and increasing its bargaining power.

A better quality of employment should mainly aim at: (i) an income above poverty level, (ii) some insurance against sickness, old age and redundancy, (iii) and some prospects of career advancement.

The following are the obligations of the Government, employment providers and the society towards the country's working population: (i) minimum wage/income, (ii) social security like health and old age insurance (iii) welfare like childcare, (iv) prospects for skill/technical advancement.

Similarly, the working population has the following obligations towards the nation: (i) minimum age limit i.e. no child worker (ii) receptive to develop skill and better technology, (iii) belong to workers organisation.

### **Statement Of Objects And Reasons**

Unorganised sector is a vast and significant segment of Indian economy in terms of its economic worth through their economic contribution and the growing number of workers the sector engages. Workers in the unorganised sector constitute a vast majority of the workforce in India, who have remained outside the purview of the present labour laws. Also these laws have proved inadequate to ensure work security and social security to the workers in the unorganised sector or to safeguard their constitutional rights.

In order to ensure, under an Umbrella legislation, economic and social security to all unorganised sector workers and to mould them into a productive and secure workforce, an Act on Unorganised Sector Workers Employment and Welfare is proposed.

# **UNORGANISED SECTOR WORKERS (EMPLOYMENT AND WELFARE) Bill**

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## **UNORGANISED SECTOR WORKERS (EMPLOYMENT AND WELFARE) BILL**

An Act to consolidate and amend the laws relating to the regulation of employment and welfare of workers in the unorganised sector in India and to provide protection and social security to these workers.

## **PART I**

### **1. Short title, Extent and Commencement**

- 1) This Act will be called the “Unorganised Sector Workers (Employment and Welfare) Act”
- 2) It extends to the whole of India.
- 3) It shall come into force on such date as the Central Government may, by notification, appoint

### **2. Objectives of the Act**

The objectives of the Act are:

- 1) to obtain recognition of all workers in the unorganised sector,
- 2) to ensure a minimum level of economic security,
- 3) to ensure a minimum level of social security
- 4) to expedite removal of the poverty of these workers through their work, protecting their means of employment and income
- 5) to ensure future opportunities for children by progressive elimination of child labour,
- 6) to ensure equal opportunities of work, for men and women workers
- 7) to encourage formation of membership-based organisations of workers,
- 8) to ensure representation of the workers through their organisations in local and national economic decision making processes.

### **3. Definitions**

- 1) “Worker” refers to the unorganised sector worker registered with the Unorganised Sector Workers Central Board through Workers Facilitation Centres. Unorganised Sector Worker includes a person who is working in an unorganised sector work place or is self-employed including a home-based worker or a person who works under no clear employment contract. It also includes workers who are not covered by ESI Act and PF Act. In case of any doubt, the decision of the Central or State Board shall be final. Worker invariably means the adult worker (male and female) with a minimum age of 14 years and maximum age of 65 years.
- 2) “Local bodies” mean village Panchayats in rural areas and the municipal and similar bodies in urban areas, and includes other Panchayati Raj Institutions (PRIs) like Panchayat Samities, zila parishads etc. by whichever name these are known,
- 3) Workers Facilitation Centre means the lowest unit of the State Unorganised Sector Workers Board

set up under this Act for facilitation of registration of unorganised sector workers and for providing welfare measures and benefits to the unorganised sector workers.

## **PART II**

### **4. Constitution of Boards**

- 1) “Unorganised sector Workers’ Central Board” (in short referred as the “Board”) refers to the Central level apex board. It will be constituted by the Central Government for the effective implementation of the provisions of this Act and to co-ordinate functions under this Act at the national level.
- 2) “State Board” means the State level apex Board. These may be called “ (name of the State) .....Unorganised Sector Workers Board”. The concerned State Government will constitute the State Board. The State Board will coordinate functioning at the state or Union territory level of other employment- specific State Welfare Board.
- 3) “State Welfare Boards” refer to bodies working under the State Board. The State Boards in consultation with the State Government will constitute State Welfare Boards. These would be named as “ (state name) (name of the employment) .... Workers Welfare Board”. Each of them is meant for studying and devising schemes for workers in specific employments, occupation, etc. State Welfare boards shall assist the State Board to formulate schemes/Rules for the respective sector of workers in the State.
- 4) “District Board” means the district level body of the Board. The State Board in consultation with the concerned District Panchayaths will constitute District Boards. District Board will function as co-ordinated by the respective State Boards. It shall also discuss problems arising out of the functioning of WFCs and find solutions for the same.
- 5) “Worker Facilitation Centres” (WFCs) are the local centres of activities of the Board co-ordinated by the respective District Boards. The District Board in consultation with local panchayats will constitute them. WFCs will work in Panchayats and areas of workers’ concentration, including those in Autonomous Districts and Hill Councils.
- 6) The number of members in the Central Board, the State Board, State Welfare Board and the District Boards shall not exceed seventeen, fifteen, thirteen, eleven and nine (Including representatives of Trade Unions, women workers, NGOs, employment providers and Government/local bodies). WFCs can have seven members. A person of eminence/expert will be the Chairperson of the respective bodies. The term of office of the Chairman and members shall be for 3 years. These bodies shall be given executive support through the Government. The Union Secretary to the Ministry of Labour shall be the ex-officio Member Secretary of the Central Board, the State Labour Secretary of the State Board, the District collector of the District Board and the Secretary of the Village Panchayat in the village Panchayat or the urban area concerned.

### **5. Functioning of Board through Worker Facilitation Centres**

- 1) Workers will be enrolled/registered by the WFC according to the norms fixed by the Central Board at the all India level. Welfare benefits will be provided by the WFCs. The WFCs shall act as the closest linkage of the Board with the workers. It shall meet as frequently as may be prescribed. It shall also register complaints against non-compliance of the provisions of the Act.
- 2) The State Board will implement the Act with the help of the State Government, Local Bodies,

Welfare Departments, Trade Unions, Employer's Organisation, Non Governmental Organisations, Health Department, and other social and charitable Organisations.

- 3) The Local Government shall assist WFCs on the enforcement of the provisions of the Act according to the norms fixed by the Central Board or State board.
- 4) The State Board or its lower level bodies up to WFCs can either directly or through authorised persons inspect any work place to verify the implementation of the provisions of the Act. The labour machinery of the Central or State Government shall assist the State Board in this respect, and its officials may be declared as inspecting officers under this Act.

## **6. Functions of the Central Board**

- (a) It shall coordinate and monitor the functioning of the State Boards.
- (b) It shall arrange for registration of the unorganised workers through the workers facilitation centers/with the help of Panchayati Raj institutions and NGOs by allotting code numbers to state and allotting district wise and WFC- wise codes. It shall advise the District Boards for allotting registration numbers to unorganised workers. In the event of registration number of a worker changing on his migration from one place or district or state to another place or, district or state, a new number shall be allotted upon surrender of the previous one and after ensuring carry forward and transfer of all accumulated benefits under the previous registration. It may be achieved by networking using Information Technology.
- (c) It shall ensure collection of cess from the employers in employments covered under respective schemes framed for setting up of employment-based boards on the advice of State Boards.
- (d) It shall endeavour that the schemes framed by different States and the States Boards for setting up employment based Welfare Boards for similar employments are of similar nature.
- (e) It shall allocate the funds to State Boards funds out of the Central Board fund in proportion to the cess collected in respect of the concerned state and the grant received from the Central Government in accordance with accepted principle.
- (f) It shall ensure the administrative expenses of the Board are kept within prescribed limit of 7% of net annual receipts.
- (g) It shall arbitrate in disputes pertaining to use of common property resources and other disputes if the parties at dispute agree in this regard.

## **7. Functions of the State Board**

- (a) It shall consult the Central Board before framing a scheme for setting up an employment based Board in the state.
- (b) It shall aid the Central Board in the registration of unorganised workers and shall approach the union board for recovery of cess from employers through the central excise or any other levy imposed by the Central Government.
- (c) It shall ensure constitution of employment- based Boards wherever necessary by framing schemes under the law and establish funds of the employment based board.
- (d) It shall ensure constitution of District level Boards. The District Boards shall ensure constitution of the WFCs.
- (e) It shall ensure efficient functioning of employment based Boards as per schemes and ensure efficient functioning of District Boards and the Workers' facilitation Centres.

- (f) It shall ensure that the fund of the State Board and the funds of employment based boards are not misutilised and the annual expenses on administration are kept within the prescribed limit of 7% of net annual receipts.
- (g) The State Boards shall arbitrate in disputes between the employers and workers' organisations if agreed by the parties and conciliate and arbitrate in disputes pertaining to the use of common property resources by the workers in the event of the matter being brought before it by one or more District Boards.
- (h) It shall ensure payment of minimum wages to workers as prescribed under the law by the Central or the State Governments and also ensure timely payment of dues of such workers.
- (i) It shall allocate funds received from the Central Board or collected through Cess on land revenue or state excise or other State taxes amongst the employment based boards, and also among the District Boards.

### **8. Functions of Employment Based Boards.**

- (a) It shall ensure the functioning of the Welfare Board, and the implementation of its schemes through the District Boards.
- (b) It shall ensure that the corpus of the fund of the Welfare Board is utilised in the best interests of the concerned workers and the annual expenditure on the administration is kept within the prescribed limits of 7% of net annual receipts.
- (c) It shall ensure collection of contributions from employers and workers and crediting of the same in the fund of the Board.

### **9. Functions of the District Boards**

- (a) It shall ensure proper functioning of the schemes framed by the State Board/State Welfare Boards and;
- (b) It shall ensure implementation of this Act and other relevant labour legislations;
- (c) It shall promote dissemination of information about various labour legislations and Government schemes within the district;
- (d) It shall supervise the proper functioning of the WFCs;
- (e) It shall conciliate or arbitrate in disputes pertaining to common property resources in the event of such matter being brought before it by one or more WFCs.

### **10. Functions of the State Board in relation to the self- employed workers**

- 1) For workers who are not wage earners but are self employed, the State Board and its subordinate bodies will take measures suitable to the self employed, to ensure they earn fair incomes, receive benefits of social security, training, and other development services.
- 2) The State Board will facilitate a support system that provide access to financial services, market infrastructure, and infrastructure like power, roads, warehousing, workplace, information and skill development interlinked in a holistic way.

## **PART III**

### **11. Functions of WFC & Registration**

- (1) Every worker whether employed or self-employed in the area of the WFC should be provided with the opportunity to register himself with the Board through WFC.
- (2) Registration will be compulsory. But membership in schemes will be voluntary.
- (3) Registration will be a one-time affair and will not change even if the worker migrates permanently to the jurisdiction of another WFC or District or State. But Registration will be periodically renewed and updated.
- (4) Local public bodies, NICNET (National Informatics Centre) or Trade Unions or other recognised Non Governmental Organisations closer to the workers will be entrusted to assist WFC in the registration process, as per the guidelines and supervision of the Board.
- (5) WFC will work as the delivery point for providing the welfare measures to the workers who become members of the welfare funds.
- (6) Any dispute arising out of employment relating to wages and working conditions which is brought before the WFC will be resolved by the WFC through tripartite or multipartite conciliation.
- (7) In case of failure of conciliation, WFCs should undertake arbitration to facilitate speedy resolution of disputes. They may also take the help of Lok Adalats or Labour Courts.
- (8) The WFCs shall directly or through other means promote tripartite or multipartite bodies for conciliation and if disputes are not settled, undertake or promote arbitration to facilitate the speedy resolution of labour disputes. They may also take the help of Lok Adalats or Labour Courts.
- (9) Every employer employing 5 or more workers in his establishment shall ensure and every employer employing less than 5 workers shall help the workers employed by him to register themselves as per provisions of sub section (1) and in securing identity cards with permanent identification numbers as per provisions of Section 12.

### **12. Identity Card**

Each worker on registration will be given a registration number and a Permanent Identification number and a Permanent Identity card or work card on payment of a registration fee. It shall have the details of his person, name, address, work wages/income social security entitlements and his photograph. The permanent Identification number will be valid all over India.

### **13. Funds**

1. The State Board will decide the system of raising funds in consultation with its subordinate lower boards for different classes of workers.
2. The Central and State Board will raise funds by way of contribution, cess, assistance, grant from Government through budget allocation or donations from employment providers, private sector, workers and other legally permitted sources. The Central and Board and State Boards shall plan management of funds efficiently.
3. The Corpus Fund with the Central or State Boards shall be utilised for the discharge of the functions at various levels under the Act. The State Board will create general or specific contributory funds and will frame rules for delivery of the benefits of the Fund under its control.
4. The Board will facilitate a decentralised delivery of the benefits administered by it, using such places and means closest to the worker like Post Office, Banks etc.



5. Existing welfare funds and welfare fund Boards at the Central and State levels will be free to merge with the State employment based Boards.
6. The State Board shall take steps to co-ordinate or merge the existing welfare funds and the welfare Boards so that they must be well coordinated, cutting down delays and red tapism.
7. The State Board shall have powers to co-ordinate the welfare funds and welfare fund Boards that have not merged, for the betterment of the respective labour sector in the unorganised sector.

#### **14. Investment of funds**

Funds shall be best invested as decided by the respective Board only in safe securities of the Government.

#### **15. Ceiling on administrative costs**

The administrative cost of the Central, State and State Welfare Boards for their functioning will not exceed 7% of the net annual receipts of the respective Board.

### **Part IV**

#### **16. Workers Organisations**

1. Board will encourage the growth of (formation of) organisations in the unorganised sector. Workers will receive opportunities to represent their interests at all possible decision making committees and fora at local and national levels. For the purpose, formation of workers' own member-based organisations as Trade unions, cooperatives, associations, federation, or similar democratically run workers organisations will be encouraged by the Board.
2. The Board will encourage and facilitate the small self-employed workers to form their Associations or marketing co-operatives so as to build capacity to stand firm in the competitive market.
3. Workers organisations will strive to create an efficient and productive workforce, and generate or improve their productive capacity and bargaining capacity.
4. Representative of the workers' organisations will be made part of implementation, planning and conflict resolution processes.
5. Workers' organisations will ensure participation of their members in training and education on on-going basis.
6. Women workers shall be given due representation at all levels.

### **Part V**

#### **17. Minimum Wage**

1. The worker shall receive minimum economic returns or minimum wages for his work as prescribed by law.
2. The State Board shall have the right to recommend to the State Government concerned minimum wages of the occupations and avocations not covered under other laws, and where there is employer-employee relationship.
3. There shall be a minimum wage.
4. There shall be no gender discrimination in deciding wages or benefits.

5. The Central or State Boards and their appointed machinery shall perform the implementation of minimum wage.
6. Non-payment of minimum wage shall be punishable.

### **18. Allowances on Minimum Wage**

The Central & State Government shall order dearness allowance on minimum wage linked to All India Consumer Price Index Number at least once in every six months and where the dearness allowance is ordered on the above lines the minimum wages shall be revised once in five years and in other cases once in two years.

### **19. Social Security**

1. Workers will be covered by social protection measures as may be prescribed by the Central or State Government.
2. The worker shall be eligible to social security protection, namely, old age, invalidity, group insurance, sickness, medical and employment injury benefits
3. The woman worker shall be eligible for maternity benefits and childcare/daycare facility while on work.
4. The Central or the State Board through its machinery or schemes visualized for workers in all sectors will implement the social security services.
5. The State Board may frame schemes for grants to workers and loans for housing, drinking water, sanitation and other infrastructural facilities.
6. The Local authorities will create and invest their resources to develop better living conditions for the workers by providing amenities like housing, safe drinking water, sanitation etc.
7. The State Board shall encourage alternate insurance for employment injury to cover employer's liability under Workmen's Compensation Act.

### **20. Health and safety**

Work shall be permitted only in safe and healthy environment and working places. The State Government may frame appropriate rules in this regard.

### **21. Working Hours, Holidays etc**

1. Workers shall have sufficient rest, leisure, holidays, leave and optimal working hours.
2. Maximum working hours per day shall be nine hours a day and 48 hours a week.
3. Intervals for rest of at least half an hour shall be provided after five hours of work.
4. The total number of hours of work including rest interval, shall not exceed ten and half-hours in any day.
5. Worker shall be given one holiday in each week.
6. Workers shall be paid overtime wages in respect of extra hours of work put in by them on and above the hours of work mentioned at 2 above.

### **22. General provisions**

1. absence of any written employment contract.
2. The worker shall work diligently in the interest of the Nation.
3. Child under the age of 14 years shall not work, and shall go to school.
4. The worker shall be eligible to access the common natural resources to develop and increase his productivity through work.
5. The worker's traditional right related to work and space will be maintained.
6. Unorganised sector shall be protected from unfair labour practices.
7. No employer shall dispense with the services of an employee employed continuously for a period of not less than six months, except for a reasonable cause.
8. The existing laws wherever they apply shall continue to apply. Nothing in this Act shall affect any better right or privilege that a worker is entitled under any other law, contract, custom, usage, award, settlement or agreement.

## **Part VI**

### **23. Education, training and skill development**

1. It will be workers' duty and right to undergo skill development and on the job training, upgradation training, literacy and workers education sessions.
2. Such programmes will be organised by the State Board and its subordinate bodies, the local Government, employment providers and training institutes,
3. The State Board will devise schemes and programmes for the purpose, considering the pace of change in technology.
4. The State Board shall establish linkages with the education, training and research institutions right from local levels up to National level.

## **Part VII**

### **24. Registers and records**

Employer shall maintain-

1. A register of workers employed
2. Muster roll cum wage payment register and
3. Wage slips to be issued to the workers with the seal of the employer.

### **25. Grievance redressal**

- 1) The Board will encourage the parties to settle their issues and disputes relating to wages and conditions of work peacefully by bi- partite or multi-partite negotiations.
- 2) Any aggrieved person, Trade Union, Non Governmental Organisation, Local Body, WFCs, officers and bodies under the Board or officers of the Central or State Government labour department can initiate a dispute or a complaint against violation of any of the provisions of the Act.
- 3) The labour court or Lok Adalat having jurisdiction over that area shall be empowered to hear disputes and try offences under this Act. The State Government shall constitute the concerned

Appellate Authority for the above matters.

## **26. Framing of Rules and Schemes**

- 1) The State Government may frame rules for the effective implementation of the above objectives, generally for all workers in the unorganised sector or for a specific group or area.
- 2) The State Board shall have power to make rules and schemes for effective implementation of the objects and provisions of the Act, which shall be placed before the concerned State legislature.