

Indicative Bill of Second National Commission on Labour-Study Group on Umbrella Legislation for Workers in the Unorganised Sector

Protection of Rights of Workers in the Unorganised Sector Bill, 2001

The National Commission on Labour, (2000-02) constituted the Study Group (II) on Umbrella Legislation for workers in the Unorganised Sector, with the following members: Swami Agnivesh, Smt. Aruna Roy, Shri Baba Adhav, Shri O.P.Aghi, Shri Avdhash Kaushal, Smt. Nalini Nayak and Shri A. Kanaga Sabapathy, and Shri D Bandyopadhyay as chairman.

The report adopted by the Study Group in its meeting dated 28 August 2001 and submitted on 14 October 2001, is thus a collaborative product of the contribution by the members and data and references brought in by the Centre for Education and Communication, New Delhi, the Consultant to the Study Group.

In Part II of the report, the Study Group has attempted an indicative Bill, 'Protection of Rights of Workers in the Unorganised Sector Bill, 2001' incorporating the key elements from Part I. The Bill has the following components in respective Chapters: Chapter I Preliminary; Chapter II Rights of workers; Chapter III Constitution of the Unorganised Sector workers' Board; Chapter IV Functions of the Boards; Chapter V Relationships among Union board, State Boards, Subsidiary Boards, district boards and worker facilitation centres; Chapter VI Relationship with the existing welfare fund boards; Chapter VII Registration of Workers; Chapter VIII Funds; Chapter IX Wage and price fixation; Chapter X Special committees; Chapter XI Record Maintenance, Inspection and Penalties; Chapter XII Enforcement; Chapter XIII Dispute Settlement; Chapter XIV Miscellaneous and Chapter XV Schedules.

The study groups indicative Bill is the first attempt to formulate a comprehensive legislation for unorganised workers.

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on Labour-Study Group on Umbrella Legislation
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Protection of Rights of workers in the Unorganised Sector Bill, 2001

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An Act to provide for the protection of the rights of workers in the unorganised sector and for matters connected therewith or incidental thereto

Whereas it is expedient to make provision for the protection of the rights of the unorganised sector workers, and for related measures;

It is hereby enacted as follows:

Statement of Objects and Reasons for Enactment

Unorganised sector is a significant segment of Indian economy in terms of its economic worth and the number of workers it employs. Workers in the unorganised sectors constitute the majority of workforce in India. The applicability of labour legislation in India is confined to less than 10 per cent of the workforce. These laws have proved inadequate to provide social security or regular income to the workers in the unorganised sectors or to safeguard their constitutional rights. In order to ensure economic and social security to all unorganised sector workers, and to mould them into a productive and secure workforce, in specific terms, the objectives of the Act are:

1. To obtain recognition for all workers in the unorganised sector
2. To ensure them a minimum level of living, with minimum level of economic security
3. To assure them a minimum level of social security
4. To safeguard the basic constitutional rights of the workers
5. To secure removal of poverty of these workers
6. To promote future opportunities for children by progressive elimination of child labour
7. To guarantee to women workers equal opportunities of employment / avocation and equal remuneration for equal work and other protections available to them under any law, for the time being in force.
8. To encourage formation of membership based organisations of workers, and
9. To ensure representation of the workers through their organisations in local and national economic decisions making.

Chapter I PRELIMINARY

1. Title, extent, commencement and application

- (1) This Act may be called the Protection of Rights of Workers in the Unorganised Sector Act, 2001.
- (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.
- (4) It applies to all the workers as defined in section 2(2)(b) of the Act and all occupations in Schedule II.

2. Definitions

- (1) Wherever definite employer-employee relationship exists, the Central and State laws shall apply *muttatis muttandis*.
- (2) In this Act, unless the context otherwise requires, -

- (a) “State” means States or Union Territories (UTs) in India.
 - (b) “Worker” refers to the unorganised sector worker registered with the Unorganised Sector Workers Board. Worker invariably means the adult worker (male and female) with a minimum age of 18 years.
 - (c) “Board” refers to Unorganised Sector Workers’ Board. Board can mean all its constituents including Worker Facilitation Centres. That means, Board refers to the total structure or its individual constituents.
 - (d) “Subsidiary Boards” refer to the bodies working under the motherboard each of which is meant for studying and devising schemes for each class of workers. Subsidiary Boards work under the State Boards.
 - (e) “Union Board” refers to the Central level Motherboard of the Board.
 - (f) “State Board” means the State level Motherboard of the Board.
 - (g) “District Board” means the district level body of the Board.
 - (h) “Worker Facilitation Centre” or the “WFC” means the Board office, opened at the Panchayats or at centres of workers’ concentration under the District Board.
 - (i) “Fund” means the fund of the Union Board, or the fund of a State Board.
 - (j) “Schemes” means the schemes run by the Board.
 - (k) “Government” means the governments at Central or State or Union Territory level.
 - (l) “Local bodies” means Panchayats in rural areas and the municipal and similar bodies in urban areas, or any references such as Panchayati Raj Institutions (PRIs) and local self-governments.
 - (m) “Member” means member of the Board.
- (3) “Chairperson” means chairperson of the Board. Any reference in this Act to a law, which is not in force in any State or area shall, in relation to that State or area, be construed as a reference to the corresponding law, if any, in force in that State or area.

Chapter II RIGHTS OF WORKERS

3. Right to adult employment

- (1) Workers shall have the right to work/employment.
- (2) As per Article 41 of the Constitution of India, workers shall be eligible to compensatory provisions as envisaged in right to social security. Workers shall have the right to public assistance in case of unemployment, underemployment, loss of employment, sickness, disablement and other cases of undeserved wants.
- (3) Right to employment shall mean right to adult employment.
- (4) Right against child labour shall mean compulsory and quality elementary education for children as per Article 23 of the Constitution of India.
- (5) Workers shall have the freedom of work. Forced labour is against Article 23 of the Constitution of India and is punishable.

4. Right to natural and common resource

- (1) Board shall devise all possible steps to help the workers depending on open and common resources to see that their productive activity is not hindered / restrained, and sustainability is maintained with environmental protections.
- (2) The Board shall take steps to protect the historical and traditional rights of the Forest workers and forest produces gatherers, Fisher-people, Potters, sand miners, quarry workers and other miners and such other groups of workers having traditional access to common property resources for their living and avocation.
- (3) The Board shall take steps to protect the right of the respective workers to share the public space to engage in economic activities.

5. Right to organise and bargain collectively

- (1) The Board, at all levels, shall encourage formation of associations, co-operatives and / or unions of workers, by their free will.
- (2) Union representatives shall be made part of the tripartite/multipartite committees.
- (3) The Board shall encourage settlement of issues relating to wages, conditions of employment and other related issues by bi-partite or multi-partite negotiations

6. Right to minimum wage and earning

- (1) The State Boards shall have advisory role in deciding Minimum Wages of all sectors registered in the Act; Minimum Wages in those occupations covered under the existing Minimum Wages Fixation machinery shall be fixed in consultation with the Board; the Board shall have right to fix Minimum Wages for all residual occupations and avocations.
- (2) The State Boards shall ensure fixation of minimum prices for produces of primary and artisanal sectors, every two years, with the help of the Boards' wage and price fixation machinery (read with sections 45, 46 and 47).
- (3) The Board shall follow the five norms set in the Resolution of the 15th Session of Indian Labour Conference (1957) and the sixth norm set by the Supreme Court verdict in *Workmen of Reptakos Brett & Co. Ltd. Vs. Management* (1991 SOL Case No. 018 Dated 31/10/1991) in deciding the minimum wages (Schedule I).
- (4) The minimum wage may constitute:
 - (a) Basic rate of wage,
 - (b) Cost of living allowance, variable with changes in prices and
 - (c) Cash value of concessions.
- (5) The Board in consultation with the Wage Fixation Machinery shall see to it that the widening gulf between wages of various occupations is brought down gradually.
- (6) The criterion for the industry and agriculture shall be the same while fixing minimum wages and minimum prices.
- (7) All occupations, without any exception, shall be within the purview of the Board for minimum wage fixation.
- (8) On an average, minimum wages shall be equivalent to the initial salary drawn by the Class IV (Group D category) employee of the central government.

- (9) Minimum wages shall not be “nominal wages” defined by Section 2 (i) of the Bonded Labour System (Abolition) Act 1976. [Nominal wage in relation to any labour means a wage that is less than the minimum wages or the locally existing normal wages, viz. less than –
- a) the minimum wages fixed by the Government, in relation to the same or similar labour, under any law for the time being in force; and
 - b) where no such minimum wage has been fixed in relation to any form of labour, the wages that are normally paid, for the same or similar labour to the labourers working in the same locality.

Payment of Nominal wage shall be a punishable offence.

(10) Perpetrators of *begar* shall be punished.

(11) Payment of any remuneration or honorarium, in lieu of work, less than the prescribed rate of minimum wages for that employment shall be punishable.

7. Right to equal remuneration and consideration

- (1) There shall be no gender discrimination in deciding wages, benefits and other rights.
- (2) There shall be no gender discrimination in recruitment and continuance of employments.
- (3) If concrete evidence to instances mentioned in 7(1) and 7(2) comes to the notice of the Board, the employers committing such offences can be warned and then imposed penalty by the concerned Board.

8. Right to special allowance for special work

- (1) There shall be special payments for overtime work, night work, underground work, high altitude work and works of specified risks.
- (2) Workers shall have the right to bargain for festival allowances, bonuses and such other benefits in different areas and avocations / employment, etc.

9. Right to social security

- (1) The social security measures for the unorganised workers shall include:
 - (a) Healthcare
 - (b) Maternity and early childcare
 - (c) Provident Fund benefits
 - (d) Family benefits
 - (e) Amenity benefits including housing, drinking water, sanitation, etc.
 - (f) Compensation or Employment injury benefit (including invalidity benefit and survivor's or dependant's benefit)
 - (g) Retirement and post-retirement benefits (gratuity and family pension)
 - (h) Cover in case of loss of earning.
 - (i) There shall be schemes, either independently or in association with governments, welfare bodies, NGOs and social organisations, for skill upgradation and the education of workers, and elimination of child labour, and forced labour.
- (2) Healthcare:
 - (a) Healthcare shall include (a) medical care for the worker and the dependants and (b) sickness

- benefits such as (i) leave and (ii) allowance.
- (b) The Board shall take steps to provide needed medical expense to the worker in case of health problems that need specialised treatment.
 - (c) The Board shall devise a scheme to provide for healthcare [9(2)(a) & 9(2)(b)] for the workers who are not covered by the ESI scheme.
 - (d) The Board shall take steps to extend ESI coverage or equivalent benefits to all workers, if the provision as per 9(2)(c) is not opted.
 - (e) For occupations declared as hazardous, there shall be special health schemes that include (a) extra benefits and (b) health insurance.
- (3) Maternity and early childcare:
- (a) Women workers shall be eligible for benefits of maternity and early childcare.
 - (b) The benefits shall include (i) maternity leave suggested by competent medical practitioner, (ii) salary for the period in case the worker is employed, or a similar amount from the insurance coverage for provisions under section 9(9) or from the Board itself, if self employed.
 - (c) Other health problems arising out of maternity and early childcare shall be considered for healthcare coverage, and the patient/s (both parents and child/ren) are eligible for benefits covered under section 9(2).
 - (d) No barrier of child-norms shall be imposed on the eligibility of maternity and early childcare benefits.
 - (e) The Board shall take steps to provide for crèches in alliance with employers' organisations, trade unions, NGOs, health departments and other social and charity organisations.
 - (f) Children of 0-6 years of age belonging to workers are eligible for admission to crèches. The Board shall compulsorily encourage taking steps to protect their rights.
- (4) Provident Fund benefits:
- (a) The Board shall take steps to universalise (i) PPF for the self-employed and (ii) Employees Provident Fund for the employed.
 - (b) State Board in consultation with the Subsidiary Boards shall decide the nature and details of the contributory scheme of PF for different classes of workers.
- (5) Family benefits:
- (a) The children and dependants of the worker's family shall be given educational assistance through the Scheme/s enunciated by the Board for the purpose.
 - (b) Promotional measures like 'food for education' schemes shall be introduced for the worker's family with school going children in elementary classes.
- (6) Amenity benefits:
- (a) Amenity benefits shall include housing, drinking water and sanitation.
 - (b) Workers who do not have residential facility shall be eligible for housing schemes evolved by the Board, either on their own or in conjunction with similar central or the state government schemes.
 - (c) The Board shall evolve housing schemes in consultation with the Subsidiary Boards.
 - (d) The Board shall evolve similar schemes for drinking water and sanitation, and the workers who do not have such amenities are eligible for these, either on their own or in conjunction with other means available in those areas.

- (7) Compensation or Employment injury benefit:
 - (a) The Board shall evolve its own scheme and shall facilitate benefits for workers under the provisions of the Workers Compensation Act for employment injury benefits including invalidity benefit and survivor's or dependant's benefit.
 - (b) Worker, if willing, is free to pursue compensation through the existing legislation such as Workmen's Compensation Act 1923. The Board should evolve schemes to cover those who are not covered by the Workmen Compensation Act
- (8) Retirement and post-retirement benefits:
 - (a) The benefits include
 - (i) gratuity and
 - (ii) family pension.
 - (b) The Board shall provide for the above schemes
 - (c) The registered workers who are not getting the benefits, mentioned in section 8(a), from their managements shall be eligible for such schemes that the Board shall devise accordingly.
- (9) Cover in case of loss of earning:
 - (a) The Board shall devise such an insurance scheme that gives some cover in case of underemployment, unemployment and loss of job to the eligible workers.
 - (b) The Board shall have powers to decide the nature of scheme and its contributory structure.
- (10) Other social service schemes:

Besides the social security schemes, there shall be other schemes, either independent or in association with governments, welfare bodies, NGOs and social organisations, for (i) the conscientisation of workers and employers, and (ii) elimination of (a) child labour, (b) forced labour, and (c) unfair labour relations and practices and encourage social cultural and recreational advancement of workers, family members and the community.
- (11) Off-Season Allowance:

As most of the classes of workers in the unorganised sector are affected by job-loss during the rainy season or during the winter in hills or due to the inherent nature of work, etc, the Board shall devise a scheme to provide Off- Season Allowance: to the eligible classes of workers.
- (12) Disaster Allowance / Compensation:

In case of death, permanent or temporary disablement, loss of employment arising out of any natural disaster, the Board shall provide for allowance / compensation as the case may be.

10. Right to training and education

- (a) Workers have the right to skill upgradation through necessary training and education.
- (b) Considering the pace of change in technology, the Board shall devise scheme/s and programmes to provide for the necessary training.

Chapter III CONSTITUTION OF the Unorganised Sector workers' Board

11. Composition and Constitution of the Boards

- (1) For the effective protection of rights of the workers and implementation of provisions in this

regard, the Central Government shall constitute a body to be known as the *Unorganised Sector Workers' Board*.

- (2) The Board is a statutory executive authority. The Board shall derive its powers from the Act.
- (3) Unorganised Sector Workers' Board is comprehensive three-tier structure consisting of Union, State and District level Boards. The Board consists of various constituent elements, and they are:
 - (a) Union Board, the Central level Board, which is the co-ordinating national level Board;
 - (b) State Boards, the bodies of the Unorganised Sector Workers' Board at the State or Union Territory level;
 - (c) Subsidiary Boards that work at the State level;
 - (d) District Boards, the district units of the Board, co-ordinated by the State Boards of the respective States to which the districts belong; and
 - (e) Worker Facilitation Centres (WFCs), which are the Board offices of District Boards, working in Panchayats and areas of worker concentration.
- (4) The Union Government shall constitute the Union Board.
- (5) The respective State Governments shall constitute the State Boards.
- (6) The concerned administrative authorities shall constitute (a) the State Boards in UTs and (b) the District Boards or State Boards, as relevant as may be, in other areas.
- (7) The Co-ordinating Board at the State levels shall constitute the subsidiary boards at their levels. That is, the State Boards shall constitute the Subsidiary Boards.
- (8) District Panchayat in consultation with the District Administration shall constitute the District Board.
- (9) The District Board shall constitute the Worker Facilitation Centres.
- (10) The constituting authorities shall designate the Chairperson and Member-Secretary, while constituting the Boards and WFCs.
- (11) One-third of membership of all the Boards/WFCs shall be reserved for women.

12. Membership of the Union Board

- (1) The Union Board shall be a multipartite body.
- (2) The Chairperson shall be a person of eminence.
- (3) There should be a Member Secretary, who is not below the rank of Director.
- (4) There shall be three government representatives, not below the rank of Deputy Secretary, one each from Ministries of Labour, Finance, and Social Justice and Empowerment.
- (5) There shall be two members in total, one each from two State Boards.
- (6) There shall be two representatives from Central Trade Unions.
- (7) There shall be two representatives from the unorganised sector Trade Unions and/or association of workers.
- (8) There shall be four representatives from employers and their associations.
- (9) There shall be two representatives from NGOs and other social organisations, working in the related fields.
- (10) The representatives from Trade Unions and NGOs shall be, as far as possible, from different

States. Their terms of offices should rotate to ensure representation of different Trade Unions and NGOs.

- (11) There shall be four persons from among the experts on labour, health, insurance, occupational hazards, problems of women, human rights and conservation of natural resources, and also other technical experts.
- (12) The total membership shall not exceed 21.
- (13) Appropriate representation should be there from women, rural workers and other deprived sections.

13. Membership of State Boards

- (1) The State Board shall be a multipartite body.
- (2) The Chairperson shall be a person of eminence.
- (3) There should be a Member Secretary, who is not below the rank of Director.
- (4) There shall be three government representatives, one each from Departments of Labour, Finance, and Social Justice and Empowerment (or Welfare).
- (5) There shall be two members in total, one each from two District Boards, if there is more than one district in the State.
- (6) There shall be two District Panchayat Presidents, if there is more than one district in the State.
- (7) There shall be two representatives from central Trade Unions.
- (8) There shall be two representatives from the unorganised sector Trade Unions and/or association of workers.
- (9) There shall be four representatives from employers and their associations.
- (10) There shall be two representatives from NGOs and other social organisations, working in the related fields.
- (11) When representatives from Trade Unions and NGOs are taken, they shall be as far as possible from different districts, if there is more than one district in the State. Their terms of offices should rotate to ensure representation of different Trade Unions and NGOs.
- (12) There shall be four persons from among the experts on labour, health, insurance, occupational hazards, problems of women, human rights and conservation of natural resources, and other technical experts.
- (13) The total membership shall not exceed 23.
- (14) Union Board members from the State shall be ex-officio members of the State Board, notwithstanding the barrier on total membership of the Board.
- (15) Appropriate representation should be there from women, rural workers and other deprived sections

14. Membership of Subsidiary Boards

- (1) Each class of occupation (schedule II) shall have a Subsidiary Board working under the State Board.
- (2) Each Subsidiary Board shall consist of seven to nine members.
- (3) From among the members, a person of eminence shall regularly chair the Subsidiary Board.
- (4) From among the members, one shall regularly do the functions of a Member-Secretary.

- (5) Of the members, at least one member shall be from the State Board.
- (6) One shall be from the side of the Government, but shall be an expert on the class of workers concerned.
- (7) One shall be from the District Board in the State, but shall be an expert on the class of workers concerned.
- (8) One shall be from the unions or associations representing the workers, but shall be an expert on the class of workers concerned.
- (9) One shall be from the side of employers or their association, but shall be an expert on the class of workers concerned.
- (10) One shall be from the side of self-employed or their association if the class is mostly represented by the self-employed, but shall be an expert on the class of workers concerned.
- (11) One shall be representing NGOs or social organisations working in the related field, but shall be an expert on the class of workers concerned.
- (12) Appropriate representation should be there from women, rural workers and other deprived sections.

15. Membership of District Boards

- (1) The District Board shall be a multipartite body.
- (2) One eminent member shall be the Chairperson of the Board.
- (3) One member representing the District Administration shall work as Member-Secretary of the Board.
- (4) There shall be two government representatives from the District Administration.
- (5) There shall be two members in total, one each from two middle level Panchayats (Block Panchayats).
- (6) There shall be two District Panchayat members, as far as possible from different development blocks.
- (7) If the district has worker facilitation centre/s, one representative from each of the centre shall be member of the District Board.
- (8) There shall be two representatives from central Trade Unions, working at district level.
- (9) There shall be two representatives from the unorganised sector Trade Unions and/or association of workers, working at district level.
- (10) There shall be four representatives from employers and their associations, working at district level.
- (11) There shall be two representatives from NGOs and other social organisations in the district, working in the related fields.
- (12) When representatives from Trade Unions and NGOs are taken, they shall be as far as possible from different development blocks. Their terms of offices should rotate to ensure representation of different Trade Unions and NGOs.
- (13) There shall be two eminent persons from among the experts on labour, health, insurance, occupational hazards, problems of women, human rights and conservation of natural resources, and other technical experts.
- (14) The total membership shall not exceed 25.

- (15) State Board members from the district shall be ex-officio members of the District Board, notwithstanding the barrier on total membership of the Board.
- (16) Appropriate representation should be there from women, rural workers and other deprived sections.

16. Worker Facilitation Centre

- (1) Worker Facilitation Centre (WFC) shall be a branch office of the District Board at all Panchayats in the District and at areas of worker concentration.
- (2) These shall be functional centres where workers approach for registration and benefits
- (3) The total membership of the WFC shall not exceed 19.
- (4) One member from the District Board shall be members of the worker facilitation centre.
- (5) Two representatives of the unorganised sector Trade Unions or the association of workers working locally shall be members of the WFC.
- (6) Two representatives of the central Trade Unions working locally shall be members of the WFC.
- (7) Four representatives of the local association of employers shall be members of the WFC.
- (8) Two representatives of the local NGOs or social organisations working in the related field shall be members of the WFC.
- (9) Two elected representatives each from the District Panchayat/s linked to the jurisdiction of the WFC shall be members of it.
- (10) There shall be two government representatives from the District Administration.
- (11) One member of eminence shall regularly chair the WFC.
- (12) One member representing the District Administration shall work as the Member-Secretary of the WFC.
- (13) State Board members and District Board members from the jurisdiction of the WFC shall be ex-officio members of it, notwithstanding the barrier on total membership of the Board.
- (14) Appropriate representation should be there from women, rural workers and other deprived sections.

17. Terms of Office, Quorum and Expense

- (1) The term of office of all the Boards and their offices (WFCs) shall be for five years.
- (2) One-third attendance shall be the quorum for all the meetings of the Board.
- (3) From the side of the Board, none of its members including Chairperson and Member-Secretary shall be paid salary or honorarium.
- (4) The body of the Board, as the case may be, shall have the power to decide the details of its day-to-day expense including sitting fees.

18. Removal of Members and Filling of Vacancies

- (1) Any member of the Board can be removed by the constituting authority on the ground of
 - a. proved misbehaviour,
 - b. incapacity, unsound mind and stands so declared by a competent court,
 - c. and having convicted and sentenced to imprisonment for an offence which in the opinion of

the constituting authority involves moral turpitude.

- (2) No act or proceedings of the Boards (including WFC) shall be deemed invalid based on vacancies in the Board or on the basis of some perceived inconsistencies in the present Act.
- (3) On vacancies arising out of removal, resignation, long leave and demise of the members of any Board, the Board may fill the vacancies by co-opting a person from the same category.
- (4) Upon expiry of the term, the Board should continue to hold office, till the Board is re-constituted by the competent authority.

Chapter IV FUNCTIONS OF THE BOARDS

19. Functions of the Union Board

- (1) The Union Board shall co-ordinate the functioning of the State Boards. While co-ordinating,
 - (a) the Union Board shall work as an integral part of a federal structure wherein the State Boards can take initiative in fulfilling the objects of the Act;
 - (b) the functioning of the Board should reach to all districts in India including the autonomous districts and areas with hill councils;
- (2) The Union Board shall register workers with the help of - Nicnet, Panchyat Raj Institutions, Municipalities, other local bodies, NGOs, trade unions or any other agency.
- (3) The Union Board shall constitute a working committee to relate with ministries, departments and local bodies, for matters connected with other than labour, as for instance, matters related to common property resources, pricing of agricultural and other commodities, public spaces with Municipal and Traffic authorities.
- (4) The Union Board shall have powers of conciliation and arbitration if the parties agree to that affect.
- (5) The Union Board shall constitute a Fund for the execution of its functions.

20. Functions of the State Boards

- (1) State Boards shall aid the Union Board in the process of the registration of workers in the respective States.
- (2) State Board shall constitute District Boards.
- (3) The State Board shall formulate specific Schemes for the classes of workers with the aid of the subsidiary boards.
- (4) The State Board shall find ways to utilise the existing wage fixation machinery, and also develop its own machinery in active consultation with the subsidiary boards.
- (5) The State Board shall guide the activities of subsidiary boards in doing classification studies, and in deciding new subsidiary boards, or discarding the existing ones, or reorganising them.
- (6) The State Board, in association with the subsidiary boards, shall formulate schemes, and shall take initiative in formulating and introducing new schemes.
- (7) As the Union Board does, the State Board shall also constitute a working committee to relate with ministries, departments and local bodies, for matters connected with other than labour, as for instance, matters related to common property resources, pricing of agricultural and other com-

modities, public space with Municipal and Traffic authorities.

- (8) The State Boards, with the help of their Subsidiary Boards, shall run the Schemes of the Board.
- (9) The State Board shall find ways to utilise the existing wage fixation machinery, and also develop its own machinery in active consultation with the subsidiary boards.
- (10) State Boards shall have the powers of conciliation and arbitration, if the parties involved agree to that effect.
- (11) For running the schemes and the related expenses, the State Board shall constitute a Fund.

21. Functions of the Subsidiary Boards

- (1) Each Subsidiary Board, in close association with the State Board, shall:
 - (a) study problems of the class of workers for which the Board is constituted;
 - (b) devise schemes on the basis of the study;
 - (c) aid the State Board and its machinery to fix minimum wages, and suggest support prices for commodities; and
 - (d) advise the State Board in deciding about introducing, discontinuing and overhauling schemes.
- (2) Subsidiary Boards in a collective manner, or as part of special committees under the State Board, shall conduct classification studies on the unorganised sector workers, at least once in five years.
- (3) A Subsidiary Board, with the aid of State Boards, can find out the areas of concentration of the workers with whom the Board is specifically concerned with, study and report to the State Board or the District Boards whether that area needs any WFC.

22. Functions of the District Boards

- (1) District Board shall aid the Union Board in the process of the registration of workers in the respective District.
- (2) District Board shall take initiative in opening WFCs in all Panchayats and centres of worker concentration in the District.
- (3) District Board shall guide and co-ordinate its WFCs.
- (4) District Boards and its authorised members shall have the powers of conciliation and arbitration, if the parties involved agree to that effect.
- (5) Though State Board and Subsidiary Boards together run the schemes, District Boards and WFCs are the closest linkages of the Board to the workers. And as such, the District Boards shall be responsible for reaching the benefits to the eligible workers at their doorstep. Applications and their basic processing shall take place at District/WFC level.

23. Functions of Worker Facilitation Centres

- (1) WFCs shall aid the Union Board in the process of the registration of workers in their respective jurisdiction.
- (2) WFCs and its authorised members shall have the powers of conciliation and arbitration, if the parties involved agree to that effect.
- (3) Like the District Boards, WFCs are the closest linkages of the Board to the workers. Therefore, the WFCs shall be responsible in their jurisdiction for reaching the benefits to the eligible workers at their doorstep. Applications and their basic processing shall take place at District/WFC level.

These WFCs should act proactively to reach out to the unorganised workers, their benefits under any scheme formulated by the State Board and to protect their rights and interests, particularly, where workers are non-organised.

Chapter V

Relationships among Union board, State Boards, Subsidiary Boards, district boards and worker facilitation centres

24. Integral parts of the same structure

- (1) Union Board, State Boards, Subsidiary Boards, District Boards and WFCs are elements of the same structure, the Unorganised Sector Workers' Board.
- (2) All the elements, mentioned in section 24(1), are independent federal bodies of the same Board for which responsibility is assigned through the present Act.

25. Relationship between Union Board and State Boards

- (1) Both Union Board and State Boards shall have more or less the same structure as well as the same pattern of functioning, except that the former shall have no Subsidiary Boards.
- (2) The Union Board shall not have any hierarchical power over the State Boards. It would only aid and advice the State Boards for better discharge of their functions.
- (3) The Union Board shall share its revenue with the State Boards.

26. Relationship between the State Board and Subsidiary Boards

- (1) State Board shall decide the number of Subsidiary Boards to start with in the respective State.
- (2) Further, once the Subsidiary Boards come into existence, the State Board shall take their assistance and advice on the question of deciding the number of Subsidiary Boards in the immediate future.
- (3) Subsidiary Boards shall work in close association with and under the guidance of the State Board.

27. Relationship between Subsidiary Boards

- 1) Relationship exists between subsidiary boards through the State Board.
- (2) Active relationship arises as when studies and necessary deliberation come up.

28. Relationship between State Board and District Boards

- (1) State Board constitutes the District Boards.
- (2) The State Board shall fund the expenditure of District Boards.
- (3) The expenditure of District Board shall also include that of its WFCs.

29. Relationship of Worker Facilitation Centres with District Board

- (1) The District Board constitutes the WFCs.
- (2) The District Board shall fund the expenditure of the WFCs.

Chapter VI

Relationship with the existing welfare fund boards

30. Option of merger

- (1) The existing welfare funds and welfare fund boards at the central and State levels, if willing, are free to merge with the Board.
- (2) The Board shall have powers to work out modalities at one-to-one meeting with the willing Boards.
- (3) Union Board shall have powers to take steps regarding merger options in the case of a welfare fund board working at central level.
- (4) State Board shall have powers to take steps regarding merger options in the case of a welfare fund board working at State level.

31. Option of co-operation

- (1) The existing welfare funds and welfare fund boards at the central and State levels, if willing, are free to co-operate with the Board.
- (2) The Board shall have powers to work out modalities at one-to-one meeting with the willing Boards.
- (3) Union Board shall have powers to take steps regarding modalities of co-operation in the case of a welfare fund board working at central level.
- (4) State Board shall have powers to take steps regarding modalities of co-operation in the case of a welfare fund board working at State level.

Chapter VII

Registration of Workers

32. Registration at the place of preference

- (1) There shall be provision for all the unorganised sector workers to register themselves at the place of their permanent residence or the place of origin. As there can be dispute on this, worker should be free to choose his/her preference. A permanent registration number should be given to each worker, which will be valid all over India.

33. One-time registration

- (1) Registration should be a simple procedure by paying a nominal fee as decided by the Union Board.
- (2) Registration shall be a one-time affair with a provision for renewal, having the same registration number, in the event of changes in place of work, employment, family details, etc.

34. Renewal

- (1) Provision shall be there for the worker to make renewals in the registration details, either at the original place of registration or at the new place of work, in the event of changes in place of work, employment, family details, etc.
- (2) Photo identity cards shall be changed every ten years by charging a fee. This process shall be simple and shall not have any other implication on the registration.

35. Registration papers

- (1) Registration papers should include photo identity card with registration number, passbook with personal and family details, and sufficient space for recording job changes and related information. A format is given in Schedule I.

36. Duplicate registration papers in case of loss

- (1) In the case of loss of registration papers, there shall be provision to provide duplicate ones.

37. Involvement of local bodies

- (1) The agency carrying out the Registration should be, as far as possible, the lowest rung of the local authority. For instance, village panchayats or local bodies can be the ideal local self-government in the rural areas where registration can be done. Municipal bodies can be their counterparts in the urban areas. In general, local self-government means the village panchayats (block and district levels, if needed) as per part IX of the Constitution of India and municipal bodies (nagar panchayat or town committee, municipal council, municipal corporation and metropolitan area) as per part IX-A of the Constitution.

38. Registration throughout the year, and throughout the nation

- (1) The
- (1) Registration should be possible throughout the year.
- (2) Registration shall be throughout the nation. Appropriate local self-governments including all Cantonment Board areas, Scheduled Areas [fifth schedule as per Article 244 (1)], Tribal Areas [sixth schedule as per Articles 244 (2) and 275 (1)] and Darjeeling Gorkha Hill Council shall also be involved as relevant counterparts of the local authorities in panchayat and municipal bodies.

39. Facilitation of registration -

- (1) At the local level, unions, NGOs, concerned individuals, etc. should be allowed to facilitate the registration of workers.

40. Digital Registration Number

- (1) Registered worker shall be provided with a permanent digital Registration Number through the technical services of the Nicnet (of National Informatics Centre) and or any appropriate organisation. These facilities are to be extended to the village level. The content of the register number shall be constructed as Census village code/ NIC code for economic activities and year and month of registration/ serial number.

Chapter VIII Funds

41. Constitution of Funds

- (1) Union Board and State Boards shall constitute their respective Funds.
- (2) The Union Government shall fund the initial expenses to set up the Union Board and its Fund (the

Union Board Fund).

- (3) The State Government / the concerned authority of the Union Territory shall fund the initial expenses to set up the State Board and its Fund (the *State Board Funds*).
- (4) The recurring administrative expenses of the Boards shall be borne by the respective Governments that constitute the Boards.
- (5) The Fund under the Board shall finance both the Board and the Schemes. But the administrative cost of the Board shall be borne by the respective Governments. The Board and its Fund shall have the power to demand the same from the Government. However, the Board shall see to it that the administrative expenses shall not exceed 7 per cent of the total expenditure incurred by the Board during a financial year.

42. Financing

- (1) Funds under the Boards shall combine both *cess-based and contributory* modes of financing.
- (2) Funds under the Boards shall do cess collection, where employer-employee relationship is not direct or easily identifiable, at source at various levels for products – for instance, at levels of wholesale, retail, export, production, etc.
- (3) Funds under the Boards shall collect contribution, wherever employer-employee relationship exists, from employers and employees. In such cases, employers other than covered in 42 (2) shall contribute 15 per cent of the wages they pay to the workers; workers shall contribute 10 per cent of their wages and Central and State governments shall contribute 15 per cent of the wages.
- (4) Wherever, the workers are self-employed or do not have any employer, such workers shall contribute 15 per cent of the minimum wages fixed for the category of worker by the concerned State Government. Central and State Government shall contribute 25 per cent of the minimum wages.
- (5) Whenever governments and PSUs become employers, their share of contribution in their capacity of employers shall be additionally collected.
- (6) The Funds shall be eligible for receiving grants and donations from all legally permitted sources.
- (7) Every worker should be encouraged to contribute part of his/her earnings to some relevant schemes.

43. Revenue sharing

- (1) Cess at the central level shall be collected by the Union Board Fund.
- (2) The Union Board Fund shall share the collected revenue with the State Board Funds on the basis of principles decided by the Union Board linking products and producing States.
- (3) While spending, the State Board Funds shall see to it that spending should be on the basis of the need of a sector, not on the basis of finances received from that particular sector. So all the income shall be pooled together by the Union Board Fund and the State Board Fund, and the Funds shall not discriminate between sectors while spending.

44. Management and Audit of Funds

- (1) Transparency shall be maintained in the management and sharing of Funds.
- (2) The Accounts of the Funds of the respective State Boards and the Union Board shall be audited by a Chartered Accountant approved by the respective governments, subject to further audit by the CAG.

- (3) Respective State Boards and the Union Board shall submit the Audited accounts along with annual reports to the respective governments, which shall be placed before the legislature for discussion.
- (4) Copies of the documents at the State level shall be submitted to the Union Board for information.
- (5) Funds shall be invested only in the approved Securities of the Government.

Chapter IX Wage and price fixation

45. Relation with existing wage fixation machinery

- (1) The State Boards and Subsidiary Boards shall make use of the existing machinery under the Minimum Wages Act, as far as possible, for fixing minimum wages.
- (2) The Subsidiary Boards shall interact with the existing wage fixation machinery while deciding the minimum wages.

46. Developing Board's own wage and price fixation machinery

- (1) In the context of the unprecedented emergence of new employments, the Board shall develop its own machinery with subgroups after combining elements from the existing wage boards and minimum wage and price fixation machinery.

47. Minimum (Support) Prices for products

- (1) The State Board's wage and price fixation procedures shall, from time to time, fix minimum support prices for industrial and agricultural products, in consultation with the government.

Chapter X Special Committees

48. Committees to relate with other Ministries and Departments

- (1) Union Board shall constitute committee/s to relate with ministries, departments and local bodies, for matters connected with other than labour, as for instance, matters related to common property resources, pricing of agricultural and other commodities, Municipal and Traffic authorities.
- (2) State Board shall set up similar committees with similar purposes as mentioned in 48(1).

Chapter XI Record Maintenance, Inspection and Penalties

49. Record Maintenance

- (1) Employers, wherever applicable, shall maintain the following records:
 - (a) Wage-cum-muster rolls with details including deductions, over-time etc.
 - (b) Annual return in respect of employment of all workers including contract and casual workers.

50. Inspection

- (1) The Board shall have powers to conduct periodic inspections through its members or group of members.
- (2) The Board shall have powers to conduct inspections if any complaint for non-deposit of contribution by any employer is made by any person.
- (3) The Board shall have the right to make use of the machinery associated with Labour Ministry and Departments.
- (4) Trade Unions, NGOs and the aggrieved workers shall submit the complaints upon which also inspection shall be conducted.
- (5) It can use the services of existing labour enforcement machinery, NGOs, trade unions and employers' organisations, consultants and eminent persons to conduct inspections.

51. Penalties

- (1) The Boards shall devise steps to prosecute any violation of any of the provisions of this Act such as the following:
 - (a) Child labour punishable as per section 3(3)
 - (b) Forced labour punishable under section 3(5)
 - (c) Nominal wage punishable as per section 6(9)
 - (d) *Begar*, a form of forced labour without pay, punishable under section 6(10);
- (2) In taking steps under section 51(1), the Board can take assistance of trade unions, NGOs, and labour enforcement machinery.
- (3) The Boards shall take strong steps against gender discrimination punishable under section 7(3).
- (4) Non-deposit of the contributions
- (5) Less payment or non-payment of wages to the workers.
- (6) Workers, NGOs, Trade unions, legal practitioners may file claims to the appropriate authorities for legally recoverable dues.

52. Appellate Authority

- (1) When the Board itself commit default in payment of recoverable dues, the worker, trade union, or authorised representative of the worker can appeal to an Appellate authority constituted by the Government.

Chapter XII ENFORCEMENT

53. Promotion of Unionisation

- (1) The Boards shall take positive steps to encourage unionisation and make it an efficient tool of enforcing the present Act.
- (2) Trade Unions and/or associations of workers shall be made members of the tripartite/multipartite bodies engaged in collective bargaining at the behest of the Boards working as conciliatory fo-

rums.

54. Involvement of Local Bodies

- (1) The Boards shall involve local self-governments as part of the enforcement mechanism.
- (2) Members of local bodies shall be made members of the tripartite/multipartite bodies engaged in collective bargaining at the behest of the Boards working as conciliatory forums.

Chapter XIII Dispute Settlement

55. Conciliation by Boards

- (1) Umbrella legislation shall have provision for fast resolution of labour disputes.
- (2) Boards may be empowered to resolve such disputes.

56. Tripartite/Multipartite Conciliation

- (1) The Boards shall encourage
 - a) promotion of unionisation,
 - b) involvement of local bodies, and
 - c) tripartite and multipartite conciliation as the three methods of dispute resolution.

57. Right to Appeal

- (1) The aggrieved party or parties shall have the right to appeal to another Board with a higher and larger jurisdiction.

58. Right to approach labour courts

- (1) If tripartite/multipartite mechanism of conciliation and arbitration fails, and if the worker or workers feel that their right is violated, they can approach any Labour Court.

59. Unfair Labour Practices

- (1) The Board shall identify and enlist types of unfair labour practices by employer and worker. Any one indulging in such mal-practices shall be penalised through due process.

Chapter XIV Miscellaneous

60. Powers to make rules

- (1) The Boards and the constituting authorities shall be vested with powers to make rules on different subjects for efficient discharge of functions and duties, and all such rules should be placed on the table of the legislature.

Chapter XV SCHEDULES [As per Section 6(3)]

61. Schedule I SIX NORMS TO DETERMINE MINIMUM WAGES [As per Section 6(3)]

The **five norms** of the Resolution of the 15th Session of Indian Labour Conference (1957) included:

- (1) the standard working class family should be taken to consist of 3 consumption units for one earner;
- (2) minimum food requirement should be calculated on the basis of a net intake of 2,700 calories, as recommended by Dr. Aykroyd, for an average Indian adult of moderate activity;
- (3) clothing requirement should be estimated at a per capita consumption of 18 yards per annum which should give for the average worker's family of four, a total of 72 yards;
- (4) in respect of housing, the norm should be the minimum rent charged by Government in any area for houses provided under the subsidised industrial housing scheme for low income groups; and
- (5) fuel, lighting and other miscellaneous items of expenditure should constitute 20 per cent of the total minimum wage.

In a major intervention in this debate of norms, Supreme Court added a **sixth one** in 1991 in the case of *Workmen of Reptakos Brett & Co. Ltd Vs. Management* (1991 SOL Case No. 018 Dated 31/10/1991). That is:

- (6) children's education, medical requirement, minimum recreation including festivals / ceremonies and provision for old age, marriages etc. at 25 per cent of the total minimum wage.

It further observed: "The wage structure, which approximately answers the above six components, is nothing more than a minimum wage at subsistence level. The employees are entitled to the minimum wage at all times and under all circumstances. An employer who cannot pay the minimum wage has no right to engage labour and no justification to run the industry."

62. Schedule II CLASSES OF OCCUPATIONS [As per Section 1(4)]

1. Agriculture and animal husbandry workers
2. Cultivators
3. Fish workers
4. Forest workers
5. Manual workers
6. Construction workers
7. Transport workers
8. Workers in the putting-out system
9. Work-contracted homebased workers
10. Unregistered factory based workers
11. Non-factory based industrial workers
12. Mining and quarrying workers
13. Hawkers and vendors
14. Freelance workers
15. Miscellaneous workers, not covered by any of the classifications above.

63. Schedule III FORMAT OF REGISTRATION FORM [As per Section 35(1)]

Register Number: _____

Date of Registration: _____

Name: _____

Sex: _____

Date of birth: _____

Place of origin: _____

Father: _____

Mother: _____

Wife / Husband: _____

Child 1: (name, sex and date of birth) _____

Child 2: _____

Child 3: _____

Other dependants: _____

Address (place of origin): (House number and street, village/locality, _____

Panchayat (local body), Block/Taluka, District, Pin Code, _____

State/UT/other) _____

Address (place of work at the time of registration): _____

Job details: _____

Job 1: (job, place, period and wage/earning) _____

Job 2: _____

Job 3: _____

Job 4 etc. _____

Whether member of PPF or EPF: _____

What are the other schemes that you are eligible for?
(Gratuity, family pension, job insurance, medical insurance, ESI facility, etc.): _____