

Victimization of the Unorganized Sector in India: Issues and Challenges Faced by the Unorganized Workers

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Abstract: *In the present times the unorganised workers working under the Informal Sector consists of 92.3% of the total economy of India. The Unorganised Sector despite of being a large section in the total workforce only 0.4% of the total are provided with the social security benefits. The unorganised although is one of the largest contributors in the economy as well as development of the country is still the victim of the problems like comprising for the basic necessities of the livelihood to the problem of adversity. The workforce which is working at the grass root in the unorganised sector always become the victims of wage insecurity which includes low or poor wages as well as uncertain wages and have always been the victims of the invisibility and are never given priority or paid attention too. Despite of playing a very crucial role in the country's economy the unorganised sector is the most neglected and victimized. The paper discusses all the problems and issues faced by the workers working in the unorganised sector and will further discuss the role of legislations and judiciary in providing Social Security to the Unorganised Sector.*

Keywords: 1.Unorganised Sector, 2.Unorganised Workers,3. Problems Faced, 4. Protection, 5. Social Security Laws, 6. Social Security Schemes, 7. Judicial Pronouncements.

1. Introduction

The term labour means any physical or mental work done for obtaining any kind of consideration in return. Marshall had defined the term labour as “any kind of exertion of mind or body under gone to partly or wholly with a view to some good other than the pleasure derived directly from the work is called labour”. The economy of India is characterized by dualism in all the sectors and the unorganised sector amounts to more than two third of the total economy and occupies a prominence place in the Indian Economy. In the current times economy of India consists of 93% of the workforce working in the unorganised sector and 7% of the workforce working in the organised sector. The unorganised sector despite of constituting a major share to the total workforce of the country yet only 0.4% of the workers in the unorganised sector receives the social security benefits. According to the economic survey of 2018-19 the total amount of workers working in the unorganised sector is estimated to be about 93% of the total workforce of the country. The total unorganised sector workforce in India amount between 450-500 million out of which about 110 million are those who are employed for a period of less than six months, around 63 million does not receive payment in regular form and approximately about 26 million are those engaged in different kinds of part time jobs. Around 88 million of the workers or approximately 20% of the total workforce are those engaged as daily wage earners, street vendors, hawkers, small traders etc. The self-employed entrepreneurs constitutes around 215 million workers which amounts to about 41% of the total unorganised sector workforce in India. The statistical data which is available for the unorganised sector workforce clearly states two troubling issues for proper management of the unorganised sector in India. Firstly there is a lack of accurate and recent data on magnitude of the unorganised sector workforce, their composition, nature of employment and the overall contribution of the unorganised sector

workforce in the economic development of the nation. Secondly due to lack of proper statistical data there is lack of proper formulation of policies for the welfare and social security of the unorganised sector and further lack of proper enforcement and implementation of the various existing labour laws and social security schemes and policies for the welfare of the unorganised sector.

2. Statement of Problem

Social Security being the basic need of every individual regardless of the nature of their employment but the unorganized sector is deprived of various basic social security benefits and are exposed to exploitations. They are very vulnerable group of working class and are prone to exploitations like low income status, lack of control over earnings, irregular work, poor working conditions, no medical facilities etc. The plight of unorganized workers is very miserable as they lack job security, social security benefits and are force to live in harsh and unsatisfactory working environment with low wages. The main aim of the present research paper is to discuss various problems and issues faced by the unorganised sector in India and further discuss various legislations and social security schemes for the unorganised sector alongwith the role played by judiciary for the protections of the rights of the unorganised sector.

3. Objectives of the Study

The main objective of the research work was to study and analyze the various problems and issues faced by the unorganised sector in India and to further analyze the various provisions made for the welfare and protection of the unorganised sector in India. The paper focuses on various problems and challenges which are faced by the unorganised sector and has further discussed the special legislations and schemes made in order to provide social security to the unorganised sector alongwith the role of judiciary in implementation of special legislations and schemes. The following were the specific objectives of the study:

- i. To find out and analyse various problems faced by the workers working in unorganised sector.
- ii. To analyse and evaluate the various legal provisions and social security schemes made for the unorganized sector in India.
- iii. To critically evaluate the impediments, loopholes and lacunas in implementation of the Laws.

4. Research Methodology

The present research work is a social-legal analysis. The study is based on the collection of data from both primary as well as secondary sources of data. The methods of research used in the present study is both doctrinal as well as empirical research. The Descriptive method of research is used to gather the information through the primary authoritative sources of law. However the empirical method of research is used to gather the data from the various unorganised workers. Further a conclusion is drawn after analyzing both the data about the problems faced by the unorganised sector in India and the status of the social security provided to the unorganised sector.

5. Literature Review

The Literature review of a study means to study and review the data regarding the research work. The review of literature is one of the starting step of working on a research problem on a subject which would provide the researcher with a clarity of the concept and different aspects of subject on the research work.

- i. M.P. Singh (2020) in book titled "*Constitution of India*", has discussed the concept of social security under the Constitution of Indian. The book covers constitutional aspect related to the concept of social security provided under different parts of the Constitution of India.

- ii. U.N. Shukla & Sanjay Tiwari (2018) in their book *“Social Security Schemes in India”*, has discussed the concept of social security in broader sense. The book has discussed the social economic rights within its scope and ambit.
- iii. Meenakshi Gupta (2007) in her book *“Labour Welfare and Social Security in Unorganised Sector”*, discusses the concept of social security as a basic need for every individual regardless of their employment or working status.
- iv. K.P. Kanan & Ravi Srivastava (2009) in their study on *“Social Security of Unorganised Sector: A Major National Initiative”*, have discussed various social security schemes and measures which have been taken by the government and National Commission on Labour for the unorganised sector.
- v. K.K. Mohabatra (2012) on *“Workers in Informal Sector in India: Understanding the Occupational Vulnerability”* have discussed various problems and issues faced by the workers of the unorganised sector the vulnerability of the unorganised sector.
- vi. Sudharshan Canagarajha, S.V.Sethuraman (2001) on *“Social Protection and the Informal Sectors in Developing Countries: Challenges and Opportunities”* discusses about the various different types of problems and challenges faced by the unorganised sector. The paper also further discusses various initiatives taken by the government for the social protection of the unorganised sector.

6. Findings

The finding and results are the empirical study of the unorganised sector certain conclusions are drawn regarding questions of the problems faced by the unorganised workers. The findings and conclusions has been drawn after studying hundred respondents in the unorganised sector.

- i. How many workers work in the unorganised sector?

Table No 1: Total Number of Unorganised Workers

No of Unorganised Sector Workers	100
Organised Sector	10
Unorganised Sector	90

It can be drawn from the above data that the number of unorganised sector in much more than that of the organised sector. The data show that around 90% workers are unorganised workers and only 10% are working in the organised sector.

- ii. Do the workers working in the unorganised sector have security of job?

Table No. 2: Job Security of the unorganised sector

Job Security	100
Yes	15
No	85

The data clearly shows that the unorganised sector workers are not provided with any kind of security of job. The data shows that only 15% of the workers working in the unorganised workers have the security of job.

iii. Are the unorganised sector workers prone to exploitation?

Table No. 3: Exploitation of the unorganised sector workers

Prone to Exploitation	100
Yes	18
No	82

The data further shows that the unorganised workers are prone to exploitations. It clearly shows that 82% of the workforce under unorganised sector is prone to exploitation at their workplaces.

iv. Are the unorganised sector workers aware of the various social security laws and schemes?

Table No. 4: Awareness of various social security laws and schemes

Awareness of Social Security Benefits	100
Yes	14
No	86

The data calculated clearly shows that the unorganised workers are unaware of various social security benefits, laws and schemes made for the unorganised sector. The data shows that only 14% of the workers are aware about their social security rights.

v. Are the unorganised sector workers provided with any social security benefits?

Table No. 5: Provided with various social security benefits

Social Security Benefits	100
Yes	12
No	88

The data here shows that the unorganised workers are not provided with various social security benefits at the ground level. It is seen that only 12% of the total workers under the unorganised sector is provided with the social security benefits.

7. Problems faced by Unorganised Workers

The Unorganised Sector despite of being a large part of the total workforce have been withdrawn from the various social security benefits. The workers working in the unorganised sector are the unseen victims in the labour market. Despite of the unorganised sector being a very crucial part of the economy of every country the workers are the most neglected. The workers face a number of problems and become victims by different ways of exploitation. The workers working in the unorganised sector faces various problems and exploitation which makes them vulnerable.

- 7.1. Insecurity of job:** The most common problem faced by the workers working in the unorganised sector is the lack of security of job. As the workers working in the informal sector are not employed with proper regulations in a formal manner there are no obligations regarding the jobs. The unorganised sector being very irregular in nature the workers tend to work in several jobs in order to secure their source of income by one or the other occupation. The other main reason for the insecurity of the jobs in the unorganised sector is being employed in seasonal occupations. The Mahatma Gandhi National Rural Employment Guarantee Act 2005 aims at providing the job security to the workers by ensuring guaranteed wage employment for a minimum of hundred days of in a financial year.
- 7.2. Incapacity to secure minimum wages:** The another problem faced by the workers working in the Unorganised Sector is that they are forced to work with low wages as the jobs are casual in nature without any kind of regulations and there is insecurity of jobs. The Supreme Court has explained that despite of any economic compulsions the workers being employed with a salary which amounting below the minimum wage level would be considered as forced labour and is forbidden under the Article 23 of the Constitution. According to the Minimum Wages Act the wages of the workers should not be below the fixed value but the scope of the act is limited only to the organised sector thus keeping the workers working in the unorganised sector out of the scope of the provisions of Act.
- 7.3. Long working hours:** The long working hours impact the lives of the workers in a very serious manner as result of it the workers are deprived of their social and family lives. The women workers have severe impact on their lives as they are to manage their household responsibilities along with the jobs. In India the working hours beyond the minimum labour standards is a very common practice, the main reason being the lack of regulations. The unorganised workers working in the various sectors like agriculture sector, industries, domestic care workers etc. are forced to work for long hours. The legislations like the Factories Act of 1948, Shops and Establishment Act, etc. provides for maximum limit of working hours but the unorganised sector is not covered under the purview of these legislations leading to no constraint in the working hours.
- 7.4. Poor and inadequate working environment:** The unorganised sector workers are not provided with proper working environment. The workers are forced to work in the poor working conditions without any kind of basic amenities like clean water, lack of proper toilet facilities, no sanitary services etc. As the industrial and agriculture sector amounts to large amount of unorganised workforce the workers working in these sectors are deprived of clean working environment and are forced to work in very poor physical circumstances with low lights, space and ventilation. The workers working in the hazardous factories and agricultural sector are not provided with any kind of safety equipments while working with the hazardous substances and chemicals. There are no safety measures provided to workers working in the construction sites and are forced to work with insufficiently secured machineries which leads their lives in risks.
- 7.5. Health and occupational risks:** The poor working conditions is one of the main cause for the poor health of the workers working in the unorganised sector. The low nutrition intake due to poverty and low wages alongwith relentless physical labour leaves the workers with health difficulties which leads them to major health issues in long run. Further due to poor economic conditions and lack of healthcare resources and benefits the workers are forced to live with the health issues. There are also occupational risks for the workers working in hazardous sectors like tobacco industry, mines, construction sites, fireworks, leather industry etc. The workers working in the tobacco industry and firework industry are directly exposed to the heaps of tobacco and chemicals which effect the workers with respiratory problems, skin allergies etc. The workers working in the agricultural sector are exposed to widespread use of pesticides, insecticides and fertilizers which exposes them to high risk of toxic substances. The workers working in the constructions sites or factories often face accidents which leads to injuries like missing limbs and amputations due to no

security and safety measures while working and insufficiently secured machineries. The workers in the unorganised sector are exposed to a large number of occupational disease and injuries with no social security benefits for healthcare.

7.6. Insecurity from natural disasters: Due to low wages and poor financial stability the workers in the unorganised sector both working and living conditions are inseparable. As the workers work and live in poor conditions they are more vulnerable to various kinds of disasters natural as well as manmade. The various natural disasters like droughts, earthquakes, floods etc. have devastating impacts on the unorganised sector as they are left with no shelters to live and no workplace to earn.

7.7. Failure to ensure old age: As the unorganised workers are not provided with social security benefits like old age security benefits thus old age insecurity emerges as one of the major concern for the workers working in the unorganised sector. The workers working in the agricultural sector and building sector are amongst those who are most effected by the old age. As they are not provided with social security benefits in the old age they suffer various issues like no financial stability in the old age, inability to fulfill the family needs, no or poor health facilities, low or poor standard of living etc.

7.8. Loss occurring from accident: As the unorganised sector works in various hazardous works like construction sites, mines, firework industries without any kind of safety and precautionary measures they are very prone to various kind of accidents at the workplace. Such accidents leads the workers to lose of job due to which they are left with no source of income and the loss is much higher if partial or permanent disabilities are caused due to accidents. The accidents leads to no income alongwith extra expenses due to medical treatments and hospitalizations etc. which further leads them to debts.

7.9. Poverty and debt:The workers working in the unorganised sector have to face poverty due to which they are forced in debts. Due to lack of financial stability and low wages and jobs of precarious nature workers are unable to fulfill their basic needs and various social and cultural obligations. The rise in poverty and increased debts has been a major cause of suicides.

7.10. Vulnerable labour groups: It has been observed in surveys that the unorganised sector has been the most vulnerable labour groups which includes bonded labourers, child labourers, migrant labourers etc. Alongwith the bonded labourers migrant workers and child labourers are the most abused and marginalized groups. In bonded labour the workers are forced to work in bondage as the employer binds the workers by providing them with loans and debts and are further forced to work as bonded labourers without any remunerations. In child labour the children of different age groups are forced to work in hazardous as well as non-hazardous sectors with poor working conditions endangering their life and limiting their growth with no education.

7.11. Lack of bargaining power: Due to lack of knowledge and analphabetism the workers are not aware of their legal rights and status. Due to lack of awareness they are forced to work on the working conditions as decided by the employer without any bargaining for their rights and working conditions. As the workers working in the unorganised sector are not aware of their rights and due to high working hours there is lack of formation of organisations due to which they are unable to express their distress and are unable to express their disagreement to various conditions imposed by the employers in order to protect their rights and interests.

7.12. Failure to enforce social security measures: The workers working unorganised sector a number of times are not financially stable due to number of reason like unemployment, social or natural disasters, accidents, industry closures etc. In these times the workers are in need of social security and social

assistance in order to survive in the time of crises. In order to protect the unorganised workers from various contingent crises there is indispensable need of social security policies. There is a great need that there are various social security benefits for unorganised workers and there is a proper enforcement of the social security schemes.

The unorganised sector is one of the most vulnerable sector and are subjected to various kinds of exploitation and abuses from low wages to poor working conditions. There are large number of problems faced by the unorganised sector and it is required that the unorganised sector should be provided with various social security benefits and proper laws and measures should be made for their proper implementations.

8. Social Security Benefits for Unorganised Workers

The various social security measures which are provided in India consists of preventive, promotional and protective measures. As the unorganised sector consists of the most vulnerable sector of the workforce there is great need to provide them with various social security measures. Recently due to the COVID-19 Pandemic it was observed that the unorganised sector of the country was in an immense need of social security to sustain their basic necessities. The social security is provided to the unorganised sector for the very first time under the Unorganised Workers Social Security Act 2008 which has further been amended and amalgamated as the Code of Social Security, 2020.

8.1. Constitution of India: The Constitution of India through its preamble is the sole repository of the social security measures. The fundamental rights under the constitution also provides which protection of basic right of livelihood to an individual. Article 21 provides every individual with right to life which includes the right to livelihood and right to life with dignity. Article 23 prohibits any form of forced labour like beggary violation of which is punishable under law. Article 24 prohibits child labour and employment of child below the age of fourteen years in any hazardous employment. The Directive Principles of State Policy also provides with various steps to be taken by the states for the implementation of social security benefits to the citizens of India.

8.2. Unorganised workers social security laws: The Unorganised Workers Social Security Act, 2008 was the very first legislation which was enacted for providing social security to the Unorganised Sector. The Act provided with framing and formation of various for the welfare of the unorganised sector by the Centre as State funded organisations. The Act provided for the constitution of National Social Security Boards as well as State Social Security Boards for proper implementation of provisions of the Act. Further the Act was repelled and further consolidated under the Code on Social Security, 2020. The Chapter IX of the code talks about the social security of the unorganised sector alongwith the Gig workers as well as Platform workers. The code provides that the Central government as well as the State Governments shall frame various welfare schemes for the unorganised workers.

8.3. Social security schemes for the unorganised sector: There are various schemes which are made by the government for providing social security benefits to the unorganised workers. The Schemes include Indira Gandhi National Old Age Pension Scheme, Garib Kalyan Rojgar Abhiyaan, National Family Benefit Scheme, Aam Admi Bima Yojana, National Social Assistance Program, Handloom Weavers Comprehensive Welfare Schemes, Rashtriya Swasthya Bima Yojana, Janani Suraksha Yojana, Pradhan Mantri Shram Yogi Maan-dhan, Handicraft Artisans Comprehensive Welfare Schemes, Ayushman Bharat-Pradhan Mantri Jan Arogya Yojana, National Scheme for Welfare of Fishermen and Training and Extension, Pradhan Mantri Suraksha Bima Yojana, Janshree Bima Yojana and Pension to Master craft Persons, Pradhan Mantri Jeevan Jyoti Bima Yojana.

Though there are various schemes for the welfare and social security of the unorganised sector but there is a need for proper implementation of such schemes and legislations. In number of instances the judiciary has taken a step ahead

for the proper implementation of the various welfare schemes and also focused on extending the benefits of the other labour welfare legislation for unorganised sector as well.

9. Role of Judiciary for Protection of Rights of Unorganised Workers

Indian Judiciary has always played an important role development of modern jurisprudence and always made major contributions through various judgments for the protection of the rights and interests of the weaker sections of the society. The Indian Judiciary has always come forward to protect the rights and provide remedies. As the unorganised sector has always been outside the purview of the various social security measures provided by the Indian Legislations judiciary has always played a pivotal role in extending the benefits of various social security legislations to the unorganised sector. The Supreme Court of India in number of judgments has emphasized on the concepts like Right to Livelihood etc.

In a very landmark case of *Rural Litigation and Entitlement Kendra, Dehradun v. Uttar Pradesh*, AIR 1985 SC 652 it was held by the Supreme Court of India that the right to life provided under the Constitution of India under Article 21 includes within itself the right to livelihood. In the case of *Sanjit Roy v. State Of Rajasthan*, it was held by the court that in cases of disaster situations if any services is taken by the workers they should not be paid wages lower than the minimum wage on the grounds that they are provided the wages in form of help for famine situation. It was held by the court that paying wages lower than the minimum wage to the person who are employed on famine relief violates Article 23 of the Constitution of India.

It was held by the Supreme Court of India in the case of *People Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473 that beggary is also a form of forced labour and thus violates Article 21 that is the right to live with dignity and respect. It was also held by the court that taking of service from any worker with non-payment of wages or minimum wages amounts to violation of Article 23 of the Constitution of India. In *Deena v. Union of India*, it was held by the court the work that is taken from prisoners without payment of wages to them shall be considered as forced labour and is an infringement of Article 23 of the Constitution of India.

It was held by court in *Bandhua Mukti Morcha v. Union of India*, AIR 1984 SC 802 that the practice of bonded labour should be looked into by the government and efforts should be made to eradicate it as it violates Article 23 of the Constitution of India which prohibits the practice of bonded labour. In the case of *Neeraja Chaudhary v. State of Madhya Pradesh*, AIR 1984 SC 1099 it was held by Justice Bhagwati that finding about the bonded labour and eradicating it is not sufficient the governments should also focus on the rehabilitation of the bonded labourers as if not rehabilitated the labourers and their families would be driven to poverty and helplessness.

It was held in *Daily Rated Casual Labour v. Union of India*, AIR 1987 SC 2342 that classifying workers on casual and regular basis leads to violation of Article 14 and Article 16 of the Constitution of India as well as Article 7 of the International Covenant on Economic, Social and Cultural Rights, 1966. In the case of *State v. Banwari*, AIR 1951 Pat 473 it was held by the Allahabad High Court that a person cannot be rendered the services merely on the ground of caste of the labourer and the rights weaker sections of the society and minorities should be protected. It government was ordered by the Supreme Court of India in the landmark case of *M.C Mehta v. State of Tamil Nadu*, AIR 1990 SCR 417 to conduct survey in order to find and further stop the child labour in various cracker and matchstick factories. It was also directed by the court that the minimum wages which are paid under the Minimum Wages Act by the subcontractors should be paid directly to the workers and further Section 21 of the Contract Labour Act, 1970 should be put into consideration.

In the case of *Delhi Jal Board v. National Campaign For Dignity and Rights of Sewerage and Allied Workers*, 181 (2011) DLT 77 (SC) the Delhi High Court had directed to pay compensation of one lakh to the sewerage workers who lost their lives but it was found out by the court that there was no implementation of the order of court for

payment of compensation. In this case despite passing of adverse orders of the court there was no implementation of the orders of the court for providing compensation and there is no or very poor implementation of laws which are enacted for the welfare of the unorganized workers.

Judiciary has always played an active part in taking all the necessary steps for the welfare of the unorganised sector and protection of the rights of the unorganised sector. Indian Judiciary has taken every necessary step for providing proper implementation of the various social security legislations and social security welfare schemes for unorganised workers. Judiciary has always tried to extend the benefit and advantages of the all labour welfare legislation to the unorganised sector as well.

10. Conclusion and Suggestions

According to survey conducted by the National Sample Survey Organization in 2009-2010, India had total employment of 46.5 crores out which only around 2.8 crore of the workers work in the organized sector and the remaining employment of around 43.7 crore workers consists of unorganised sector. The unorganised sector workers are exposed to exploitation and face various problems and challenges like casual work culture, challenges in regulation with employer, low wages, long working hours, poor working conditions, no security benefits etc. As the workforce under the unorganised sector are engaged in casual, scattered seasonal employment which are not unionized the unorganized sector does not get the advantages and benefits of various labour laws and social security schemes. Though the labour laws are enacted to provide social security to the labourers but the conditions based on which the provisions of the laws are to be applied cannot be fulfilled by the workers working under the unorganized sector. The unorganized sector is deprived of the basic social security benefits like Payment of Minimum Wages, Employee State Insurance, Pensions, Workmen's Compensation, Gratuity etc. The fundamental principle and objective of the constitution of various labour legislations is to guarantee the workers or the labourers in the labour market with the protection from any kind of exploitation and protect their basic rights in order to provide a fair negotiations between the employer and employee. However when it comes to implementation of such labour laws to the unorganised sector the fundamental principle and objective of labour legislation is tarnished.

There is a great need of the hour that there is proper implementation of the various laws and schemes made for the welfare and protection of the social security of the unorganised sector. Despite the constant efforts of the Government of India for the welfare and protection of unorganized sector there is great need that proper mechanism are made for the implementation of such provisions. The Unorganised Workers Social Security Act, 2008 provided the provisions for formation of National Social Security Board as well as State Social Security Board for the unorganised sector and also to provide proper funding and setup workers facilitation centers. As the unorganised sector plays a very crucial role in the economy of India the rights of the unorganised sector should be protected. For the effective and proper implementation of the labour legislations for the welfare of unorganised sector there is a great need that the existing employment relations should be analyzed alongwith the working conditions of the workers working in the unorganised sector. There is need to provide special attention to the unorganised sector of India by providing them with better infrastructure and better working atmosphere alongwith basic amenities. Another important issue to be focused on is that the informal sector should be organised so that they can address their issues and take various initiatives of self-help and link themselves with the institutional structure providing services. This will reduce the problem of identification of unorganised workers which is the main cause of ignorance of the unorganised workers and will help in providing adequate social security benefits to the unorganised workers at the grassroots level.

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