

## POSITION OF WOMEN WORKERS IN UNORGANISED SECTOR: A HUMAN RIGHTS PERSPECTIVE

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### *Abstract*

*A woman occupies a larger part of the labour force in our country. Working Women suffers from mental, physical, economical, physiological and many more problems. Women working in an unorganised sector are to be looked upon and their problems deserve special emphasis and focus. International Conventions and the Constitution of India have promised to protect the rights of the workers. The provisions made in the Labour Law seem to be inadequate for the protection and welfare of the women working in unorganised sector. In this paper we have highlighted about how the pandemic Covid 19 have devastated the life and livelihood of the women working in unorganised sector and have illustrated with case laws and study of legislative frame work for social security of unorganised workers and further suggests that Indian policy makers, with specific regard to the unorganised sector workers, should take more-adequate measures for the protection of human rights of such workers.*

**Keywords:** *Women; Unorganized sector; Pandemic; Social security; Case Laws*

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## INTRODUCTION

A woman plays a crucial role in different stages of her life as a mother, sister, wife and daughter. She has a role in the socio-economic development of a country as well. A woman acquires a unique position in the era of globalisation. The role of working women today is a necessary characteristic of the modern society although women's work is activity for her and her family's empowerment vis-a-vis the development of society at large.<sup>1</sup>

In the early period of civilization women's were not allowed to work for earnings. Her duty was to look after the family and children and was supposed to participate in an agricultural work along with the family members. She did not have economic independence; women were dependent upon her father before marriage and were dependent upon her husband after marriage. Women are said to be an integral part of every society but even then they are not thought to be equal to men in anyway. Women were not provided with the rights or the freedom that men were provided with. They used to spend their lives within the four walls of their houses. But now the scenario has changed due to industrialization and globalization in our country.

Now let's see how women entered into work force: During the end of 17<sup>th</sup> century and early 18<sup>th</sup> century the birth of industrial revolution took place in Europe. Industrial revolution created an opportunity of employment in industries in India which brought a major impact upon the labourers working in agriculture. The agriculture labourer's started migrating towards the industrial sectors as they were getting high wages in the beginning. Later on the wages were not sufficient to fulfil the needs of the family which forced women to work in the industrial sector for the purpose of improving the economic condition in their family. But the women were paid less wages compared to the men working in the same sector. This was the primary step of women who stepped out of domestic work and started working in unorganized sector.

## MEANING OF UNORGANISED SECTOR

Unorganised sector could be described as that part of the workforce who has not been able to organise in pursuit of a common objective because of constraints such as casual nature of employment, ignorance and illiteracy, small size of establishments and superior strength of

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<sup>1</sup> Nirmal Kanti Chakrabarti (Ed.), *Gender Justice*, 1<sup>st</sup> ed, Cambray and Co. Pvt. Ltd. Kolkatta (2006) at 189.

the employer operating singly or in combination.<sup>2</sup>

Unorganised sector could not be described on the basis of the nature of the work that workers or employees in the sector are engaged in because the sector comprises of home based workers info tech and software workers. It cannot be based on the number of employees in undertakings because it covers agricultural worker Craftsman home based workers employed workers, self-employed workers ,weavers workers, cooperatives as well as worker in small scale industries where the work force can be counted on one's finger.<sup>3</sup>

National Commission on Enterprises in Unorganised Sector (NCEUS) has defined Unorganised Sector consists of all unincorporated private enterprises owned by individual or households engaged in the sale or production of goods and services operated on a proprietary for partnership basis and with less than 10 total workers.<sup>4</sup> According to the World Bank definition, the term 'informal sector' covers a wide range of labour market activities that combine two groups of different nature. An unorganised worker has been defined as a home based worker, self-employed worker or a wage worker in the Unorganised Sector.<sup>5</sup>

## HUMAN RIGHTS OF WOMEN

The Human Rights of women include the right to equality before the law, right against gender discrimination, right to life and Liberty, right against harassment, right to privacy, right to live with human dignity and the right to economic empowerment. Right against domestic violence has also gained recognition as a human right because domestic violence is one of the serious threats to the human civilization.

Human Rights is one of those minimal rights which every individual must have against the state or other public authority by virtual of his being a member of the human family irrespective of any other consideration as stated at the outset though the concept of human rights is as old as the ancient doctrine on natural rights founded on natural law, the expression human right is of recent origin emerging from post Second World War

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<sup>2</sup> Under the chairmanship of Justice Gajendragadkar, the First National Commission on labour has defined the unorganised sector.

<sup>3</sup> Meenakshi Gupta, '*Labour Welfare and Social Security in Unorganised Sector*', Deep and Deep Publications, New Delhi, (2007) at 2.

<sup>4</sup> Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector, Academic Foundation, 1<sup>st</sup> January 2008 at 1774.

<sup>5</sup> Section 2(m) of the Unorganised Workers Social security Act, 2008.

international charters and conventions.<sup>6</sup>

The Universal Declaration of Human Rights states that everyone is entitled to all the rights and freedom set forth in the declaration without distinction of any kind such as race, colour, sex, language etc.<sup>8</sup>

The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) acquires a significance place in bringing to the force of the international human rights arena, the rights of the woman as rights of half the humanity. The spirit of the Convention is reflected in the preamble to the same, which while reaffirming faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women. Further recognising that discrimination against women violates the principles of equality of rights and respect for human dignity and is an obstacle to the participation of women on equal terms with men in the political, social, economic and cultural life of their countries. The CEDAW lays down an international Bill of Rights for women and obligates the Nation state to ensure the enjoyment by woman of these rights by affirmative state action.<sup>7</sup>

## **PROBLEMS OF WOMEN WORKERS IN UNORGANISED SECTOR & COVID 19**

Women working in unorganised sector face lots of problems and on top the sudden announcement of complete lock down by the Government of India on 24<sup>th</sup> March 2020 drastically altered the life and livelihood of the women workers engaged in unorganised sector. Women workers face job insecurity and this pandemic has hit the area where women workers work and has adversely affected on their wages. The migrant women workers who used to work as domestic helpers, labourers in construction sites, nurses working in private hospitals and many more to mention have suffered a lot in this pandemic. Due to financial crisis in this pandemic their health has also been deteriorated. No nutritious foods are being afforded by themselves. No proper sanitation for themselves. There is a complete lock down everywhere and thus the working areas have also been shut down. Due to this they suffer mental stigma such as anxiety, depression, heart attack and many more problems. The nurses who are working in private hospitals are also working in low rate wages. They are compelled to handle the Covid patients without taking care of their health and wellbeing. Their wages

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<sup>6</sup> D.D.Basu, '*Human Rights in Constitutional Law*', Wadhwa and Company, Nagpur, (2005) at 8.

<sup>7</sup> Swati Mehta, '*India's Non Commitment to the CEDAW*', *Lawyers Collective*, (2003) at 24.

are not much as compared to the nurses working in Government hospitals the so called organised sector. Therefore, low wages is the main problem of unorganised workers.

Now again this pandemic has proved that High level job insecurity and poverty is a common phenomenon of the workers of unorganized sector. Time and again it is evident from this pandemic that Loss of employment due to some reason is a natural incident in unorganized sectors. Numbers of harassment issues at work place for working Women are also prevalent in unorganised sector. Health problem is a very common happening of workers working in unorganized sectors. Occupational diseases like pneumoconiosis, tuberculosis, and asthmatic are out of control in informal sectors. In addition to that, problem in digestive system, circulatory system, urinary tract, blood pressure and effects on various sensory organs (like loss of eye sight, hearing etc.) are also very common happenings. They do not get proper facilities for treatment except the health centre of Employees' State Insurance Scheme.<sup>8</sup>

## **PROTECTION OF UNORGANISED SECTOR WORKERS UNDER THE INDIAN CONSTITUTION**

The supreme law of the land the Constitution of India as well as the ILO Conventions guarantees some rights to the workers. The Universal Declaration of Human Rights, (UDHR) is an assertion of the universal right to freedom and life with dignity. The declaration proclaims that all human beings are born free and equal in dignity and are entitled to all rights and freedoms set forth therein without any discrimination as to sex.

Indian Constitution has provided various provisions for the protection of women in our country. The constitution empowers the state to adopt measures of positive discrimination in favour of women for neutralizing the cumulative socio-economic educational and political disadvantages faced by the women. Articles 14, 15, 16, 23, 39(a), 39(d), 39(e), 42, 47, 243 and 324 of the Indian constitution are the relevant provisions containing for the empowerment of the women.

The Directive Principles and Fundamental Rights proceed on the basis of human rights. Part IV of the Constitution has laid down certain Directive Principles of state Policy. The Directive Principles of state Policy are certain guidelines which are given to the state which it must keep in its mind while formulating laws and policies. These provisions are not

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<sup>8</sup> Subhasish Chatterjee, 'Labourers of Unorganised sectors and their Problems', *International Journal of Emerging Trends in Science and Technology*, Vol.03 Issue 07 (2016) at 4401.

enforceable in any court of law but are considered fundamental in the governance of the country. These provisions are sort of directions given to the state for applying these principles in making laws to establish a just society. It aims to create social and economic conditions under which the citizens can lead a good life. It also aims to establish social and economic democracy through a welfare state.<sup>9</sup>

### **AN OVERVIEW OF AN UNORGANISED WORKERS SOCIAL SECURITY ACT, 2008 A LEGISLATIVE PROVISIONS FOR WOMAN**

In order to protect the rights of the unorganised workers, an Unorganised Workers Social Security Act was passed by the Parliament in 2008. The Preamble of the State states that “An Act to provide for the social security and welfare of unorganised workers and for other matters connected therewith or incidental thereto.”<sup>12</sup> India being one of the ratifying countries of Universal Declaration of Human Rights (UDHR), and International Covenant on Civil and Political Rights (ICCPR), the social security of unorganised workers should be considered as the basic human rights in India and the country must adhere to protect such rights.<sup>10</sup>

The main aim of the Unorganised Workers Social Security Act, is to provide social security to the unorganised workers. This act makes it mandatory for the central government to formulate and notify, from time to time, suitable welfare schemes for unorganised workers on matters relating to life and disability cover, health and maternity benefits, old age protection and any other benefits as may be determined by the Central Government.<sup>11</sup> And the state Government may formulate schemes relating to provident fund, employment injury benefit, housing educational schemes for children, skill upgradation of workers, funeral assistance and old age homes for unorganised workers. Several Welfare schemes has been provide by the Act which are as follows:

1. Indira Gandhi National Old Age Pension Scheme
2. National Family Benefit Scheme

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<sup>9</sup> Somnath Roy, ‘Indian Constitution and the Protection of Women’ in Rathin Bandyopadhyay, Sanjay Kumar Singh, et.al. (eds.), *Women Rights Human Rights*, R Cambray & Co. Kolkata, (2010) at 220.

<sup>10</sup> Dipankar Debnath, ‘way forward for empowering of Unorganised Workers in India: A Review of the Unorganised Workers Social security Act, 2008’, *IJLJ* Vol. 5 No.1 (2014) at 244-245.

<sup>11</sup> Section 3(1) of the Unorganised Workers Social security Act, 2008.

3. Janani Suraksha Yojana
4. Handlooms Weaver's Comprehensive Welfare Scheme
5. Handlooms Artisan's Comprehensive welfare Scheme
6. Pension to Master Craft Person
7. National Scheme for Welfare of Fishermen and training and Extension
8. Janashree Bima Yojana
9. Aam Admi Bima Yojana
10. Rashtriya Swasthya Bima Yojana

### **THE GOVERNMENT ATTEMPTS TO CHANGE THE SCENARIO WITH THE INTRODUCTION OF THE UNORGANISED**

Workers' Social Security Act of 2008, India Exclusion Report 2013-14 explains the act as "Enacted to benefit the working poor and targeting people with little or no means of their own, like the land less and land-poor, this piece of legislation was aimed at reaching out to these citizens in need of public support, to secure their survival. It has, however, largely resulted in the culmination of the sum of existing pieces of social welfare schemes. These welfare schemes do not, con-versely, share the act's rights-based approach"<sup>12</sup>.

### **JUDICIAL PRONOUNCEMENT**

Judiciary has always played an important role in protecting the rights of the women workers in our country. The judiciary plays an important role in providing justice to the workers. It has always showed its concern for the upliftment of the workers through a number of landmark judgments.

In *Municipal Corporation of Delhi v. Female Workers (Muster Roll)*<sup>13</sup>, the Supreme Court in the matter of maternity benefits has held that even female workers engaged on casual basis or on muster roll on daily wages are also entitled to benefit under the Maternity Benefit Act, 1961 as nothing in the Act confers the benefit only on regular women employees. The

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<sup>12</sup> Satyam Mishra, Social Security for Unorganised Workers in India, *Journal of Social Sciences*, 53:2 (2017) at 77

<sup>13</sup> (2000) 2 SCC 269

Supreme Court further held that right to claim maternity benefit is recognised as the child bearing role of women as a social function incorporated under Article 5(b) of Convention on Elimination of all forms of Discrimination against Women.

The Supreme Court in a case<sup>14</sup> held that labour taken from prisoners without paying proper remuneration was forced labour and violation of Article 23 of the Constitution. The prisoners are entitled to payment of reasonable wages for the work taken from them. And the court is under duty to enforce their claim.

Taking of labour or service of any person for payment less than the prescribed minimum wages is violation of the fundamental right to such labourer while excising the scope and ambit of Article 23 of the Constitution of India. The court further held that beggar is a form of forced labour, in whatever form it may manifest itself because it is violated of human dignity and contrary to basic human rights.<sup>15</sup>

The Supreme Court has laid down in the cases of *Olga Tellis v. Bombay Municipal Corporation*<sup>19</sup>, that the right to livelihood is inherent in the right to life under Article 21. The ultimate object of social security is to ensure that everyone has the means of livelihood.

The National Domestic Workers Welfare Trust had filed a petition for the recognition of rights of domestic workers and in response to the petition; the central government has included domestic workers in the schedule of employment in the Unorganised Worker's Social Security Act, 2008<sup>16</sup>

## CONCLUSION AND OBSERVATION

Gender-based discriminations are very prominent in Indian labour market and the practice is common across various sectors. Women in the unorganised sector require social security addressing issues of leave, wages, working conditions, pension, housing, child care, health benefits, maternity benefits, safety and occupational health. This can only be ensured by extending labour protection to those sectors in a manner that pays special attention to the needs of women workers.<sup>21</sup>

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<sup>14</sup> *Deena v. Union of India*, AIR 1983 SC 1155

<sup>15</sup> *In peoples' Union for Democratic Rights v. Union of India*, AIR 1982 SC 1473

<sup>16</sup> *National Domestic Workers Welfare Trust v. Union of India* Writ Petition (Civil) No(s). 160 of 2003. Government of India, Report of the Working Group on Social Security for the Twelfth Five Year Plan, (2012-17), at 169.



We can see that there are various legislations extending social security benefits to the unorganised sector or the unorganised workers, the problem remains is in the implementation of such legislation and schemes and identification of such workers. The legislators may require providing a universal and concrete definition to such classes of workers and extend social security such as food, nutrition, health, housing, employment, etc. to the unorganised workers. Female domestic workers are a constantly growing section of workers in unorganised sector of urban India. The domestic work is hard to regulate, being invisible because it is performed in the privacy of the employer's house hold. The COVID-19 proved that there is no minimum level of protection to domestic workers

The work of unorganised sector workers need to be effectively protected through new legal frameworks that account for gendered trends in the digital economy. From minimum wages to decent work, social protection, and prevention of workplace discrimination, legacy laws need to be revisited. The social security Act, 2008 is not up to the satisfaction due to non-implementation of the schemes properly. In order to make the schemes effective both government and NGO's must be encouraged. It is high time the Labour laws need to be upgraded. Instead of coming out with scheme based project the proper statute should come out for unorganised workers.