

REPORT OF THE STUDY GROUP (II)
ON
Umbrella Legislation for Workers in the
Unorganised Sector

Submitted to

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Preface

The National Commission on Labour, 2000 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, with the undersigned as the Chairman.

Each member of the Group is eminent in her / his line of activity or discipline. In the first meeting of the Study Group, it decided to associate the Centre for Education and Communication (CEC), New Delhi, an organization specialized on Labour issues, as its consultant, to prepare a draft on the basis of issues formulated and views expressed by the members, backing them up with relevant information and data.

The group met six times, between 09 November 2000 and 14 October 2001. Members formulated the basic issues, expressed their views on them and then requested the CEC to prepare the draft filling in with the relevant background material and data. In each meeting the basic draft was revised. The report adopted by the Study Group in its meeting dated 28 August 2001 is thus a collaborative product of the contribution by the members and data and references brought in by the CEC on the advice of the Group. The members of the Secretariat of the Commission helped the Group immensely by providing inputs on the legislation and outcome of various consultations held by the Commission in different parts of the country.

The report adopted by the Study Group is in two parts. Part I is a discussion on the framework of a possible 'Umbrella Legislation for workers in the Unorganised Sector'. It is divided into 15 chapters and discusses following topics: Who are the unorganised sector workers? (Chapter I); Existing legislation and the unorganised sector (Chapter II); History of recommendations for legislation (Chapter III); Justification for legislation (Chapter IV); Perspective and rationale for umbrella legislation (Chapter V); Sustenance of natural, open and common property resources (Chapter VI); Minimum wages/earnings (Chapter VII); Core Labour Rights (Chapter VIII), Social Security (Chapter IX); Review of the existing models of welfare funds and boards (Chapter X); Social security Suggestions (Chapter XI); Classification of occupations (Chapter XII); Unorganised Sector Workers Board (Chapter XIII); Summary (Chapter IV); Bibliography (Chapter XV) and Annexures (Chapter XVI).

In Part II, 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 group places on record its high appreciation of the work done by Shri T. C. Girotra, Dr. Rashmi Agarwal and Dr. R.S. Tiwari of the Commission. It also acknowledges gratefully help and co-operation it received from the supporting staff of the Commission. The group would like to thank Shri J John, Executive Director and his fellow researchers of the CEC for helping it to prepare a fairly exhaustive report and an indicative outline of the proposed Bill on the Protection of Rights of Workers in the Unorganized Sector.

Finally, the group records its gratitude to the Chairman of the Commission and his fellow members for encouragement and guidance that it received from them.

New Delhi
14 October 2001

D Bandyopadhyay
Chairman, Study Group II

Chapter 1: Who are the Unorganised Workers?

1. Unorganised sector is too vast to remain within the confines of a conceptual definition. Hence, descriptive means are used to explain the unorganised sector, besides going into the existing definitions. Unorganised sector is often used interchangeably as informal sector. There are authors who differentiate these sectors.
2. In this document, the term 'unorganised' sector is used as inclusive of informal sector. Attempt is made to discern some of the features of the unorganised sector making use of the existing literature and a sample analysis based on secondary sources, the data sheet of which is appended.
3. Some of the distinct sub-sectors of unorganised sector are reviewed in order to get a grasp of the sector. Some of occupations in the unorganised sector are listed.
4. The concept of informal/unorganised sector received great attention in the early 1970s when International Labour Organisation through its World Employment Mission Programme took up serious efforts to study the issue. In India, National Council for Applied Economic Research (NCAER) and Self-Employed Women's Association (SEWA) conducted a joint workshop on this issue in March-April 1997. Institute for Applied Manpower Research (IAMR) and Institute of Human Development (IHD) had also done a similar joint exercise in December 1997. Central Statistical Organisation has formed an Expert Group on Informal Sector (Delhi Group) to suggest definition of informal sector. In the NCAER-SEWA workshop, Gujarat Group of Experts on Estimation of Informal Sector proposed a **definition for informal sector based on employment**. According to the group, the informal sector includes all workers in informal enterprises, some workers in formal enterprises, self-employed workers, and those doing contract work for informal or formal sector enterprises and contractors (Kantor, 1997). NCAER-SEWA workshop has raised doubts on the enterprise-based definition of the informal sector that may leave details on contractual wage labour untouched. It said that the definition for informal sector should comprise of activities and ranks of the self-employed producing non-tradable services and items for the local markets. It further said that the National Accounting must cover the informal sector that shall include home-based workers, artisan groups and contract workers, besides the workers in unorganised sector of service, manufacture and agriculture.
5. The term 'informal' per se denotes the **informal nature of work** in the activity concerned **irrespective of the actual number of workers** employed and also

irrespective of whether it is within the purview of registration requirements. Studies done in India restrict informal sector to activities employing less than 10 persons. These tend to set an upper limit of employment of 9 persons, besides other criteria, for identifying informal sector activities.

6. In India, unorganised sector and informal sector are used interchangeably. However, the unorganised sector is used commonly in all official records and analysis. It is defined as the **residue of the organised sector**. The term 'organised' is understood to have 10 or more employees. The various methods of estimating organised sector data on labour such as used by Annual Survey of Industries (ASI), Employment Market Information (EMI) programme, decennial Population Census and quinquennial surveys of the NSSO have themselves limitations (Suryanarayanan, 1998). The problems of underestimation and insufficient coverage lead to further problems in the residual estimate of unorganised sector. Therefore, the definition based on residual approach that considers organised sector, as employing 10 or more workers is no longer dependable. Many new enterprises and employment that emerged in the recent years are to be taken into account.
7. The sector is very diverse, and many characteristics are identified in the literature as describing various aspects of the sector (Mehta, 1985; Sankaran and Rao, 1995; Mukhopadhyay, 1997; Singh, 1997). However, none of these characteristics identified are crucial in defining the sector as such. Some of these characteristics are given as follows:
 - (a) low scale or level of organisation
 - (b) labour relations operate on casual basis, or on the basis of kinship or personal relations
 - (c) small own account (household) or family owned enterprises or micro enterprises
 - (d) ownership of fixed and other assets by self
 - (e) risking of finance capital by self
 - (f) involvement of family labourers
 - (g) indistinguishable production expenditure from household expenditures and usage of capital goods

- (h) easy entry and exit
- (i) free mobility within the sector
- (j) usage of indigenous resources and technology
- (k) unregulated sector
- (l) absence of fixed working hours
- (m) lack of security of employment and other social security benefits
- (n) labour intensive technology
- (o) unprotected sector
- (p) lack of support from government
- (q) workers live in slums and squatter areas
- (r) lack of housing and access to urban services
- (s) migrant labour

8. Sankaran and Rao (1995) differentiate the terms unorganised and informal, and rightly argue that the **number of workers is not the factor** to distinguish the unorganised/informal from the organised. The organised sector can be distinguished from the unorganised by the coverage of legal protection, size of the establishment, capability of the workers organising themselves into unions, and production processes organised in a systematic manner that follows certain specified patterns. The authors consider the unorganised sector as the opposite or the residue of the organised sector. In the case of informal sector, the distinguishing factors mentioned here that demarcate the organised from the unorganised cannot be applied. For instance, the licensing or permission requirements of shops selling medicines under the Drugs Act or of the eateries from the Municipal bodies. There is significant diversity in the nature of work involved in these activities. While the nature of medical practice or shops is highly organised, systematic and sophisticated requiring high level of skills acquired through formal education system, the nature of work involved in small to medium hotels cannot be said to be formal or organised. Work in numerous garment-manufacturing units, many of which employ a large number of workers, is not organised in nature but entirely informal.

9. The formal-informal categorising has helped in identifying a variety of new income generating activities hitherto non-enumerated and excluded from the statistics, which is also a reflection of underemployment in the urban areas (Sethuraman, 1976:77). Swaminathan (1991) says informal sector employment occurs in circumstances where the labour processes and the conditions of work are outside the sphere of public scrutiny.
10. In the broader sense, the number of employees does not limit the unorganised sector to fewer than 10. Because, such enterprise based definition does not take into account the vast masses of unorganised labour who work as agricultural workers, cultivators, construction workers, self-employed vendors, artisans and traditional craftspersons, homebased workers, the traditional service workers, and the workers depending on the common property resources such as forests and fisheries. Almost the entire non-agricultural activity in rural India is unorganised. All these sectors are mostly unorganised in terms of organisation (industry), employment and labour participation.
11. The unorganised sector, as an industry, is in no way an independent and exclusive sector. It is linked to, or in many occasions, **dependent on the organised sector** and the rest of the economy through a variety of linkages. It depends on the organised sector for raw materials and other capital requirements, generation of employment, marketing facilities, etc. The subcontracting model is used by the formal sector for further exploitation of labour in the unorganised sector. The informal or the unorganised sector, considered a system of production, is closely related to and dependent on the rest of the economy. The economy is characterised as being fragmented with many interconnected sectors rather than as being divided into two distinct (formal/organised and informal/unorganised) sectors.
12. In practice, unorganised sector does not get enough protection from labour legislation. Despite the existence of labour laws, for various reasons, the workers in this sector do not get social security and other benefits as their counterparts in the formal sector get. The workers are highly exploited by the entrepreneurs. The workers are casually employed. With the exception of very few cases (where SEWA, etc. are involved), there is hardly any trade union or other institutional measures to fight for the workers. Collective bargaining could not so far get any serious space in the unorganised sector. As the workers in the unorganised sector, and particularly women, could not organise themselves, they are further discriminated in the sector. Overall, this is an **unprotected sector with low bargaining coverage**.

13. In the organised sector too there is a section of permanent workers who are getting casualised and contractualised for reasons related to the new economic and industrial policies. Besides, the sector employs casual and contract workers. We consider these workers as part of the unorganised sector. At the same time, in the unorganised sector, there are sections of workers who are organised and unionised such as the headload workers in some of the industrial and trade centres. However, for practical purposes, we propose to retain these unionised workers of the unorganised sector as part of the workers in the unorganised sector. Therefore, **workers in the unorganised sector comprise of all the workers of the unorganised sector and the casual and contract workers in the organised sector who for any reason fails to get the benefits of the Social Security Laws .**
14. Unorganised sector is an area that **evades definition**. However, its main features can be identified, and sectors and processes where unorganised labour is used can also be listed, though not exhaustively. Contract workers, home-based workers, most of the semiskilled and unskilled workers, home-based artisans, and a section of self-employed persons involved in jobs such as vending, rag picking and rickshaw pulling come under the unorganised sector. Agricultural workers, rural non-agricultural labour, khadi and cottage industry workers, construction workers, migrant labour and manual and helper jobs come under the unorganised sector. The form of employment or the labour relation is important in demarcating different sectors. However, conventional labour laws do not define most of them as workers, because a principal employer is un-identifiable in most of these sectors. To be precise, in most of the cases, **the employer-employee relationship has become ambiguous** in the unorganised sector.
15. Available literature and the **sample study of economic activities** that we did (see Annexures) bring home certain general characteristics of the unorganised sector. They are:
 - i. It is low wage and low earning sector in general.
 - ii. Women constitute an important section of the workers in the unorganised sector.
 - iii. Family labour is engaged in some occupations such as the homebased ones.
 - iv. Economic activities, which engage child labour, fall within unorganised sector.

- v. Migrant labour is involved in some sub-sectors.
 - vi. Piece-rate payment, home-based work and contractual work are increasing trends in the sector.
 - vii. Direct recruitment is in the decline. Some employment is through contractors. More than this, there is an increasing trend of work being contracted. This trend is more visible in the areas of homebased work. There is a sort of convergence of homebased work and the work being contracted.
 - viii. If some works are seasonal, some others are intermittent. As such, underemployment is also a problem in the sector.
 - ix. The jobs are mostly on a casual basis.
 - x. In a number of occupations, both employed and self-employed workers are found.
 - xi. The workers are less organised into trade unions, while the self-employed are also not much organised into associations. Collective Bargaining is rarely employed in the sector.
 - xii. Co-operativisation of self-employed sectors is at a low level.
 - xiii. Very often, raw materials are supplied and their produces become linked ones. This speaks of the dependency of the self-employed workers in the unorganised sector.
 - xiv. Debt bondage is very common among the employed as well as the self-employed sections in the unorganised sector.
 - xv. The self-employed have less access to capital. Whatever capital they manage is mostly from non-bank and usury sources, especially invested by the trader-contractor.
 - xvi. Health hazards exist in majority of occupations.
16. There are certain other factors specific to some sub-sectors in the unorganised sector. For instance, the depletion of open resources such as forests and fisheries is depriving those depending on common property resources of their livelihood. Hawkers and vendors face harassment from the authorities such as police, traffic

police and local self-governments. There are **specific problems confronted by different sets of occupations in the unorganised sector**. A cursory look into some of them can bring more light on the nature of the sector as a whole. Let us examine some.

17. **Homeworker/home-based worker:** Home worker is a grey area, a category between employed worker and the self-employed. There is no system to account for minimum wages because of the informal contractual relationship among the worker and the employer, employer's agent or the contractor. Usually, home worker is dubbed just as a self-employed person, and not a worker. There are self-employed workers as well as workers employed by others among home-based workers. Carr et al (June 2000) says: "the term "home-based workers" refers to two types of workers who carry out remunerative work within their homes – independent own-account producers and dependent subcontract workers – whereas the term "homeworkers" refers to the second category only. Under this usage, homeworkers are a subset of home-based workers. Both types of home-based work involve production for the market and should not be confused with unpaid housework or subsistence production." Another term used for the subcontract worker who works from home is "industrial outworker."
18. ILO Convention no.177 and Recommendation no.184 codifies the rights of home-based workers. The ILO Convention no.177 of 1996 (*Convention concerning Home work*) provided that "many international labour Conventions and Recommendations laying down standards of general application concerning working conditions are applicable to homeworkers," and said that "it is desirable to improve the application of those Conventions and Recommendations to homeworkers, and to supplement them by standards which take into account the special characteristics of home work." Article 1 of *Convention Concerning Home Work* (Convention No. 177) defines homeworker in its section (a), specifies who is not so in section (b), and pinpoints the employer in section (c). The whole Article is reproduced here:
 19. Article 1: For the purposes of this Convention:
 - (a) the term "home work" means work carried out by a person, to be referred to as a homeworker,
 - (i) in his or her home or in other premises of his or her choice, other than the workplace of the employer;

- (ii) for remuneration;
- (iii) which results in a product or service as specified by the employer, irrespective of who provides the equipment, materials or other inputs used, unless this person has the degree of autonomy and of economic independence necessary to be considered an independent worker under national laws, regulations or court decisions;

(b) persons with employee status do not become homeworkers within the meaning of this convention simply by occasionally performing their work as employees at home, rather than at their usual workplaces;

(c) the term “employer” means a person, natural or legal, who, either directly or through an intermediary, whether or not intermediaries are provided for in national legislation, gives out home work in pursuance of his or her business activity.

20. The ILO definition does not give importance to who provides the raw materials and inputs. The factors such as the dependency of the worker, the worker’s involvement for remuneration in producing the product or doing the service as specified by the employer, and the work being carried out at home or a place of worker’s choice together define a homemaker (Article 1).
21. Article 4 of the Convention asks for the promotion of equality of treatment for homeworkers including the rights to organise, protection against discrimination, occupational safety and health, remuneration, statutory social security protection, access to training, minimum age for admission to employment, and right to maternity protection. The same rights were demanded by the South Asia Declaration on Homebased Workers, made by a consultation held in Kathmandu on 18-20 October 2000, which was participated by the national governments of India, Pakistan, Bangladesh, Sri Lanka and Nepal, and South Asian TUs, COs, ROs and NGOs. Ratification of the ILO convention would have offered safeguards for millions of homeworkers in India.
22. A National Consultation with Labour Secretaries, Labour Commissioners of the State governments, representatives of central Ministries and Departments, research and academic institutions, and NGOs/representatives of home-based workers was held on 17 January 2000 in Vigyan Bhavan, New Delhi. The discussion paper by Ministry of Labour presented in the National Consultation does some effort to

define home-based workers (HBWs). Paragraphs 4 to 12 try to explain the characteristics and situation of HBWs in India. The paper says: “Home Based Workers are those who are otherwise unemployed, intending to but not absorbed by the organised sector with skills limited to certain jobs which have economic value... The issues and problems of such workers are complicated, because of there being no direct employer-employee relationship between the home worker and the person or organisation for whom he works – the relationship being of a loose, contractual and tenuous nature. The home worker has thus economic dependence on the person for whom he works but the latter carries no responsibility for him. The relationship being ambiguous and indefinite, the worker is also subjected to exploitation in various forms. The home worker is thus, a self-employed person conducting economic activity for a person or an organisation ... The mode of payment or price can be on piece-rate or time rate basis, depending on the economic activity.

“Among these home based workers there are some for whom this is their main economic activity, while there are others for whom this is a supplementary source of income during their spare time. The gravity of the problems of home workers is therefore felt more acutely by the former category than for the latter.

“There is still some amount of avoidable confusion regarding the term Home Based Workers. HBWs would really indicate that they are workers within the confines of their respective homes and could be termed “self-employed” as well. In many of these cases, either the head of the family or a member of the family does the work himself/herself with the help of other members of the family. It is a collective self-employment effort and strictly speaking, there is neither an employee nor an employer. In fact, all these home-based workers are workers, materials managers, production managers, finance managers, personnel managers, marketing managers and chief executives of their businesses – all rolled into one.

“The absence of specific data pertaining to HBWs in official statistics in India is a reflection of lack of recognition of their legitimacy as workers and also of a refusal to acknowledge their economic contribution. It is argued that HBWs “subsidise capitalist growth by providing space, tools, and equipment and by working for below-minimum wages.” Their contribution to national income in quantifiable terms is yet hazy, but is estimated to be substantial. Partly because of this lack of recognition, HBWs, particularly women workers, have borne the consequences of the inequality in economic structures (formal vs informal) and policies, in all forms of production and access to resources including social

security. In fact, there would be a strong case for granting a formal status to HBWs by accepting the validity of home-based work” (Ministry of Labour, 2000).

23. The factors like employable/unemployed status of the labour, ambiguity in employee-employer relationship and hence the irresponsible behaviour of employers, high level of exploitation, self-employed nature of job, and involvement of family labour in home-based work are acknowledged in the explanation given by this paper (Ministry of Labour, 2000).
24. This paper (Ministry of Labour, 2000) puts the informal count of homeworkers as around 50 million. The paper bases its tentative count on the survey done by SEWA on the status of home-based workers in readymade garments, pappad making and agarbatti making in the States of Gujarat, Karnataka, Rajasthan, MP and UP. Studies done by SEWA (Self-Employed Women’s Association) point out that, female workers constitute the majority of home-based workers.
25. As the paper (ibid.) puts it, SEWA has also identified the presence of certain discrete categories of home-based workers in some of the major States of India. They are as follows:

Rajasthan: beedi, agarbatti, readymade garments, weaving shawls and durries, wool spinning, food packing and preparing, handicrafts and traditional crafts, block printing.

Delhi: zari work, garments, lifafa (envelope) making.

Madhya Pradesh: beedi making, readymade garment stitching, smocking, embroidery, agarbatti, pappad, zari work, tendu leaf, jadi booti and jhadoo.

Bihar: lacquer work, weaving, spinning, bamboo work, pappad rolling, shawl weaving, beedi, packing cooked food, tushar.

Maharashtra: beedi, leatherwork, rope making, cashew, garment, cardboard box making, onion cleaning and sorting, seafood, handicrafts, food products.

Bengal: handicrafts, lacquer work, bamboo work, spinning, weaving, seafood, jute work, carpet making, garment stitching, sack making, leather and footwear.

Tamil Nadu: woollen carpet making, shawl weaving, beedi, scented betel nuts, garment stitching, handloom weaving, ornament making, gems polishing, utensils, lacquer work, sea foods, footwear.

Karnataka: beedi, agarbatti, readymade garments, pickle, food packing and cleaning.

Uttar Pradesh: beedi, handloom, readymade garments, chikan work, food products, lacquer work, rope making, zari work, carpet weaving.

26. The National Consultation on Home-based Workers held under the auspices of the Ministry of Labour in January 2000 opined that the terms like “homeworker,” “self-employed person” and “own account worker” should be defined and the coverage of policy be outlined. Its technical session on *Status of Living and Working Conditions* (Group 1) recommended among other things the following as the first three suggestions (Ministry of Labour, 2000a):

1. “The Group broadly agreed with the definition of home workers as suggested in the ILO Convention No. 177. However, the definition of home workers should not include self-employed persons and should be limited to wage earners working for some outside employer for remuneration. The home workers would mean workers working at home/place of their will rather than place of employer’s choice/home environment.

2. “The home workers are paid wages on piece rate basis and for their benefit. It would be advisable that they are included under the Minimum Wages Act so that a minimum level of wage protection is provided to them. This could come about by either inclusion of each of the activities under the Minimum Wages Schedule or else fixing up a basic minimum wage for all employment irrespective of their inclusion in the Schedule.

3. “The Group suggested the coverage of the home workers under some kind of Central/State legislation so that the welfare schemes and provisions existing under different labour laws can be extended to them. The Group also felt that special care has to be taken in working out these provisions, as it is not possible to transplant the existing provisions in the organised sector to the home workers.”

27. These recommendations suggest that definition of home workers be limited to wage earners working for outside employers, they should be included under the Minimum Wages Act so as to get a minimum level of wage protection, the welfare schemes and provisions existing under different labour laws be extended to them, and that the existing provisions in the organised sector should not be transplanted

to the home workers. These recommendations, however, ignore the fact that self-employed homeworkers are also workers in the unorganised sector. Technically, it is important to distinguish that there are both wage-employed and self-employed among the home-based workers. However, the thin line of distinction in principle is not visible in the Indian context as far as the home-based workers are concerned. However, different measures can be suggested for these two groups of home-based workers.

28. **Rag pickers, rickshaw pullers, hawkers and vendors, and other self-employed workers**: Among rag pickers are a substantial section of street children, who are harassed by the society and the law enforcing agencies (Mandar, 1998). At times, whole family would be involved in the rag picking job. Those who are engaged in waste business seldom properly compensate their labour. Their health and hygiene are worst. The rickshaw pullers are mostly migrants. The rickshaw pullers in Delhi are migrants from the States of Bihar, Orissa, Madhya Pradesh, Uttar Pradesh and Rajasthan. Most of the rickshaw pullers are small peasants or land-less workers who were forced to migrate to the cities due to feudal oppression, exploitation by land mafia or natural calamities like recurring floods. Traffic police and municipal authorities harass them by taking bribe, booking them under laws of which they are ignorant, and impounding their rickshaws. Street vendors and other self-employed workers who manufacture and sell in the cities also face similar problems from police and local bodies. Rickshaw pullers and vendors are in a vicious cycle of indebtedness. The social and income status of these workers is low. The self-employed workers come under unorganised sector as **working producers** or **service providers** involved in manufacturing products or doing services.
29. **Artisans**: Artisans are persons with some skill or craft with which they produce products of every day use or other tools for their livelihood. Artisans who are not employed in the organised sector come under the category of home-based workers. Like the home-based workers, some among the artisans are self-employed while some are employed under others. As in many cases raw materials are supplied, the products become linked and a sort of **dependency** comes into play. For the employed as well as the self-employed, **wages and earnings are low**.
30. **'Unskilled workers'**: Manual workers and a number of other unorganised sector workers performing unskilled activities are considered unskilled workers. As specific skills are acquired through formal or informal training, the untrained

hands performing all kinds of jobs that do not need substantial specialisation are treated as unskilled workers. The unskilled workers who are not employed in the organised sector come under the category of unorganised sector workers. Majority of agricultural workers and construction workers belong to this category. Helper category of jobs in all sectors, the manual workers, roadside workers available for all kinds of petty jobs, headload workers/porters, etc. come under this category. It should be noted that they possess some skills that other persons in the skilled categories do not have. The skill needed for headload work is different from the skill of typing. All the workers are semi-skilled or skilled in this sense. It would be pertinent to observe here that while fixing minimum wages, a category of 'unskilled' is not used. As their **wages are fixed low**, these unorganised workers get only subsistence wages.

31. **Piece-rate workers:** This is not a particular category of workers. These workers are paid on a per-piece-basis. Piece-rate issue is an extremely important one that has not been adequately addressed. Piece-rate system of compensation is rampant among the unorganised workers. Many among the home based workers, contract workers, earth diggers, brick workers, etc. fall under this category. **The piece-rate is fixed in such a way that they get extremely low pay.** Mechanism for fixing piece-rate is not clearly spelt out while implementing minimum wages. The Minimum Wages Act, 1948 has provisions for both time-rates and piece-rates. It has also provision for a "guaranteed time-rate" for piecework [section 3(2)(c)] that can be put into best use.

32. **Unorganised workers in the organised sector:** Casual and contract workers in the organised sector are more or less equal to unorganised workers as far as benefits are concerned, though the latter are eligible for most of the benefits under law. Regular and permanent workers are mostly eligible for the legislative benefits. There is a section of workers on the official waitlist in most of the employments. They are the **casual workers** who are often called **badli workers**, daily-wage workers and so on. The present trend is one of increasing casualisation where even regular workers in the organised sector are losing their work security. This section of labour, even if in organised sector, has to be considered part of the unorganised sector. It is also the case with the contract workers. **Public Sector Undertakings (PSUs) engage contract labour.** Most of the large-scale factories are engaging more and more contract labour, in some cases more than 50 per cent of the workforce. In some cases, these contract workers are not properly educated, not fully trained to handle machines, electricity and other chemicals, etc. In public sector 50 to 60 per cent are contract workers, and regular workers are just turned

out in the name of outsourcing, as it is taking place in PSUs like Bhilai Steel plant or the Bokaro steel plant. They are really exposed to very dangerous machines and dangerous processes. Contractualised and casualised labour should be considered part of the unorganised sector. The proposals in the budget 2001 that relaxed the conditions of retrenchment are certainly going to add to the **casualisation of the organised sector labour** and in turn the strength of membership in the camp of unorganised workers.

33. **Agricultural workers, marginal farmers and sharecroppers:** The Annual Report of the Ministry of Labour, 1999-2000 considers cultivators, sharecroppers and agricultural labourers among the unorganised workers. **Agricultural sector constitutes the largest segment of workers in the unorganised sector.** Inadequacy of employment opportunities, poor security of tenure, low income, and inadequate diversification of economic activities create economic problems for the workers in the sector. Agricultural labour gets **employment for less than six months in year** and they have often to migrate for other avenues of employment in construction and **other occupations during the off-season.** Circumstances force most of these sections in agriculture to **borrow money from time to time** from private sources either for consumption or meeting social obligations like marriages (Ministry of Labour, 2000b: 106-107). **Inputs needed in farming and the amount of family labour put by farmers is not recovered in agriculture** because of the existing price system. There exist a mechanism to announce minimum wages in certain occupations; however, there is no system to account for minimum prices for crops. When traders are in control of the price of fertiliser, insecticide and seed, farmers have no say in the pricing of their agriculture products.
34. **Unorganised workers depending on common property resources:** A good number of workers depend on natural resources for their livelihood. Natural resources include forests, water bodies and mineral/stone deposits. Forest workers including adivasis, grazers, fisher-people, cultivators, sand miners, potters and quarry workers depend on these resources. Some of these resources are converted into public property through various legislations. For instance some enactments in relation to forests made them government property and in that sense public property. With this, forest dwellers lost many of the traditional rights and powers they wielded. It is also the case with mineral deposits and fisheries. Panchayats now own the water tanks where any leaseholder who needs not be a fisher-person can do fishing. This development leads to results in two directions. First is the **entry of external players like middlemen and mafia** in the exploitation of

resources that pushes the original and natural stakeholders to too low a subsistence life. Second is the **depletion of resources** due to wanton destruction or overexploitation by the new entrants.

35. As resources, these are open resources. As property, these belong to state or public domain. Regulated tapping is the way to sustain the open resources or the common property. **Private individual tapping of an open or common resource brings in the question of ownership to a community or the question of communal property.** Communal property is a domain that stands between individual property and public property. **In fact, the take over of open access resources like forests and fisheries through legislation from practically the communal hold of adivasis and fisher people led to private leasing of public property, effecting a transfer of ownership.** Remedial strategies argued by the affected people include the involvement of the communities in the sustenance of these resources will be needed. Village commons, the grazing land and the source of wood, fuel and other food items, are also on the decline, pushing its poor dependants into further poverty. Let us examine some of these common property based workers.
36. **Fish-workers** : Land-based activities including mining and industry, tourism, and off-shore problems like oil pollution, destructive fishing practices, etc. play a role in the depletion of the fishery resources. Over and above depletion, state has taken over the ownership of many of these water bodies through panchayats and other local and State level bodies. The developments in the coastal areas like construction of harbours, tourist centres, industries and allied developments have evicted a sizeable marine fishing population and destroyed quite a few fishery belts. The sector is obviously unorganised as it is characterised by **seasonality of employment, uncertainty of minimum wages (income), indebtedness and bondage**, and dislocation of family life caused on account of migration (inter-district, inter-state, etc.). As National Fish-workers Forum (NFF) says, these are problems caused on account of unplanned and unregulated 'development' that created misery, privation and suffering.
37. **Forest cultivators** : Traditional forest based agriculturists, mostly Adivasis, are facing livelihood crisis following the legislation on forests that vested the monopoly of rights over forests with the state. Numerous national parks, sanctuaries and forest departments are very often in conflict with these subsistent farming people. The indigenous peoples had been considering the forest as their common property. The autochthonous peoples live in conformity with the laws of

nature and forests. They do not destroy the open-access resources. **Now, the forest people do not have property rights over forest.** Forest villages are not considered legal entities. There is no definition of ‘forest village’ in either the Indian Forest Act or the Wild life (Protection) Act (Krishnan, 1996). With the legislation, **most of them were converted into forest labour** with family contracts to cultivate pieces of land within the reserved forest. *Rabhas* are one such people who live in the Buxa (West Bengal) tiger reserve’s buffer zone. Through eco-development committees, these people are officially made partners in wildlife conservation. But their situation is worse with their livestock and cultivation in danger (Karlsonn, 1999). These cultivators are also unorganised workers like the other cultivators that we discussed.

38. **Forest workers** : Choudhury and others (1998) define forest workers in a broader perspective as to include plantation labour employed by the forest department, workers employed by forest corporations, gatherers of minor forest produces and even the seasonal pastoral migrants from forest to forest. However, forest workers can include workers connected with forestry work, those involved in timber and logging operations even under contractors, workers based on forest resources like bamboo, various commercial grasses, etc. engaged in operations such as cutting, binding, loading and transporting of them. These workers have to brave hazards like snakebite poisoning and malaria. They are included in the schedule of the Minimum Wages Act. A good section of them is working under Forest Development Corporations. At present, most of them are **facing loss of jobs and insufficient work**.
39. **Forest produces gatherers**: Forests provide a large number of non-timber products. Gathering and selling of these produces like firewood, tendu leaves and fruits, saal seeds, mahua petals, gum, tamarind, amla (gooseberry), medicinal herbs and roots, and honey constitute livelihood for millions of people. Though trading of these items is big business, **the collectors do not get the pay for the labour they put in, because the mafia-traders network controls the market price**. In some cases, state-sponsored bodies like Forest Development Corporations work as buyers where also prices are not competitive.
40. **Pastoral toilers** : Shepherds, nomads depending on domestic animal herds, animal grazers utilising village commons and forest lands are another category of self-employed groups who **live often at below-subsistence level**

41. **Other common property resources based workers** : Traditional artisans such as basket weavers and rope makers depend on a number of resources taken from forests and *village commons*. Village forests offer various grasses, canes and bamboo. The *baan* workers of Saharanpur produce ropes from the *bhabhar* grass, abundant in the Shivalik hills of Saharanpur district of Uttar Pradesh. **Village commons are source of food, fodder and fuel for the poor villagers .**
42. All these workers depending on common property resources, whether employed or self-employed, are making **low earnings** for a number of reasons such as depletion of resources and lack of work. **Debt bondage** is prevalent among them. They belong to the unorganised sector.
43. One of the characteristics of the new economy is the **fast changing technologies and the need for new skills** that keep emerging. In the earlier days, a specialisation in one skill was usually enough for lifetime employment. Today, there is need to continually adapt skills. At the same time, the workers of the unorganised sector do have their own skills, which may be traditional skills. However, they are very versatile and adapt their skills to the needs of the markets and economy if given the chance. Skill upgradation is a priority for advancement of the economy and the workers.
44. **A new kind of bondedness**: Unorganised workers face a new kind of bondedness. Especially in the new economy, workers are at a loss with no chance of bargain in the face of unregulated entry of millions of unemployed including children in the wage market. The process of their inputs are imposed on farmers, while they do not have control over the prices of their products. When **earnings and wages are below the statutory minimum wage**, the labour involved is equivalent to bonded labour. The actual wages in the unorganised sector is below dignified wage. **Basic labour rights are denied** to the unorganised workers. When the worker is paid below the dignified wage and when farmer is not getting a justifiable price for the produces, it hits Article 23 of the Constitution. The Bonded Labour System (Abolition) Act, 1976 and the Asiad workers' case (*People's Union for Democratic Rights Vs. Union of India*, AIR 1982 SC 1473) together points out that the prevailing situation in the unorganised sector is equivalent to bondedness and is unconstitutional and illegal.
45. Section 2 of the Bonded Labour System (Abolition) Act, 1976 defines bonded labour system as follows:

“(g) “bonded labour system” means the system of forced, or partly forced, labour under which a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that,-

(i) in consideration of an advance obtained by him or by any of his lineal ascendants or descendants (whether or not such advance is evidenced by any document) and in consideration of the interest, if any, due on such advance, or

(ii) in pursuance of any customary or social obligation, or

(iii) in pursuance of an obligation devolving on *him* by succession, or

(iv) for any economic consideration received by him or by any of his lineal ascendants or descendants, or

(v) by reason of his birth in any particular caste or community, he would-

(1) render, by himself or through any member of his family, or any person dependent on him, labour or service to the creditor, or for the benefit of the creditor, for a specified period or for an unspecified period, either without wages or for nominal wages, or

(2) forfeit the freedom of employment or other means of livelihood for a specified period or for an unspecified period, or

(3) forfeit the right to move freely throughout the territory of India, or

(4) forfeit the right to appropriate or sell at market value any of his property or product of his labour or the labour of a member of his family or any person dependent on him,

and includes the system of forced, or partly forced, labour under which a surety for, a debtor enters, or has or is presumed to have, entered, into an agreement with the creditor to the effect that in the event of the failure of the debtor to repay the debt, he would render the bonded labour on behalf of the debtor.”

46. Section 2(g)(v) and its sub-clause (4) of this Act guard against bondage on caste grounds and forfeiting “the right to appropriate or sell at market value any of his property or product of his labour or the labour.” The Bonded Labour System

(Abolition) Amendment Act, 1985 brought the contract labour and migrant labour under the purview of the legislation, adding the following clarification under section 2 (g) of the Act of 1976:

“Explanation. - For the removal of doubts, it is hereby declared that any system of forced, or partly forced labour under which any workman being contract labour as defined in Cl. (b) of sub-section (1) of Sec. 2 of the Contract Labour (Regulation and Abolition) Act, 1970 (37 of 1970), or an inter-State migrant workman as defined in Cl. (e) of sub-section (1) of Sec. 2 of the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (30 of 1979), is required to render labour or service in circumstances of the nature mentioned in sub-clause (1) of this clause or is subjected to all or any of the disabilities referred to in sub-clauses (2) to (4), is “bonded labour system” within the meaning of this clause.”

47. Article 23 (1) of the Constitution of India, relating to Fundamental Rights, states that “traffic in human beings and *begar* and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.” This is very much in consonance with the provisions of Slavery Convention of 1926. Supreme Court in *People’s Union for Democratic Rights Vs. Union of India* (AIR 1982 SC 1473) and *Bandhua Mukti Morcha Vs. Union of India* (AIR 1984 SC 802) has redefined the scope of Bonded Labour System (Abolition) Act 1976. The Supreme Court in the *Asiad Workers’ Case* pointed out that the Constitution makers decided “to give teeth to their resolve to obliterate and wipe out this evil practice by enacting constitutional prohibition against it in the chapter on fundamental rights, so that the abolition of such practice may become enforceable and effective as soon as the Constitution came into force. This is the reason why the provision enacted in article 23 was included in the chapter on fundamental rights.” The word ‘*begar*’ has not been defined in the Constitution and this term along with the term ‘forced labour’ used in Article 23 came up for discussion in the *Asiad Worker’s case*. The Court observed that “*Begar* is form of forced labour under which a person is compelled to work without receiving any remuneration.”
48. The Court further pointed out that the object of adding the words “other similar forms of forced labour” was to expand the reach and content of Article 23. Thus, “every form of forced labour, ‘*begar*’ or otherwise, is within the inhibition of Article 23 and it makes no difference whether the person who is forced to give his labour or service to another is remunerated or not. Even if remuneration is paid,

labour supplied by a person would be hit by the Article if it is forced labour, that is labour supplied not willingly but as a result of force or compulsion.” In the *Asiad Workers’* case, the Court laid down foundations for the expansive meaning of the expression ‘forced labour’ thus paving the way for future interpretation.

49. The *Asiad workers' case (People’s Union for Democratic Rights Vs. Union of India AIR 1982 SC 1473)* added the new dimension that force arising out of **economic compulsions to make one volunteer to work below minimum wages is also forced labour**. The Court, basing the argument on Article 23, held that: “This Article strikes at every form of forced labour even if it has its origin in a contract voluntarily entered into by the person obliged to provide labour or service. The reason is that it offends against human dignity to compel a person to provide labour or service to another if he does not wish to do so, even though it be in breach of the contract entered into by him.”

“Where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words ‘forced labour’ under Article 23. The word ‘force’ must therefore be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage (Mathew, 1983; reprint 1985).”

50. In the *Bandhua Mukti Morcha* case, the power of the Supreme Court as per Article 32 was invoked to free the forced labour in two stone quarries in Faridabad. In the light of the above historic judgements, when a person enters even into a willing contract by force of circumstances, **if the person is paid only nominal wages or gets only nominal prices for products, then the person is bonded and doing forced labour**. Therefore, the cases of farmers who do not get minimum prices for crops and workers who do not get minimum wages need a correctional legislative step. In other words, both the self-employed and employed workers need a guaranteed income or wage to get them out of the clutches of the neo-bonded economy.
51. Anganwadi and Balwadi workers are getting only nominal wages. Some health workers who are ‘employed’ as *Swasthya Rakshak* by Health Departments/Ministry or by para-statal organisations get insignificant rewards euphemistically called ‘honoraria,’ given for ‘voluntary service.’ These workers,

whose working conditions are not regulated, are neither given wages nor considered employed by the institution. They are used by the governmental and semi-governmental wings for umpteen tasks like campaigns against malaria and polio. At the same time the employers are not ready to own them and since the wages are insignificantly low they officially term the same as honoraria. These and similar workers are considered part of the unorganised sector and they should be given minimum wages and other relevant social security measures to be proposed by the umbrella legislation.

52. Notwithstanding the ambiguity in the employer-employee relationship, dependency relationships between them and of the self-employed on others have become prevalent in this sector. The **economic dependence** of the unorganised workers is obvious. However, the nature of it needs further study.
53. **Gender nature of workforce:** Mostly, women are working in the unorganised sector. The share of casual labour and self-employed workers among female labour is higher compared to those among male labour. As early as in 1986, Vaidyanathan (1986) observed on the basis of three NSS rounds (1972-73, 1977-78 and 1983) that when the proportion of the casual labour to wage labour increased from 64 per cent in 1972-73 to 73 per cent in 1983 for the males, the figure for the females rose from 88 to 92 per cent. The NSSO rounds of 1993-94 showed that while 56.8 per cent of the female workforce constituted of self-employed, the figure for the males was only 53.7. When the figure for casual labour was 29.6 for the males, it was as high as 37 per cent for the females (NCAER, 1998). Proportionately, the unorganised component is higher among the female workforce compared to the same among the males. This trend of increasing women labour in the unorganised sector is growing with casualisation of labour, and as more employments are coming within the homebased sector. As majority of women is working in the unorganised sector, and as they form a special group, they need to be given greater protection in accordance with the norms of the Constitution of India.
54. In a sense, all the workers who are not covered by the existing Social Security Laws like ESI Act, EPF and Miscellaneous Provisions Act, PGA and Maternity Benefit Act can be considered as part of the unorganised sector or for any reason who do not get the benefits of the Social Security laws.
55. Then, **worker in the unorganised sector** can be **understood** as any apprentice, casual or contract worker, home worker, or self-employed person, whether

dependent or not, engaged in any industry/agriculture/service directly, or indirectly through a contractor, to do any manual, unskilled, skilled, technical, operational, teaching, sales promotion, clerical, supervisory, administrative or managerial work for hire or reward, whether the terms of employment are expressed or implied or none, or any worker or self-employed who depends directly or indirectly on natural resources that are open or common property-based; provided

- i. that it does not include any such person who is subject to the three armed forces Acts or employed in the permanent police or prison services;
- ii. and that they are not employed as permanent workers in:
 1. Factories as defined in section 2(m) of the Factories Act of 1948,
 2. Plantations as defined in section 2(f) of the Plantations Labour Act of 1951,
 3. Mines as defined in section 2(j) of the Mines Act of 1952, and
 4. Shops and commercial establishments as defined by the different State Acts.

Other casual and contract workers in the Armed Forces, factories, plantations, mines and shops and commercial establishments who for any reason do not enjoy the benefits of the Social Security Laws should come under the unorganised sector.

56. In India, the official definition of informal sector enterprises consists of Directory Establishments that employ at least six persons but not more than nine, Non-Directory Establishments which employ five persons or less, and Own Account Enterprises that employ oneself. Officially, these constitute the unorganised sector of industries. However, the available database and hence the modes of estimation of unorganised sector workforce are least dependable.
57. **Numerical strength:** The unorganised sector accounts for around 91 per cent of the total workforce in the country, i.e., around one-third of India's population. Sixty per cent of the unorganised workers are self-employed/homebased workers. Annual Report 1999-2000 of the Ministry of Labour (2000b:106-107) basing its figures on the 1991 Census gives the following account on unorganised workers

(detailed labour data based on 2001 Census is not yet out, and the Annual Report 2000-2001 of the Ministry of Labour also does not provide any new data):

- Out of the total workforce of 314 million, 286 million are main workers and 28 million are marginal workers. Out of the 286 million main workers, 259 million are in the unorganised sector.
- In relative terms, unorganised labour accounts for 90.6 per cent of the total workers.
- Out of 191 million workers engaged in agriculture, forestry, fishery and plantation, 190 million (99.2 per cent) are in the unorganised sector.
- Out of the 28.92 million workers in the manufacturing sector, 21.62 million (75 per cent) are in the unorganised sector.
- In building and construction, 78 per cent of its workers are in the unorganised sector.
- In trade and commerce, 98 per cent are unorganised workers.
- In transport, storage and communication, 4.9 million (61.5 per cent) are unorganised workers.

58. **List of jobs and processes in the unorganised sector:** It is not possible to prepare an exhaustive list of processes and jobs in the unorganised sector. All manual and un/semi-skilled works, both piece-rated and time-rated works, and all jobs that are executed in the informal/unorganised sector shall be identified as eligible to be brought under the coverage of the Umbrella Legislation for the Workers in the Unorganised Sectors. The following list is made based on the Schedules in the State and Central Minimum Wages legislation as well as on other employments. The Shramshakti (the Report of the National Commission on Self-employed Women and Women in Informal Sector, 1988) report and the paper by Ministry of Labour on Home-based Workers are also used in preparing the list. However, the following list cannot and should not be construed exhaustive.

- 1) Employment in plantations, farms and agricultural fields: any form of farming including the cultivation and tillage of the soil; the production, cultivation, growing and harvesting of any agricultural or horticultural commodity, and any practice performed by a farmer; farm operations including any forestry or timbering operations and the preparations for market and delivery to storage

or to market or to carriage for transportation to market of farm produce;
Employment in cleaning and sorting of onions and other incidental work;
Employment in sericulture, horticulture, floriculture, mushroom cultivation;
Cotton-picking, pod opening, unskilled and manual works.

- 2) Dairy farming, animal husbandry, poultry, piggery, bee keeping.
- 3) Employment in forestry including silviculture: aligning and stacking, surveying and demarcation of forest lands, digging pits for planting, transport of seedlings and other planting materials, planting, weeding, tending, soil working, ploughing, fencing, application of fertilisers and pesticides, timber and logging operation, raising of nursery, breaking plots, watering, collection of fertile earth or tank silt collecting, clearing and grading of seeds, scraping fire lines, road works, building operations, up-keep of livestock, collection of minor forest produce and other operations or occupations connected with forestry; plucking and processing of kendu/tendu leaves, forest produces and hill produces industry.
- 4) Furniture, carpentry, interior decoration/furnishing, saw mills, plywood, cardboard, paperboard, pulp and paper production, reed work, basket weaving.
- 5) Elephant handling and caring.
- 6) Fisheries, fish processing; packing, drying of fish; aquaculture; processing of molluscs and other shellfish, squids and shrimps.
- 7) Cold storage, ice plants, fruit and vegetable preservation, canning of fish and meat, processing and export of seafood, frog legs, etc.
- 8) Beverages, bought leaf tea factories, coffee curing, distilleries, breweries, bottling plants, toddy tapping and related occupations, neera tapping, liquor vending.
- 9) Handloom, power-loom, textile, ready-mades, woollen carpet making, shawl weaving, hosiery, cotton carpet weaving, tagai-work, cotton ginning, pressing, spinning, weaving, blankets, durries, garments, knit-wear, tailoring, embroidery, charkha-spinning, knitting, lace/tilla work, Gota, kinari, lappa establishments; zari/jari, zardosi, chikan, brocade, chindi/chandi work; kosa silk, silk industry.

- 10) Rice, flour and *dal* mills, oil mills, sugarcane, *khandsari*, sugar mills; food processing and agro-business trades; rice workers (making of *murmura*, *chuda*, etc.); baking processes, bread/biscuit making, confectionery, pappad making, home-cooked food, masala pounding; ice cream and cold drinks, aerated syrups and drinks, fruit juices.
- 11) Khadi and village industries, handicrafts and traditional crafts; cashew processing, copra, coir, jute, tobacco processing, beedi making, supari-cutting, lac manufacturing, tanneries and leather works/leather products, shoe-embroidery, footwear, rope making, envelope making, lacquer work, bindi pasting, jhadoo, jadi booti, agarbatti, tushar, food packing; Laundry and washing, gunny bag stitching.
- 12) Construction and maintenance of roads, runways, dams, irrigation facilities, embankments and buildings; Sinking of wells and tanks: Earth cutting, removing, and filling and drilling activities; Tube-well industries.
- 13) Transport and ferries.
- 14) Mining, quarrying, stones crushing, slates factories.
- 15) Commercial establishments, shops, saloons/salons, parlours, catering units, eateries, hotels, tourism-related jobs, clubs, canteens, restaurants; Cinema stalls, motion picture industry; Small media/newspaper establishments; Door to door selling/sales promotion; Petrol and diesel pumps.
- 16) Employment in religious and social institutions, co-operative establishments, NGOs, private educational institutions, pre-schooling institutions/ nursery schools, coaching and technical institutions, private hospitals, nursery homes, clinics.
- 17) General engineering, workshops, garages, printing presses, bookbinding, plumbing, wiring; Laying underground cables, electric lines, water supply lines and sewerage pipelines; Metal industries; tie-and-dye.
- 18) Manufacturing of utensils and household articles; Sports goods.
- 19) Stationery industries; Manufacture of articles of artistic design; Packers, couriers.

- 20) Electronic and electrical goods; Photography, reprography, audio and video processes.
- 21) Ayurvedic, Allopathic and Unani medicine manufacture; Chemicals, pharmaceuticals, pesticides, fertilisers, feeds; *Sindur* and *rang* manufacture; Cosmetics; Paints, varnishes, dyes; Detergents and soap powder making; Gold plating; Dyeing, bleaching, etc.; Plastic and PVC goods industry, natural and artificial rubber and rubber products; Salt-pans; Bone-crushing; Matches, crackers/fireworks.
- 22) Kilns – tiles, bricks; potteries including crockery, sanitary ware, refractories, jars, electrical accessories, hospital-ware, textile accessories, toys, glazed tiles, etc.; Pottery-painting; Ceramics/chinaware; Stoneware; Hard-coke ovens and foundries; Processes in glass/bangle manufacturing and glass sheet manufacturing, bead piercing; Lock and trunk making, brassware, metal ware;
- 23) Gem cutting and polishing; Bobbins.
- 24) Cements industry, cement-ware, asbestos cement, cement pre-stressed products industries, cement concrete products; Hardware and building materials.
- 25) Cleaning/*safai* works; Assistant/helper jobs; Unskilled and manual works; Domestic labour; Loading and unloading, head load works.
- 26) Person involved in any other job, process or avocation or profession, not covered by any other industrial legislation should be treated as worker in the unorganised sector.

Chapter II: Existing legislation and the unorganised sector

59. Labour being the largest social segment of production activity and also the largest social partner, the social health of the society depends on the well being of the labour. We have much labour enactment to protect the interests of the labour in general and the organised labour in particular. However, only some of the labour legislation protects the unorganised labour and that too partly. Besides the labour laws in general, there is labour legislation on social security, welfare schemes and funds. We have to analyse and examine the existing provisions of these labour laws, social security legislation and labour welfare schemes and funds, and examine the applicability of their provisions for the workers in the unorganised sector. Some of these Acts and schemes are examined here.
60. **The Factories Act, 1948:** The Factories Act 1948 is designed to protect workers in the factories. The Act extends to the whole of India. The Act underwent various amendments and was updated last in 1987. Various sections of the Act deal with benefits and welfare facilities and also health, safety and hygiene inside the factory premises. The implementation of the Act is under the jurisdiction of the State governments. They enforce it through the Factory Inspectorates. Any worker can complain to the Inspector about the conditions inside the factory and the source is not supposed to be disclosed. Unfortunately, the implementation mechanism is very poor. Each factory inspector has more than a thousand factories under him, without any serious infrastructural facility. The first schedule of the Act lists the industries involving hazardous processes; the second schedule is on the permissible levels of certain chemicals in work environment; and a list of notifiable diseases makes the third schedule.
61. This Act in its updated form has a very broader definition of "worker." However, practically, every factory discriminates between its workers. Contract and adhoc workers do not get the benefits given to its permanent workers. Factories Act has provisions for better work environment, and for safety and contingencies. Factories Act imposes restrictions on employment of women in factories during the night, especially the period between 7-00 p.m. to 6 am. There is also restriction of daily working hours for women in factories, i.e., not more than 9 hours in a day and 48 hours in a week; thus, women cannot be engaged in extra hours of work in a factory. Sections 23 and 27 of the Factories Act prohibit of women and children

from handling dangerous devices. However, all these provisions are not applied in practice for a section of its workers. Moreover, the Act is applicable for the manufacturing units, organised as factories. The provisions of this Act do apply to the vast masses of workers in the unorganised sector.

62. **Industrial Disputes Act, 1947:** I. D. Act is enacted to make provision for the investigation and settlement of industrial disputes and for certain other purposes. The Act applies to the whole of India. The Act is a progressive piece of legislation designed to resolve disputes; it gives scope for devising “rational norms keeping pace with improved industrial relations reflecting and imbibing socio-economic justice” (*Workmen vs. Hindustan Lever Ltd., (1984) 1 SCC 728: 1984 SCC (L&S) 183*). The Act generally applies to all industries irrespective of the religion or caste of the parties. It applies to industries owned by the Central and State Governments too (*Hospital Employees Union vs. Christian Medical College, (1987) 4 SCC 691: 1988 SCC (L&S) 53*) (Malik, 1999:1363).
63. The special provisions relating to lay-off, retrenchment and closure as contained in Chapter V-B of the Act applied earlier to establishments employing 300 workers or above. With a view to extending this statutory protection to workers of smaller establishments also, the number was reduced from 300 to 100. However, in the light of the recent developments in the world economy and increasing globalisation, employers are demanding flexibility. It is demanded that industry should be given the flexibility to utilise contract labour in non-core areas, prevent multiplicity of Trade Unions, accept Exit policy and rights of Employers to lay off and retrench the surplus manpower, and legalise closure in the unprofitable units. Chapter V-B is a stumbling block for the employers’ design, and the law is applicable to all establishments employing one hundred or more workmen. Chapter V-B stipulates that lay-off, retrenchment and closure of the establishment can be effected only with the prior permission of the appropriate government. The PM’s task force recommended the application of chapter V-B only in bigger establishments employing one thousand or more workmen, instead of the present provision of one hundred or more workmen. The changes envisaged will provide unrestricted powers to the employers to hire and fire the workers. Establishments with less than 1000 workers means that the new measure is going to affect the majority workers in the organised sector. An influx of the retrenched workers into the unorganised sector is expected with the proposed changes.
64. **Minimum Wages Act, 1948:** The Minimum Wages Act, 1948 is the most important legislation for the benefit, meant mostly, of the unorganised labour. It is

enacted for fixing, reviewing and revising the minimum rates of wages in the scheduled employments where the workers are engaged in the unorganised sector. The Minimum Wages Act is an affirmation that the rule of market forces and laws of demand and supply shall not be allowed to determine the wages of workmen in the industries where the exploitation of workers is considered the maximum. The minimum rates of wages are fixed keeping in view the minimum requirements of a family and these rates shall be paid by all the employers irrespective of their capacity to pay.

65. Minimum Wages Act 1948 helps those unorganised workers who come under the scheduled employments. As nearly 60 per cent of the workforce within the unorganised labour is self-employed/homebased, the major portion of unorganised labour remains outside the purview of the Minimum Wages Act, 1948.
66. **Payment of Wages Act, 1936:** Payment of Wages Act, 1936 regulates the payment of wages to certain classes of persons employed. It ensures the timely payment and correct payment without unauthorised deductions. The Act allows the authorised deductions, which can be made before payment of wages by the employers. This Act applies to persons employed in factories, mines, oil fields, Railways and various other establishments specified in sub-clauses (a) to (g) of clause (ii) of Section 2.
67. The Payment of Wages Act, 1936 is also not applicable for self-employed/home based workers, as they are not persons employed in the establishments given in the Act.
68. **Workmen's Compensation Act, 1923:** The Workmen's Compensation Act, 1923 (8 of 1923) is an Act to provide for the payment by certain classes of employers to their workmen of compensation for injury by accident. The Act extends to the whole of India. After the 1995 amendment (Act 30 1995), the Workmen's Compensation (Amendment) Act, 2000 came into being. The Act has 4 schedules. Schedule I provides a list of injuries with percentage of disablement (loss of earning capacity). If the injury is not a scheduled injury, the loss of earning capacity must be proved by evidence. Majority of the workers who are not insured under ESI Scheme are covered under the Workmen's Compensation Act, 1923. Two conditions must satisfy the exclusion of any case from the purview of the Workmen's Compensation Act. These are: (i) employment should be of casual nature, and (ii) employment should be for other than the employer's trade and business (Gonsalves et al, 1993). Employer is liable to provide monetary

compensation to the worker or dependant in case of death or disablement provided it occurs “out of and in the course of employment.” An occupational disease listed in the schedule III of the Act is also accepted as an accident occurred while on duty. The burden of proving that the accident arose out of employment is upon the worker (Mathew, 1984).

69. The method of claiming compensation for disability is long and painful that rarely one gets it. Any qualified medical practitioner can certify the case, and the victim files claim in the court of the labour commissioner with a copy to employer. The Labour Commissioner decides the case, and the revenue department recovers the compensation amount. Since most of the workers in this category belong to unorganised sector, it becomes very difficult for them to prove that who is their employer. Most of the time cases are prolonged and workers die before they actually get any thing (Jaitli, 1998).
70. The Workmen’s Compensation (Amendment) Act, 2000 that came into existence in December 2000 provides for compensation to even casual workers. The minimum amount of compensation for death has been enhanced from the existing amount of Rs.50000 to Rs.80000 and for total disablement from Rs.60000 to Rs.90000. The ceiling on monthly wage/salary reckoned for determining the compensation amount has also been increased from Rs.2000 to Rs.4000. The amount of funeral expenses payable is increased to Rs.2500 from Rs.1000 (*Business Line*, New Delhi, 16 December 2000).
71. **Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979:** The vast majority of migrant workers falls under the unorganised sector. The labour is recruited from various parts of a State through contractors or agents commonly known as ‘sardars’ for work generally outside the State in big construction projects and other jobs. This system lends itself to various abuses. The promise of contractors at the time of recruitment that wages would be higher and settled from time to time is not usually kept. No working hours are fixed for these workers and they have to work all the days in the week under extremely bad working conditions. The provisions of various labour laws are not being observed in their case and they are subjected to various forms of labour malpractice. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 was enacted to regulate the employment and conditions of service of inter-State migrant workers.

72. The benefits include non-discrimination in wage rates, holidays, hours of work and other conditions of work for inter-State migrant workers in relation to local workers. They are eligible for non-refundable Displacement Allowance equal to 50 per cent of their monthly wages in addition to the wages. Journey Allowance equal to rail fares both ways is to be paid by the contractor with wages during the period of journeys. Other facilities include regular payment of wages, equal pay for equal work to both men and women workers, and provisions for suitable conditions of work, suitable residential accommodation, adequate medical facilities, and adequate protective clothing. In case of accidents, there is provision to report to the authorities of both the States (Home State and State where he or she is working) and to their next of kin.
73. To understand the applicability and utility of the Act, we must understand the definition of inter-State migrant workman in the Act. It says, “any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State, whether with or without the knowledge of the principal employer in relation to such establishment.”
74. According to this definition, we find all migrant workers (who are generally unorganised workers) are not inter-State migrant workers and hence cannot reap the benefits of the ISMW Act. To prove the application of Act in the court in a prosecution case is very difficult, as the employers refuse that the workmen were recruited in another State (Home State) by any of their contractor. Rather, the workers are recruited from the nearby places within the State where the industry is located. So, this Act has a very limited scope for the unorganised sector worker.
75. In order to make the ISMW Act more effective and cover all migrant workers, there is a need to change the definition of inter-State migrant worker. It should mean any person who is employed in an establishment situated in a State other than the Home State of the worker. This change can make the ISMW Act implementable without any ambiguity and cover large number of unorganised workers.
76. **Building and Other Construction Workers’ (Regulation of Employment and Conditions of Service) Act, 1996:** Building and Other Construction Workers’ (Regulation of Employment and Conditions of Service) Act, 1996 is an Act to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures

and for other matters connected therewith or incidental thereto. The Act applies to every building or other construction work establishment, which employs or had employed ten or more workers. It covers all central and State government establishments. The special feature of this Act is that it covers all private residential buildings if the cost of construction is more than Rupees ten lakhs.

77. Registration of Establishment is a must and no Establishment without Registration can employ any building or construction worker. Registration of every worker between 18 and 60 years is required to become eligible for benefits. He/she must have put in at least 90 days of work in the previous year for eligibility for registration. Every registered worker gets an identity card and work entries are made in the card. The worker remains a beneficiary up to the age of 60 years and for the year when s/he puts in at least 90 days of work.
78. A fund has been created with contributions by all including the workers. The benefits include assistance in case of accident, payment of pension, house building loan, assistance for group insurance scheme, education for children, maternity benefits for female beneficiaries. Provision is there for regulation of working hours, and welfare measures and other conditions of service of building workers. Provision of safety and health measures with all other precautions are required for safe working, i.e., safety devices for installation work, demolition work, excavation, underground construction, handling measures, proper ladders, ropes and fencing, etc. Inspections and penalties are provided. In actual practice, the provisions of this Act are only beneficial to the skilled and continuous workers in the industry. The unskilled workers who do not work with a construction establishment continuously may not get the benefits available under the Act. It will not be possible for those unskilled, uneducated and purely casual workers to make regular, timely contributions to the fund as per the provisions of law. So even this legislation will not be of much significance to ameliorate the economic interests of all unorganised workers in the construction industry. The scope is limited. To reap benefits, a worker has to work in this industry only and cannot change occupations.
79. **Contract Labour (Regulation and Abolition) Act, 1970:** Contract Labour (Regulation and Abolition) Act, 1970 regulates the employment of contract labour in certain establishments and provides for its abolition in certain circumstances. The Act is applicable if the principal employer engages twenty or more contract workers in an establishment. The contractor who employs twenty or more workers in his contract work shall be covered under Contract Labour (R&A) Act 1970. The

Act provides for registration of all establishments of Principal Employers and licensing of all contractors. There is a special provision (section 10) for abolition of contract system on meeting certain conditions like the nature of jobs being of perennial nature and connected with the core business of the principal employer. There are sufficient measures in the Act for the welfare and safety of contract labour. For regulating the implementation, certain registers, records, returns, etc. are provided to be maintained by the principal employers and contractors. Penalties have been provided for the violators of the law. This Act is meant for the unorganised labour and its scope is very limited. It, by implication, benefits the contractors if they are engaging less than twenty workers. This provision is utilised to the maximum by all possible manipulations by employers and contractors. Therefore, the coverage of workforce in the unorganised sector under this Act is insignificant.

80. **Beedi and Cigar Workers (Conditions of Employment) Act, 1966:** Beedi and Cigar Workers (Conditions of Employment) Act, 1966 is an Act to provide for the welfare of the workers in Beedi and Cigar establishments and to regulate the conditions of their work and for matters connected therewith. The Act provides for licensing of all industrial premises where beedi, cigar or both are made. The law provides for cleanliness, ventilation and against overcrowding of the premises. Welfare measures include drinking water, latrines and urinals, washing facilities, crèches, first aid and canteens. Working conditions provide for implementation of working hours, wages for overtime, interval for rest, spread over, weekly holidays, annual leave with wages and wages during leave period, and ban on child labour and night shift for women and adolescents.
81. The employees who are given raw material by an employer or a contractor for making beedi and cigar at home are covered under the Act. The persons not employed by an employer or a contractor but working with the permission of or under agreement with the employer or contractor are also covered. Section 43 of the Act does not cover the self-employed persons in the Beedi and Cigar making industry. If the owner or occupier of dwelling house is not the employee of an employer and carries on any beedi and cigar-making work as a self-employment, the person is not covered under the Act. It is observed that only those unorganised workers can receive the limited benefits of the existing labour laws if they happen to work for the employers, in other words, if there is master-servant relationship. None of these labour laws can provide shelter to the vast majority like self-employed, or even to the home-based workers and other workers when employed in less numbers than provided for under the various labour laws.

82. **Social security legislation, and labour welfare schemes and funds**: For various reasons, the social security legislation and the labour welfare schemes and funds available in India could not benefit the unorganised sector workers in a substantial way. Let us examine some of the laws and schemes.
83. **Employees' State Insurance Act, 1948**: Employees' State Insurance Act, 1948 provides certain benefits to employees in case of sickness, maternity and employment injury and makes provision for certain other matters in relation thereto. The Act applies in the first instance to all factories, which are not seasonal and subsequently it may be extended partly or wholly to any establishment or class of establishments. The Act covers labour employed including the clerical staff. The benefits available for the employees are (i) Medical benefits (ii) Sickness benefits, (iii) Maternity benefits (for female employees), (iv) Disablement benefit and (v) dependants' benefits. This Act covers only the employees in the organised sector and none of the employees in the unorganised sector is benefited.
84. **Employees' Provident Funds and Miscellaneous Provisions Act, 1952**: The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 provides for the institution of provident funds, pension fund and deposit-linked insurance fund for employees in factories and other establishments. This Act covers all factories and establishments in industries given in its schedule. It is applicable when twenty or more persons are employed. Government has power to add new industries in the schedule. Employers contribute 10 per cent of the total wages and individual employees also contribute equally to the Fund. The benefits are paid from the fund on superannuation, retirement and if employee leaves the job. This Act in practice benefits the workers in organised industries.
85. **Payment of Gratuity Act, 1972**: Payment of Gratuity Act, 1972 provides for a scheme for the payment of gratuity to employees in factories, plantations, shops and establishments, mines, oil-fields, ports and railway companies in the event of superannuation, retirement, resignation and death or total disablement due to accident or disease. The quantum of gratuity payable is fifteen days' wages based on the wages last drawn by the employees concerned for every completed year of service. The eligible employees will have to serve at least five years in the establishment of one employer. There must be at least ten or more employees in the establishment to attract the provisions of this Act. A continuous service of five years or more with one employer in the specified employments entitles the

employee for gratuity benefit. This covers only the organised industry workers and this Act is of no relief to the workers in the unorganised sector.

86. **Maternity Benefit Act, 1961:** Maternity Benefit Act, 1961 regulates the employment of women in certain establishments for certain periods before and after childbirth and provides for maternity benefit and certain other benefits. This Act applies to all factories, mines, plantations and establishments where persons are employed for the exhibition of equestrian, acrobatic and other performances, and also other establishments added from time to time. There must be minimum requirement of ten persons employed. The women employees who complete at least eighty days of work prior to her delivery are entitled for maternity benefits. The maternity benefit includes wages and leaves up to twelve weeks of which not more than six weeks shall precede the date of her expected delivery. Maternity Benefit Act, 1961 is beneficial to the women employees in the organised industries and does not cover those in the unorganised industries.
87. **Labour Welfare Fund Acts for workers in Mica Mines (1946), Limestone and Dolomite Mines (1972), and Iron, Manganese and Chrome Ores Mines (1976):** These Acts provide to constitute funds for the financing of activities to promote the welfare of labour employed in mining industry for various minerals. The proceeds of the duty of excise, customs, etc. are deposited in the Funds after deducting the cost of collection. The welfare commissioners and staff are appointed to administer the funds. These funds are utilised for the welfare measures of the employed persons in these mining industries
88. Though we have not analysed each and every piece of labour legislation, we could see that almost all the labour laws cover the workers who are employed by employers. Vast majority of unorganised labour is working as home-based and self-employed workers in India. A large section is also employed in smaller establishments, which are left out of the purview of the already existing plethora of labour legislation. The conditions such as the need of a minimum of 90 days of work in the case of Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act 1996 preclude most the construction workers from the purview of the Act. In fact, more than 80 per cent of the workers are not covered owing to such conditions. Similar conditions exist in the prevailing legislation applicable for the unorganised workers. As far as social security is concerned, **almost all the existing social security legislation is applicable for the organised industry workers.** So there is need to think of some

other legislation, which may give certain relief primarily to the workers engaged in unorganised economic activities.

Chapter III: History of recommendations for legislation

89. We have a history of recommendations for labour legislation by various committees, commissions, conferences of ministries, study groups, advisory boards, tripartite agreements and court judgements. Some of the prominent suggestions that have exercised considerable influence on the criteria for calculating minimum wages came from the Committee on Fair Wages, the sessions of Indian Labour Conferences, the Central Pay Commissions, ILO Conventions, National Commission Reports on Rural Labour and Agricultural Labour, Committee on Wage Policy, Committee of Secretaries, the Study Group on Wages, Incomes and Prices, and the Minimum Wages Advisory Boards. It is not possible to go into each recommendation here. However, it is important to mention here some of the major reports and their recommendations, as they are concerned with the unorganised, low-paid and sweated labour. Following paragraphs contain mention of (1) Report of the National Commission on Labour 1969, (2) Report of the National Commission on Self-employed Women and Women in the Informal Sector (Shramshakti) 1988, (3) Report of the National Commission on Rural Labour 1991, and (4) Thirty Fourth Session of the Indian Labour Conference.
90. **Report of the National Commission on Labour, 1969:** The first National Commission on Labour was appointed in December 1966 when Shri Jagjivan Ram was the Union Labour Minister. The Commission under the Chairmanship Dr. P. B Gajendragadkar started working since January 1967. The commission submitted its report in 1969. The First National Commission on Labour was to study and review the conditions of labour since 1947, the existing labour legislation and the living conditions of workers. To keep up continuity with Whitley Commission (1929-1931), the period of 1931-47 was also considered whenever necessary by the commission. The Report is a comprehensive document that touches among other things the issues of industrial relations, labour welfare, social security, minimum wage, wage fixation machinery, and employment of women and children. Concern was expressed on child labour and it was taken as a serious economic problem. However, it did not suggest the complete elimination of child labour. The commission recommended that by fixing limited hours of employment for the children, their education and employment should be combined (p. 387).
91. In this Report, one chapter is devoted to unorganised sector labour. The “illustrative” categories of unorganised labour considered in the Report were “(i)

contract labour including construction workers; (ii) casual labour; (iii) labour employed in small scale industry; (iv) hand-loom / power-loom workers; (v) bidi and cigar workers (vi) employees in shops and commercial establishments; (vii) sweepers and scavengers; (viii) workers in tanneries; (ix) tribal labour; and (x) other unprotected labour” (p. 417). Following were the recommendations:

- (1) First hand detailed survey from time to time to understand the problem of the different categories of unorganised labour.
- (2) Legislative protection by the state for unorganised / unprotected labour.
- (3) Simplification of legislative and administrative procedures applicable to small establishments.
- (4) Expedite the process whereby the unorganised workers get educated and organised.
- (5) As there is no alternative to the existing implementation machinery, the same should be reinforced, and the inspection system should be strengthened. The difficulties faced by small employers are genuine and they should be encouraged to form association and give training to their staff.
- (6) Steps for protection of workers against middlemen, and development of self-help through co-operatives. Co-operatives should pay adequate wages and bonus and give employment opportunities to the underemployed and unemployed among them (pp. 434-35).

The Commission’s opinions on minimum wage are dealt in this document on the section on wage/income.

92. **Report of the National Commission on Self-employed Women and Women in the Informal Sector, 1988 (Shramshakti Report):** The National Commission on Self-employed Women was set up in 1987 under the Chairpersonship of Smt. Ela Bhatt. The Commission later enlarged its scope to include women workers in unorganised sector and submitted its report (*Shramshakti: Report of the National Commission on Self-employed Women and Women in the Informal Sector*) in 1988. The main objectives of the Commission were:

- (1) to examine the status of self-employed women with special reference to their employment, health, education and social status, and constraints that affect productivity,

- (2) to assess the impact of various labour legislation, especially those on maternity benefits and health insurance, on self-employed women,
- (3) to identify gaps in training, credit, upgradation of skills and marketing,
- (4) to survey employment patterns including production relations and their impact on wages, and
- (5) to study the effect of macro level policies on the health of productive and reproductive roles of the self-employed women.

93. The Commission decided to cover also the poor women as both shared important characteristics relating to fewer and poorer opportunities to work, greater impact of unemployment/underemployment, casual nature of work, greater vulnerability due to lack of skills and education, heavy responsibilities, systematic social practice of underrating women's work, and lack of access to better technologies, tools and productive assets. To a large extent, poor women kept moving between the status of self-employed, casual labour and unemployed.
94. The Commission recommended enlarging the definition of women workers to include all paid and unpaid activities performed within the home or outside as an employee or on own account.
95. The single most important intervention towards improving the economic status of poor women working in the informal sector of the economy would be to devise strategies, which would enhance their ownership and control over productive assets. These could be a plot of land, housing, tree pattas, joint ownership of all assets transferred by the state to the family, licence, bank accounts, membership of organisations and identity cards.
96. The commission noted the unquestionable evidence from all available studies about the flagrant violation of statutory provisions regarding payment of wages, safety regulations, provision of housing and medical facilities, accident compensation and so on. Hence, there was need for much more stringent observance of existing labour laws with deterrent penalty clauses. In the context of non-observance of these laws, simplification of judicial procedures was recommended so that unorganised workers could obtain legal redress without undue harassment.
97. For the domestic workers, introduction of a system of registration was suggested. Fixing a minimum wage is extremely important due to existing exploitative trends.

There is also need for legislation to regulate the conditions of employment, social security and security of employment.

98. Though fifty-one per cent of the working women's population is farm labour, their contribution is unrecognised. Women's access to land ownership is extremely limited and women have no say in decision making and in the use of credit technology and marketing. The Commission observed that in certain areas, for the same kind of work, women got Rs.3 to 4 per day, while men got Rs.10 as wages. The Commission recommended that contribution of women to agriculture should be recognised by policy makers and reflected in the country's agricultural policy and programmes, with adequate resource allocation and orientation for women producers. Women involved in seasonal agriculture should be facilitated to diversify into horticulture, fruit processing, vegetable growing, animal husbandry and dairying. The Commission also noticed that the number of women cultivators was declining.
99. The Commission recommended that the Right to Work, already a Directive Principle, should be made a Fundamental Right. The rates of minimum wage are low and have to be increased keeping in view the requirements of the woman worker and her family. Piece rates must be so fixed to enable women workers to earn for 8 hours work a wage equal to the time rated minimum wage. Where work is carried out at home due to which the employer saves on installation cost and equipment an additional amount at 25 per cent of the minimum wage should be paid. There should also be a national or regional minimum wage. Despite the Equal Remuneration Act 1976 wage discrimination is widely prevalent. This must be corrected through better enforcement and wider dissemination of the law. There is also the tendency to classify the tasks generally done by women as those of a slightly inferior nature. This has to be corrected and one way of doing this is to broadbase into a single category the activities requiring work of similar nature.
100. The National Commission recommended the setting up of an Equal Opportunities Commission set up under a central law which would have wide powers of investigation, direction, advice and monitoring.
101. The Commission recommended the establishment of **Tripartite Boards**, as no law however well conceived would benefit women workers unless they have a major hand in the implementation of the laws. The Tripartite Boards have to be constituted in such a manner that workers have as many representatives as the government and employers. The Tripartite Boards will regulate implementation of

legislation and also contribute to making women workers visible, empower them to be equal partners and participants in a production process.

102. A Central Fund from which welfare and social security measures for women workers should be financed must be set up. Apart from a levy on individual employers, a levy on major industries for the benefit of small activities that home based workers carry on is desirable.
103. There should be a separate wing in the Labour Department for unorganised workers with adequate number of women employees at various places.
104. No solution to the problems of women at work will be complete without taking into account her reproductive functions, which can be effectively tackled through maternity benefit and childcare. Maternity benefits on the scale provided under the Maternity Benefit Act should be universally available to all women. The responsibility for this should be borne by all employers, irrespective to whether or not they employ women, through a levy calculated as a percentage of the wage bill and placed in a separate fund from which maternity benefit can be provided. In the case of a large number of women like home based workers and others where the employer is not identifiable, the responsibility for providing maternity benefits must lie with the State governments.
105. The Commission noted with distress that though childcare facilities were provided in various labour laws, these were not being implemented and had in fact lead to the retrenchment of women workers as the employers wanted to avoid their statutory responsibility. Hence an extended system of childcare throughout the country was necessary to reduce the burden on women and to facilitate the all round development of the child.
106. The Commission stressed upon an integrated perspective of **health** as most of the health problems that women faced related to their general life situation, which aggravated the problems that women faced as workers. These problems included nutrition, accessibility to health care, water, housing, sanitation, maternity benefits and childcare among others. A package of health services for women in the informal sector would be inadequate, if it does not simultaneously address their standard of living, including a living wage, improved conditions of work, a safe and hazard free workplace with protective equipment, controlled work hours, benefits for health, maternity, crèches and old age, housing and potable water near their homes in quantities necessary for family health.

107. The Commission emphasised the need for regulating working hours in the informal sector where there is considerable exploitation of the poor. It recommended that piece rates be converted into daily wages based on the normal quantum of work completed at a healthy pace. Also, health insurance including compensation for accidents should be available to women workers. Health cards should be distributed to them. Every workplace had to assure safety to the workers. Preventive health education was to be initiated through Worker Education Boards. The Commission also recommended that a comprehensive Health and Safety Act be evolved and enacted.
108. **National Commission on Rural Labour (1987-91):** The first ever Commission on Rural Labour had its genesis in the Budget Speech of 1987, when the then Prime Minister, Rajiv Gandhi announced that “the government would appoint a National Commission on Rural Labour to look into the working conditions of this vulnerable section of our society and the implementation of social legislation for their protection.” The terms of reference of the Commission were very comprehensive and the Commission could make recommendations on a wide spectrum of activities, which had an impact on eliminating poverty, improving the quality of life and increasing productive opportunities for rural labour. The Commission was finally chaired by Dr. C. H. Hanumantha Rao and submitted its report in 1991.
109. The Commission defined rural labour as “a person who is living and working in rural area and engaged in agricultural and/or non agricultural activities requiring manual labour, getting wage or remuneration partly or wholly, in cash or in kind or both during the year or such own account workers who are not usually hiring in labourers but are a part of the petty production system in rural areas.” As defined by the Commission, rural labour comprised 150 million persons or roughly 60 per cent of the total rural workforce in the country. It needed to be kept in mind that (a) the number of rural labour both in agriculture and non-agriculture was increasing at a faster rate than the rate of growth of rural population, and (b) a number of factors like uneven and declining labour absorption in agriculture, declining land base and scarcity of non-farm employment opportunities had led to large scale migration and casualisation of rural labour.
110. National Commission on Rural Labour estimated Agricultural labour to be around 110 million or 73 per cent of the total rural labour with nearly half belonging to the Scheduled Castes and Scheduled Tribes. According to the Commission, a multidimensional strategy was needed to lift agricultural workers from the vortex

of poverty. First, infrastructure for irrigation, drainage, flood control and rural electric supply had to be created or strengthened to increase agricultural productivity and employment. Second, enforcement of minimum wages and social security was essential. Third, central legislation for agricultural labour providing security of employment, prescribed hours of work, payment of prescribed wages and machinery for dispute settlement was necessary. Registration and provision of identity cards was also to be included. Fourth, the commission was of the opinion that a Welfare Fund with the employers' contribution in the form of a cess on land and a nominal contribution from the agricultural labour could be set up. This Fund would make provisions for (a) maternity leave for women agricultural labour, (b) old age pension at a minimum of Rs.100 per month to every agricultural worker above the age of 60, and (c) compensation for death or injuries due to accidents.

111. According to the Commission's estimates, non-agricultural labour accounted for 40 million or 27 per cent of the rural labour.
112. *Handloom Workers:* The Commission endorsed the proposal to place Handloom (Reservation of Articles for Production) Act 1985, in the Ninth Schedule of the Constitution. Weavers were to be trained in new methods of weaving technology, adequate financial assistance was to be provided and marketing for handloom products was to be improved. Legislation on the lines of Tamil Nadu Handloom Workers Act, 1981 was to be considered.
113. *Beedi Workers:* All workers engaged in beedi making, either at their homes or elsewhere were to be provided with identity cards. The contract system was to be abolished and initiatives to form the workers' own co-operatives were to be made. A change in the Beedi Cigar Workers Act 1966 was suggested in order to establish unambiguously the employer-employee relationship in the case of home workers.
114. *Construction Workers:* Recruitment of workers through middlemen was to be checked to enable construction workers to get their wages in full measure.
115. The Commission also suggested measures aimed at improving the lot of brick kiln workers, toddy tapers, fishermen, leather workers and sweepers.
116. *Bonded Labour:* The National Commission on Rural Labour suggested a countrywide census of bonded labourers, and periodic sample surveys in districts with concentration of bonded labourers. Effective enforcement of the Bonded Labour (Abolition) Act 1976 was required. The process of identification, release

and criminal prosecution of the employer of the bonded labour should be done simultaneously.

117. *Migrant Labour*: As more than 10 million inter-State rural migrant workers were involved in various activities, the Commission suggested some changes in the existing Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (ISMW):
 - (a) The definition of migrant workmen should be expanded to cover all migrants, whether they come on their own or change contractors after entering a recipient State.
 - (b) Amendments should be made to allow third parties to file complaints.
 - (c) Make the liability of the principal employer very specific to prevent them from escaping liability.
 - (d) Contractor to be made liable for breach of the Act either by him or by the subcontractor.
118. *Recommendation on Minimum Wage*: According to the Commission, Rs 20 at 1990 prices was the subsistence wage level and no employment should be allowed at less than this level.
119. **Indian Labour Conferences**: The 34th session of the Indian Labour Conference (ILC) held in December 1997 recommended that identity cards must be issued to all workers both in the organised and unorganised sector in a phased manner by the government. This was recommended to improve the visibility of the workers and also improve accountability in terms of labour law enforcement.
120. Yet another recommendation was that all the State governments and Union Territories emulate the example of the Kerala government and a few others, which had set up welfare funds for various categories and subcategories of unorganised labour. These Welfare Funds would go a long way in meeting bare minimum welfare needs like allotment of house sites and construction, providing drinking water, medical aid, and scholarship for workers' children. The ambit of the Welfare Funds should be progressively enlarged.
121. The 34th session of ILC expressed its concern over the predicament of inter-district, inter-State and inter-country migration. It recommended that the provisions of the existing laws be rigorously enforced.

122. The proposed Umbrella Legislation for Workers in the Unorganised Sector will integrate the main lessons from these recommendations.

Chapter IV: Justification for legislation

123. Indian Constitution, the ratified ILO conventions and the existing legislation together guarantee some rights to the workers. **The Universal Declaration of Human Rights**, proclaimed by the General Assembly of the United Nations on 10 December 1948, is a document against slavery and an assertion of freedom and life with dignity. Article 23(1) of it states: “Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.” In fact, the quintessence of the legislative step we take should satisfy the contents of this Article. This UN Declaration was one of the basic documents of human rights and justice that became a standard-bearer for peoples, communities and nations.
124. Article 1 of the Universal Declaration of Human Rights of 1948 considers that: “All human beings are born free and equal in dignity and rights.” “Everyone has the right to life, liberty and security of person,” says Article 3. According to Article 4, “No one shall be held in slavery or servitude.” All these Articles guarantee freedom and secure life and halt bondedness. Articles 20 and 23 provide rights to association, employment and unionisation. As per Article 20, “Everyone has the right to freedom of peaceful assembly and association.” Article 23 guarantees right to work and TU right. According to Article 23 (4), “Everyone has the right to form and join trade unions...” Article 22 states that “everyone, as a member of society, has a right to social security ... indispensable for his dignity and the free development of his personality.” Relevant Articles guarantee “right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay” (Article 24), and “right to a standard of living adequate for the health and well-being...” (Article 25(1)). Article 26 provides right to education. Article 26(1) says that: “Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory...” All these Articles together ask, in essence, for the overall social security of all individuals including workers.
125. This Declaration (1948) mentions also about motherhood and childhood. Its Article 25(2) says: “Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.” Issues such as child labour, etc. are taken up for discussion in the section on Core Labour Rights (section VII) of the present work. However, it should be mentioned here that a number of conventions reiterates the rights of

children including the right to education. The need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959. The same is recognised in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (in particular in Articles 23 and 24), the International Covenant on Economic, Social and Cultural Rights (Article 10) and in the statutes and relevant instruments of specialised agencies and international organisations concerned with the welfare of children. Charter of the United Nations, International Covenants on Human Rights, and Geneva Declaration of the Rights of the Child of 1924 are the other documents that argues for the right of children. As indicated in the **Declaration of the Rights of the Child**, “the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth...”

126. The **Convention on the Rights of the Child** was adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989. It entered into force on 2 September 1990, and India acceded to it in 1992. Articles 28 and 29 of the Child Rights Convention argue for free and compulsory primary education of children. Following are the articles:

Article 28

1. States Parties recognise the right of the child to education and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;

(e) Take measures to encourage regular attendance at schools and the reduction of dropout rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international co-operation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

(a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;

(b) The development of respect for human rights and fundamental freedoms and for the principles enshrined in the Charter of the United Nations;

(c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilisations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given

in such institutions shall conform to such minimum standards as may be laid down by the State.

127. **Constitution of India:** Various Articles and the overall spirit of the Constitution of India guarantees social security measures to all Indian citizens including the unorganised sector workers, who are around one-third of India's population. Fundamental Rights and Directive Principles of State Policy conferred by the Constitution of India provide the bases of social justice to all Indian citizens. Fundamental Rights include right to equality (Article 14), right against discrimination (Article 15), rights to freedom of speech and to association (Article 19), rights to life and personal liberty (Article 21), rights against traffic in humans, right against forced labour (Article 23), and right against child labour (Article 24). Provisions by way Directive Principles of State Policy (Part IV of Constitution – Articles 36 to 51) also lend support to the necessary formulation of social security measures. Subrahmanya and Jhabvala (2000:22) points out that, in the Indian context, the concept of social security is derived from the provisions of Article 38 of the Constitution, which requires that the state should strive to promote the welfare of the people by securing justice – social, economic and political, and minimise inequalities in income and status between individuals, groups and regions.
128. Article 39 (a), (b) and (e) of the Constitution requires that the citizens have right to adequate means of livelihood, that the material sources are so distributed as best to subserve the common good, that the health and strength of workers and tender age of children are not abused, and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Article 41 requires that within the limits of its economic capacity and development the state shall make effective provision for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement, and in other cases of undeserved want. Article 42 requires that the State should make provision for securing just and humane conditions of work and maternity relief. Article 43 requires that the state shall endeavour to secure work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. Article 47 requires that the State should regard the raising of the level of nutrition and the standard of living of its people, and improvement of public health, as among its primary duties.
129. **The Protection of Human Rights Act, 1993** (Act 10 of 1994) that extends to the whole of India (applicable to Jammu and Kashmir with some conditionality)

provides for better protection of Human rights. Section 2(1)(d) of the Act defines human rights as “the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.” This Act also justifies the need of such legislation.

130. **ILO Conventions** : ILO conventions are codifications of universally applicable labour standards and have led many countries to accept labour rights as basic rights. Some of its conventions protect children from labour, women from night shifts, and all workers from forced labour. As on September 2000, ILO with 175 member states could convince only 22 countries to sign its eight core conventions. Another 52 countries signed seven Core Conventions. In total, 74 countries signed seven core conventions in all. However, the ILO conventions are binding on member states. While the ratified conventions work as legal sanction, the other conventions form moral sanction for the practices of member states. Most recently, in the 86th Session of the International Labour Conference in 1998, ILO adopted the ‘Declaration on the Fundamental Principles and Rights at Work,’ which was an affirmation of eight Core Conventions. These Conventions are seen as representing core labour standards, which are fundamental to the implementation of other standards. These fundamental principles and rights at work are (1) Right to Organise and Collective Bargaining (Conventions 87 and 98), (2) Against Child Labour (Conventions 138 and 182), (3) Against Discrimination (Conventions 100 and 111) and (4) Against Forced Labour (Conventions 29 and 105). The follow-up mechanism envisaged in the Declaration makes it binding on member states, irrespective of the fact whether concerned state has ratified the Conventions or not, to submit annual reports to the ILO on the observance of respective Conventions.
131. It is important that the proposed Umbrella Legislation for Workers in the Unorganised Sector incorporate elements of core labour rights from the Constitution of India, UN Covenants and ILO Conventions. It is the Constitutional obligation of the state that it should provide social security for its citizens including workers, particularly those in the unorganised sector. **It is also necessary to consider women as a special group and give them greater protection in accordance with the provisions of the Constitution of India.**

Chapter V: Perspective and Rationale for Umbrella Legislation for Workers in the Unorganised Sectors

132. We have seen the justification of need for providing employment, right to union and bargain, education to children and overall a secure life to the citizens including the workers in the unorganised sector. International conventions and covenants and the Constitution of India stand for providing these. We also saw that, as per the Constitution of India, the state is duty-bound to provide social security to the working people of the nation. Now the question is how to translate these constitutional provisions in order to target the unorganised sector workers. A **new legislation** is the answer.
133. The very issue of umbrella legislation brings in **a number of questions** to be answered. Why should there be a new legislation? If it is needed, why should it be umbrella legislation? Will such legislation can be implemented? There are also various questions related to social security, its contents, system or structure of management, financial mobilisation, and enforcement and so on. Let us now ponder on some of the initial doubts raised on the need of a new legislation when there is already a plethora of legislation, and the possibility and practicality of umbrella legislation.
134. **Why a new legislation?** While a section of the stakeholders are trying to reduce the number of Laws, the rationale for proposing a new enactment should be explained. As we have seen in the section on existing legislation (section II), the prevailing laws are not enough to provide adequate security to the workers in the unorganised sectors or to safeguard their rights. Either because of the conditionalities attached to the legislation or for various practical reasons, 80 per cent of the workers in the unorganised sector are not able to get the benefits offered by the existing legislation. There are number of employments and areas of employment that did not get so far any coverage at least in certain States in terms of wages and regulation of working conditions. A national level consideration on these untouched areas is needed. As a majority of unorganised workers is self-employed, some set up is to be evolved as part of the new legislation in terms of enabling better earning conditions and providing social security. To fulfil all these aims, a new comprehensive legislation is necessary. This is necessary despite the existence of a number of other laws.

135. **Why umbrella legislation?** It is argued that there is a simple law of regulation, which is valid in any system that one talks of. The rule is that only variety can absorb variety. If the situation has so many varieties, it is argued that the regulatory mechanism should also have as many varieties. Otherwise, it is not possible to regulate it. For instance, unorganised sector is not uniform. The range of its constituents is vast. If we mix the vast sector of agriculture with equally vast and variegated areas of industry, trade, service and manufacture, the legislation cannot work for each of the different situations. What will the umbrella legislation do then? It will take the minimum common denominator, and that will be equivalent to nothing. Similar kinds of arguments very clearly suggest the uselessness of any umbrella legislation. There is some truth in the argument. However, it is possible to search out broader common denominators to arrive at general groupings without violating the truth of the argument. If limited generalisations are not allowed, no classification becomes possible. Genus accommodates species. Genera and differentia go together. Common legislation is also possible and sometimes necessary, as sector wise legislation is possible and often necessary. In such a context, it is possible to think of umbrella legislation for the unorganised sector labour with provisions for subgroup consideration within it.
136. Legislation for basic rights does not militate against variety. For instance the Acts such as Factories Act, Minimum Wages Act, P F Act and Equal Remuneration Act institutionalise basic rights. With every such legislation, the state accepts (1) the economic worth of an activity or group of activities, (2) the identity of a group or groups, and (3) the social worth of the group or groups. Any legislative exercise enhances the self-esteem of the groups involved. **Legislation is a method by which basic rights are extended to all** activities and all segments of workforce engaged in such activities. In this respect, the proposed umbrella legislation will no way be different and will be a welcome step.
137. What is the **relationship** of this umbrella legislation with the existing labour laws? Umbrella legislation does not intend to codify or replace the existing legislation. Each legislation has a history, involvement of trade unions, and even national movement behind it. Benefits acquired in concrete cases in specific situations should continue. Existing facilities through other laws should not be taken away and instead should be strengthened. The proposed umbrella legislation will be a new legislation on its own right. At the same time, it will open itself for linkages with the existing machinery of legislation like Minimum Wage fixation machinery, labour welfare boards, etc., as specified in the section on the Board proposed (section XIII). However, it is left optional for the existing bodies to link

or not. Moreover, as production and production relations are not exclusive but interrelated to spheres such as resources, environment and state policies, this comprehensive legislation will have to deal with (not in any conflicting or commanding manner) other arenas of state administration that are not exclusive to labour. For instance, the new set up to be legislated should have to take interest, as far as possible, in the sustenance of common property resources because unorganised sector workers like forest and fishery workers depend on the common and open properties like forests and water bodies.

138. The approach of the legislation shall take into consideration the following aspects and factors:
1. The importance of the Umbrella Legislation lies in the fact that it is going to apply for over 90 per cent of the workforce in India.
 2. If properly conceived and effectively implemented, it will be a definite measure against poverty in the country. Employment, as income earning opportunity and collective organised strength, is one of the surest links between economic growth and poverty.
 3. The proposed umbrella legislation has to be seen in a holistic way. The unorganised sector is in no way an independent and exclusive sector. It is dependent and linked to the organised sector and the rest of the economy. Such interdependence has to be recognised. It has to be understood that the unorganised sector is here to stay. Therefore, the nature of the work in the sector, which is informal, seasonal, and absent in fixed employers and workplaces, will have to be thoroughly understood and recognised. The basic approach of the legislation should be recognition and protection for all types of workers in the sector, regardless of industry, occupation and work status.
 4. The proposed Umbrella legislation is different from the earlier labour laws because the earlier laws defined industries and those working in the industries as workers, and hence they were covered by protective labour legislation. Whereas, the unorganised sector workers are literally all over the place in fields, in homes, on streets, in small workshops, in forests – everywhere. So, it needs to be recognised that the umbrella legislation cannot be effective without integrating these facets of reality into laws, policies and schemes that basically control the economies of these sectors.

5. The Umbrella legislation should be seen as an enabling legislation that will lead to the growth of the economy, improve the quality of employment, provide a decent life to the workers and integrate them with the growing opportunities in the country.
139. In the last section (IV), we saw that the overall spirit of the Constitution of India guarantee social security measures to the unorganised sector workers. Constitution of India provides the rights to equality, freedom of speech and association and rights against discrimination and exploitation such as right against traffic in humans, right against forced labour, and right against child labour. The Constitution of India requires that the state should strive to promote the welfare of the people by securing justice – social, economic and political. The state is constitutionally bound to provide adequate means of livelihood, see that the health and strength of workers and tender age of children are not abused, and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. The state shall make effective provision for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement, and in other cases of undeserved want. The State should make provision for securing just and humane conditions of work and maternity relief, endeavour to secure work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure. Umbrella legislation shall be an affirmation, in all this sense, of the basic rights of workers in the unorganised sectors. To follow this **perspective**, the umbrella legislation for unorganised labour should take care of **four important categories of basic rights** and they are common assets, core labour rights, wages/income, and social security, which we shall take up individually and separately.
140. In order to ensure economic and social security to all unorganised sector workers so as to mould them into a productive and secure workforce, in specific terms, the objectives of the umbrella legislation should be:
1. To obtain recognition for all workers in the unorganised sector
 2. To ensure them a minimum level of economic security
 3. To ensure them a minimum level of social security
 4. To ensure removal of poverty of these workers
 5. To ensure future opportunities for children by elimination of child labour

6. To encourage formation of membership based organisations of workers, and
7. To ensure representation of the workers through their organisations in local and national economic decisions.

Chapter VI: Sustenance of natural, open and common property resources

141. A large section of unorganised sector workers and producers, viz. both employed and self-employed workers, depends on the natural resources such as forests, seas, water bodies and mineral and stone deposits. (a). For some people such as fisher people, forest produces gatherers and sand miners, these natural resources become direct products of their labour. (b). For others such as potters, farmers and cattle grazers, these resources like clay, water and grass become essential raw materials. Therefore, village commons, agricultural land, water bodies, fisheries, forests, etc. should be conserved. These natural resources are getting polluted, destroyed and depleted. No future labour legislation are going to help the people depending on these resources for livelihood, unless and until these resources themselves are protected and their rationalised tapping practised.
142. The intervention of state by taking over the common properties, in many cases, has gone against these workers. For instance, the baan workers of Saharanpur producing ropes from the bhabhar grass (abundant in the Shivalik hills of Saharanpur district of Uttar Pradesh) are an exploited lot. When this common property was made state's property and the forest department introduced a system of contracts favourable to the middlemen who supply bhabhar to the baan producers, their earnings came equivalent to the local unskilled wage rate (Johri and Krishnakumar, 1991).
143. For the fishing communities, fish harvesting is a traditional source of livelihood solely dependent on the natural fish resources in the seas, rivers, lakes, lagoons, canals, dams, reservoirs and other water bodies. Damage and destruction done to these water bodies due to industrial, agricultural or civic pollution, reclamation, etc., or any other activity hindering their natural functioning, cause depletion of the natural fish stock. To ensure fuller employment of the fish-workers there should be sufficient provision in the law to protect the water bodies as well as aquatic resources.
144. Although fish harvesting is the only occupation of the traditional fisher-folk since ages, law does not guarantee their right over the water bodies and fish resources. Practically an open access regime prevails in the fisheries sector. As a result, merchants, mafia and other profiteering interests enter into the fisheries, taking advantage of the so-called modern fishing technologies. This causes serious threat

to the sustainability of the resources and drastically displaces the traditional fishers from their only source of livelihood.

145. Abhijit Guha (1998), in his secondary study, estimated that the range of decline of the area under common property resources (CPRs) was by 31-55 per cent (period not mentioned). The same study pointed out that before 1952, the CPR products ranged from 27 to 46. Because of the reduced bio-diversity, these products now range only from 8 to 22. Use of inorganic fertilisers and insecticides, population load and the encroachment of the commons have reduced the area and bio-diversity of the village commons (Guha, 1998). The encroachment by people and the state take-over of lands have contributed in the reduction of village commons.
146. Jodha (1990) finds overexploitation, poor upkeep, privatisation and encroachment as reasons for the depletion of CPRs. His study of 24 villages of 12 districts in 7 States has validated the dependence of the people, especially the poor, of the dry regions of India on the village commons for not only fuel and grazing, but also for employment and income. His study could clearly show that it is the poor households that depend on the CPRs for most of their fuel (66 to 84 per cent of it), for grazing their cattle (69 to 84 per cent of grazing), and for more employment days (128 to 196 person-days) than the non-poor. When the poor household earns from Rs.534 to Rs.774, the non-poor one earns only Rs.62 to Rs.413 per year from the CPRs. When 14 to 23 per cent of the total income of a poor household comes from CPRs, the share of this for the non-poor is only 1 to 3 per cent in the dry villages of India on an average (Jodha, 1990). The study shows how precious are the CPRs for the poor.
147. What is said about CPRs is also true of forests. The adivasis and other pastoral groups who depends on the forests are increasingly losing their livelihood or getting immiserised because of (i) the lopsided policies of the state and (ii) the depleting forest cover. Similar is the case of fisher people.
148. Historical and traditional rights of the people are being taken away by a string of new legislation, and on their place evolved and substituted ownership rights have been imposed. Traditional livelihood means are getting threatened through innumerable ways, both legal and otherwise.
149. Meanwhile, there are encouraging people's efforts to share resources like water on their own based on mutually agreed principles. By now, the stories of water panchayats among farmers in villages are well known. Umbrella legislation shall encourage such efforts from the side of the people.

150. Agricultural lands are also being ‘developed’ for other purposes or submerged by ‘projects.’ These developments are also prompted by policy shifts. Given the considerations of food security and unemployment among agriculture workers, positive steps should be taken to conserve agricultural lands and promote agriculture. The input-output imbalance in agriculture is working against farmers. Over and above the input of self-labour and family labour is not even getting accounted. Besides effecting changes in policy orientation, the new legislation should take steps to insure crops against damage and incurring loss from market fluctuation. The Board can consider steps like the government paying the premium for crop protection.
151. Therefore, as far as possible, the umbrella legislation for unorganised labour should have provisions (i) to protect historical and traditional rights of the people to earn their livelihoods (ii) to protect CPRs (iii) to see that open access resources are rationally tapped, (iv) to encourage people’s attempts in sharing resources, as shown in Pani (Water) Panchayats, and (v) to see that natural resources are conserved, and (iv) agricultural lands are not destroyed.

Chapter VII: Minimum Wages/Earnings

152. While the workers should get proper wages, the farmers and other producers should get the fair prices for their products. The actual wages are low and in many cases lower than the statutory minimum wages. Here, it is worthwhile to go into the history of arguments for minimum wages and into the components of minimum wages. We also argue for minimum wages for workers and for official announcement of minimum prices for products including agricultural crops.
153. **Prevailing wages:** Women engaged in fish sorting and drying in Midnapore district, West Bengal get Rs.10 each per day, that too for a period of six months in an year. The Employer's Association has fixed a piece-rate of 50 paise per 20-kg basket of wet fish. It is humanly impossible to sort more than 20 baskets a day. A study of homebased workers in Ahmedabad (quoted by SEWA) showed that in 1995, the average earnings per day for these workers varied in between Rs.6 to Rs.22. Both the fish worker and the Ahmedabad homebased worker are piece rate workers. Their earnings are grossly inadequate to sustain themselves. They live a life below subsistence level. The minimum wage fixed by the Orissa Government in construction sector is Rs. 25. Similarly, the minimum wage fixed by the Rajasthan Government for the sector is Rs. 32. The daily minimum wages fixed by the UP Government for working in a Soap factory is Rs. 25.64. In Andhra Pradesh, the State Government has fixed Rs. 855 per month as the minimum wage for Fishery and Seafood workers (John, 1997).
154. A number of States who have reviewed and revised minimum wages in respect of scheduled employments for which they are the appropriate governments gives many disturbing results. In Sikkim, the Minimum Wages Act is yet to be extended and enforced. Only 15 States/Union territories have made provision for Variable Dearness Allowance as a part of minimum wages for few or all of scheduled employments. It is also clear that the wages vary from State to State, and the disparity is so wide that it cannot be explained except by the fact that different appropriate Governments are following different criteria for the fixation of minimum wages. The adjustment of VDA is also very irregular. So also is the revision of minimum wages in many States (Sharma, 1997). The least minimum of the minimum wages, meant most probably for unskilled workers, are below Rs.30 in some States and union territories, as on 01/10/2000: Rs.19.25 in Pondicherry, Rs.20.63 in Tripura, Rs.21 in Goa, Rs.26 in Himachal Pradesh and Karnataka, and Rs.27 in Andhra Pradesh (see the Table on minimum wages in Para 174). The

daily minimum wages vary widely within the States (different wages for different occupations). The Table carries both the minimum and maximum payment from among the variety of occupation-specific wages fixed as Minimum Wages within each State.

155. **Table: Daily Minimum Wages (in Rs.) as on 01/10/2000**

Centre/ States/Union Territories	Minimum	Maximum
Central Sphere	80.74	90.19
Andhra Pradesh	27.00	63.19
Arunachal Pradesh	35.60	37.60
Assam	32.80	55.70
Bihar	49.19	61.59
Goa	21.00	125.00
Gujarat	34.00	92.40
Haryana	70.30	74.30
Himachal Pradesh	26.00	51.00
Jammu & Kashmir	30.00	-
Karnataka	26.00	74.03
Kerala	30.00	164.77
Madhya Pradesh	50.46	56.46
Maharashtra	42.46	108.95
Manipur	44.65	55.00
Meghalaya	50.00	-
Mizoram	70.00	-
Nagaland	40.00	-
Orissa	42.50	-
Punjab	69.25	151.32
Rajasthan	47.05	60.00
Sikkim (Minimum Wages Act, 1948 not yet extended and enforced)		
Tamil Nadu	35.00	115.80
Tripura	20.63	45.00
Uttar Pradesh	42.02	70.62
West Bengal	48.21	87.28
Andaman & Nicobar Islands	50.00	86.76
Chandigarh	81.65	-
Dadar & Nagar Haveli	60.00	71.00
Daman & Diu	50.00	60.00
Delhi	93.00	-
Lakshadweep	46.80	-
Pondicherry	19.25	65.00

Source: Ministry of Labour, Annual Report 2000-2001, p. 50.

156. An evaluation study conducted by the Labour Bureau, Ministry of Labour, on the implementation of Minimum wages in the agricultural sector in selected States

shows that nowhere agricultural workers are receiving full minimum wages in the surveyed States. The surveyed States are Karnataka, Rajasthan, Andhra Pradesh, Uttar Pradesh, Bihar and Gujarat, and this is especially true in the low technology labour intensive sectors like forestry, fisheries, cottage industries and artisan production, and in urban employments like vending and slum based and homebased productions.

157. Disparity in minimum wages, lapses in its implementation and enforcement, periodic non-revision of minimum wages are among the factors that make such a potential Act a deadwood. The State government of Bihar has fixed Rs.27.30 as the minimum wage for agricultural workers in 1996, while an agricultural worker near Dhanbad received Rs.20. A female agricultural labourer in the same area received as daily wage Rs.15 and 200 to 250 grams of *muri* (puffed rice). In Fatehpur, Ahrawa and Fulepur villages of Barh in Bihar, the agricultural workers got as wages one kg of rice or flour and half a kg of *sattu* for breakfast. In the Baruhi village of Bhojpur, in 1996, women got Rs.15 and a breakfast comprising of 2 rotis, while men got Rs.25, lunch and breakfast. Bihar, which boasts having the highest number of inspectors exclusively for agricultural sector could not enforce the minimum wages, set by the State government during this period (Sharma, 1997).
158. **Need for minimum wages in the unorganised sector:** The character and nature of informal or unorganised sector are undergoing fundamental changes. The movement is from permanent to casual, contractual, temporary employment; from establishment based to home-based production; from time-rate to piece-rate work; male dominated to female intensive work situation; regulated to unregulated forms of labour; and from unionised to non-unionised labour. Meanwhile, labour market, in particular the rural labour market, is experiencing the influx of casual labour from the traditional subsistence occupations like forestry, fisheries, agriculture, handlooms, etc. as a result of dispossession of assets, and the integration of these sectors into market economy. At the same time, researchers point out that the labour force is highly segmented due to factors like sectoral disparities, variation in skills, education, and those pertaining to caste, religious, regional and linguistic differences. It is also important to note that, largely, wage labour alone is ensuring the subsistence of the workers (John, 1997). In such a situation, minimum wages are to be prescribed and enforced in the unorganised sector.
159. Nevertheless, **wage labour** is fast emerging as the major component of Indian labour force, though highly segmented and heterogeneous. As the component of

wage labour increases, money wage becomes the main determinant in the calculation of earning of labourers, and thereby their very survival. Employment and remuneration for that employment which will ensure the subsistence of the worker and his/her family becomes a very important point of discussion at this juncture.

160. **ILO Convention 26** of 1928 (Concerning the Creation of Minimum Wage-Fixing Machinery) signed by India in 1955 is binding on India in its commitment to offer minimum wages for its workers (Subrahmanya and Singh, ed., 1995).
161. Report of the first National Commission on Labour (1969) analyses different perceptions of minimum wages. **Statutory minimum wage** is the concept initiated by the Minimum Wages Act of 1948. **Bare or basic minimum wage** is the term used in awards and judicial pronouncements. **Minimum wage, fair wage and living wage** are concepts used by the Report of the Committee on Fair Wages (1949). **Need based concept of minimum wage** was discussed by the Indian Labour Conference, and it had a Resolution on it in its 15th Session in July 1957. Section 2 (i) of the Bonded Labour System (Abolition) Act 1976 defines what is called ‘**nominal wages.**’ Nominal wage in relation to any labour means a wage that is less than the minimum wages or the locally existing normal wages.
162. **History of demand for minimum wages:** The demand for minimum wages and the discussion on the nature of minimum wages have a long history in India. Way back in 1921, there was discussion on establishment of industrial boards for determining minimum wages for each industry in Bengal Presidency in the Bengal Legislative Council. When International Labour Conference in 1928 adopted a draft ILO convention concerning the creation of minimum wage-fixing machinery, which became the ILO convention 26, both chambers of Central Legislature of India (British) refused to entertain the document (Subrahmanya and Singh, ed., 1995). On the grounds of need for enquiry, Government of India (British) refused its ratification. Legislative assembly added the rider “pending the report of the Indian Labour Commission” (Whitley Commission - Report of the Royal Commission on Labour 1931).
163. In view of the ILO convention (1928), **Whitley Commission of 1931** argued that minimum wage should not be considered in comparison with Western or other foreign standards but by comparison with the general trend of wages and wage levels in similar occupations in India. Beedi making, small tanneries and mica factories were considered for *prima facie* enquiries. The Report accepted the

existence of many trades where minimum wages were “desirable” but not immediately “practicable” (Subrahmanya and Singh, ed., 1995).

164. In 1938, a **resolution in the Central Legislative Assembly** urged the payment of “**sufficient wages**” and fair treatment to workers employed in industries receiving protection or subsidy from the Government. Sufficient wage was then defined as “a wage, which would ensure to every worker the necessities for existence, food, clothing, housing and education, taking into account at the same time the practical side of the question of the needs of the industry.”
165. The **5th Session of Indian Labour Conference** in 1943 discussed minimum wages in the context of social security. The **4th Session of Standing Labour Committee** in 1944 concluded that there was a fair body of opinion in favour of **minimum wages for regions**. The Report of the **Rege Committee (1944)** said that its survey revealed the basic wage level in most of the Indian industries as extremely low, that nothing was done by the Indian industries to revise the basic wages in an upward direction. The **Central Pay Commission** in 1946 recommended the adoption of uniform scales of pay and dearness allowance all over India, with house rent allowance and compensatory allowance in large towns and industrial centres. The Commission recommended that the Government should take steps in giving effect to the **principle of “living wages”** in dealing with the employees who are virtually on the “poverty line,” and concluded that in no case a worker’s wage should be less than a living wage.
166. The **First Central Pay Commission of 1947** outlined the principle that the “discussion must start with the determination of the **basic wages** payable to unskilled labour.” It was also of the opinion that “a **minimum wage standard** should be adopted by the state” irrespective of “the market value of such labour.” It further said that the minimum wages could be applied to correct inequalities in the distribution system but not in disregard of the total production capacity of the country or without reference to the national income. The positions of the successive Pay Commissions paved way for the Minimum Wages Act.
167. **Minimum Wages Act of 1948** was a progressive measure. Report of NCL (1969) argued that the Act was revolutionary because the provisions of the Act made it clear that rule of the market and law of demand and supply would not affect wages for the employment put in the Schedule. The Minimum Wages Act (the Act XI of 1948) said: “The justification for a statutory fixation of minimum wages is obvious. Such provisions which exist in more advanced countries are even more

necessary in India, where workers' organisations are yet poorly developed and the workers' bargaining power is consequently poor."

168. The Act requires that the appropriate Government should review and revise the minimum rates of wages at intervals not exceeding five years. The Schedule is being enlarged through notifications and state orders. States and Union Territories have also separate Schedules. The NCL Report talks of the intent of the welfare state, social justice, etc. on the question of settlement of wages in non-scheduled industries. Industrial Relations Machinery (IRM) or collective bargaining depends on the capacity of the industry to pay. Industry means not the individual unit but industry as a whole. Unorganised and weakly organised labour and the extension of original schedules brought in difficulties in the implementation of the Act (Subrahmanya and Singh, ed., 1995).
169. Part I of the Schedules lists the employment in the industry while Part II lists those in the agricultural sector. In 1948, thirteen employments in all were included in the schedule. In 1996, there were 1180 employments under schedule, out of which 1140 were in respect of State Governments and 40 in respect of Central Government (*Labour File*, March-April 1997). By 2001, the central schedule has increased to 44, and the aggregate came to 1,222 scheduled employments (*India 2001*, Government of India, p. 592, cited in *Integral Liberation*, June 2001). There are hundreds of employments that do not find space in the schedule.
170. The Recommendations of the **Committee on Fair wages (1949)** defines living and minimum wages. Living wage represents a standard of living that provides not merely for bare physical subsistence but for the maintenance of health and decency, a measure of frugal comfort, and some insurance against more important misfortunes (para. 7). Minimum wage must provide for not only bare sustenance of life but also the preservation of the efficiency of the worker by providing some measure of education, medical requirements and amenities (para. 10). Lower limit of fair wage is the minimum wage. Upper limit is set by industry's capacity to pay. Actual wage depends on various factors such as productivity of labour, the prevailing rates of wages, level and distribution of national income, and the status of the industry in the national economy. The Committee recommended considering the standard family of one wage earner as requiring 3 consumption units. Fair wages were to be determined, and Wages Boards on industry cum region basis and central appellate Board should be set up (Subrahmanya and Singh, ed., 1995).

171. **First Plan** (1950-51) supported Minimum Wages legislation, but suggested giving prior attention to the depressed areas and employment. **Second Plan** (1955-56) also emphasised the same as first priority. Effort should be made to improve wage levels in rural areas and to enforce the legislation despite limitations. **Third Plan** (60-61) observed that provision for fixation and revisions of wage rates had not proved effective. It suggested the strengthening of inspection machinery for better implementation and the re-examination of nutritional requirements of a working class family. The latter suggestion was in the wake of the **Resolution of the 15th Session of Indian Labour Conference (1957)**. The said Resolution demanded need-based minimum wage and moved in the direction of quantifying its main components. The Resolution held that the need-based minimum wage should ensure the minimum human needs of the worker, irrespective of any other consideration. It put forward five norms as a guide for all wage-fixing authorities including minimum wage committees, wage boards, adjudicators, etc. The **Second Pay Commission** (1957-59) took note of the norms set by Indian Labour Conference and calculations done by employees' organisations, and suggested minimum wages based on consumer price indices at all-India level.
172. The **Report of the NCL (1969)** analysed the philosophy behind the Minimum Wages Act of 1948 as one of social justice. The Report argued that the workers in the unscheduled industries should also get minimum wages. It pointed out that though the Schedule was extended, wages were not revised in time. Amendment was recommended to make it obligatory on the part of the appropriate governments to revise wages at least once in three years. Local authorities should do price adjustments also. The Commission argued to take into consideration the capacity of the industry to pay, provided that the onus of proving inability to pay should lie on the employer. This recommendation on the issue of ability to pay is against the spirit of the Act.
173. The Report observed that the minimum wage was never clearly defined, and it, however, argued that the concept will "necessarily have to be left flexible." Settling the question of the need for fixation of "national minimum wage" was one of the terms of reference of the First NCL (para. 16.16). The Commission discouraged the concept and argued that "widening of the area for fixation of minimum wage beyond a State may be impracticable and also not in the best interests of the workers." Common statutory minimum wage was recommended as might be feasible and desirable in case of industries spread over two or more adjacent States to avoid flight of industry from one to the other as it happened in the case of beedi industry (Subrahmanya and Singh, ed., 1995).

174. Minimum wages should not be what is called “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–
- 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
 - 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.
175. **Minimum wages for rural and agricultural labour – suggestions of various bodies:** Report of the **National Commission on Agricultural Labour (1976)** identifies three special features of the sweated industries, namely, identifiability, enforceability and terminability. It recalls that the task of enforcing minimum wages in agriculture will have none of these feasibility-features, and suggests that the policy on minimum wages should be integrated with other employment generating programmes of the state. Minimum wages target the prevalence of poverty in rural areas, and also the factors that help employers to exploit workers.
176. Considering the heterogeneity of labourers and of their employers in a typical market for agricultural labour in India, the Commission suggested that the implementation of the policy needs to be focused on the areas where wages are adjudged to be low primarily due to caste and economic inequalities. It said that the success of enforcement of minimum wages in these areas would depend upon the co-ordinated efforts of the Panchayat and the watchdog committee to be supplemented by measures to encourage and support for forces working towards unionisation of agricultural labourers. The watchdog committees were suggested to consist of local member of the Legislative Assembly, Chairman of Zila Parishad, representatives of wage earners, and representatives of employers with an appropriate official serving as the Secretary of the Committee. It also said that the policy on minimum wages needs to be integrated with the ‘employment creating’ programmes, such as rural works programmes, to influence wages indirectly by offering alternative employment.
177. **The Subcommittee of the Parliamentary Consultative Committee for the Ministry of Labour (Gurudas Dasgupta Committee) on Unorganised Labour in Agriculture (1988)** suggested that minimum wages should be fixed on a rational basis taking into account factors like poverty line, requirements of

nutrition, shelter, clothing, fuel, light, medical and educational expenses, etc. and on a realistic assumption of the consumption units and the number of workers in a family. Minimum wages should not be linked to the capacity to pay, but it should be linked to the movement of consumer price index (CPI) to account for the cost of living and also be revised every two years or on a rise of 50 points in the CPI.

178. The **National Commission on Rural Labour** submitted its report in 1991. The report has stressed the importance of the role of rural workers in the economy, and recommended for the need for a new technology programme for them and for regulation of their working conditions and also the need for introduction of social security measures for them. According to the Commission, the basic factors that must decide the minimum wage should be (a) the cost of living relating to the minimum subsistence level of the worker and the family of three adult consumption units, and (b) the minimum wage will be the same for all employment. To protect the minimum wage from falling below subsistence level the cost of living element (DA) shall be linked to the minimum wage and adjusted every six months. The Commission accepted the norm of daily calorie intake of 2400 per person in rural areas and 2100 in urban areas, and arrived at a figure of Rs.510 per month (Rs.19.62 per day for 26 days) for rural areas with the consumer price index 1960 = 100 at 804 points. (For urban areas it was Rs.650 per month or Rs.25 per day.)
179. Creation of a tripartite body at each district headquarters in each State to monitor the administration of MWA, and a Conciliatory Machinery for disputes at the village level, and evolving an institutionalised framework comprising the Panchayat Raj System and involving voluntary organisations, trade unions, workers' associations, etc. were suggested as desirable. The Commission called for amendments in the MWA, including deletion of the provision for exemption, doing away with provision for minimum number of workers for the applicability of the Act and shifting of the burden of proof to the employer.
180. **Women workers**: The National Commission on Self-employed Women and Women in the Informal Sector which submitted its report (Shramshakti) in June 1988, while investigating the working conditions of women workers, has studied the problems of home based workers. The commission has concluded that a new law specific to their needs which would give them greater visibility and resolve the vexatious question of employee-employer relationship by fixing of control over productive process and the ultimate product instead. It has also concluded that the new law should provide for tripartite boards, contain provisions relating to

safety and welfare and working conditions on the lines of other such protective labour legislation. It asked to make the laws stringent on safety regulations and payment of wages.

181. **National Minimum Wages Policy:** The first National Commission on Labour (1969) and the Subcommittee 'D' of the Standing Committee of Labour Ministers (1981) felt it would not be feasible to prescribe a national minimum wage. Going by the dismal performance of various appropriate authorities, the irregular revisions of wages and the unsympathetic attitude in adjusting the cost of living allowances and also the non-updating of the schedules being included, it is strongly felt and suggested that **an integrated national minimum wages policy** based on the principle of equal remuneration for equal work should be introduced. On an average, minimum wages should be equivalent to the initial salary drawn by the Class IV (Group D category) employee of the central government.
182. The Committee on Wage Policy (1973) suggested that taking Rs. 40 per month (at October 1972 prices) as the national minimum, minimum consumption norms for different centres and regions will need to be worked out taking into account variations in the costs of living. It also suggested a phased programme for the enforcement of minimum wages, and by 1978-79 the minimum wage fixed for different centres and regions must become universal. The Study Group on Wages, Incomes and Prices (Bhoothalingam Committee, 1978) argued that the real minimum wage can only be the absolute national minimum, irrespective of sectors, regions or States, below which no employment would be permitted. A national minimum has necessarily to be at a realistic level. According to the National Commission on Rural Labour (1991), one of the basic factors that must decide the minimum wage should be that the minimum wage be the same for all employment.
183. **Components of the minimum wage – a discussion:** The Minimum Wages Act is an affirmation that the rule of the market forces and the law of demand and supply will not be allowed to determine the wages of workers in highly exploited establishments and areas. While accepting this contention, Prof. Ruddar Dutt, points out two factors which could lead to an improvement in minimum wages. Taking instances of two regions, Kerala and Punjab, where higher minimum wages prevail, he points out that in Kerala model, workers achieved higher wages on account of the strength of their organisation. The workers in Kerala are in a peculiar situation, where they have more income per day, but less income per year. The yearly income has come down because employment was not available

throughout the year. In contrast, in Punjab, there were comparatively less intense struggles of workers. Yet the minimum wages increased. This he attributes to the stable growth process, especially the agricultural development in Punjab. Therefore, minimum wages cannot be seen separated from employment. States where these two factors, organisation of workers or economic development are absent, the rates of wages tend to remain very low. Moreover, the wage differential across regions pushes down wages in high employment areas, and encourages large-scale migrations in inhuman conditions (John, 1997).

184. If one looks at the evolution of the debate on Minimum Wages in the country, its trajectory is clearly towards more universal applicability of the Act, and its usefulness as an instrument against poverty and unemployment. This relationship among 'poverty,' 'employment,' and 'minimum wage' is very crucial. The wage income a worker earns, should be sufficient to meet the basic needs like food, shelter, clothing, medical care and education of their children. According to the Planning Commission document (*Indian Planning Experience: A Statistical Profile*, downloaded from web site), 35.97 per cent of India's population is living below poverty line (p.23); as per the New Official Methodology, these people who live in urban areas have to manage their life with a monthly average of Rs.281.35 per person (p.25) while those in rural areas spend Rs.205.84 per person per month (p.26). Such poverty level wage/income is a violation of the right to life of the worker. Efficiency and the productivity of the worker will go down. It is also a denial of the rights of children for quality education, health care and nutritious diet, and thereby adversely affecting the very social fabric of future generation.
185. The Minimum Wages Act, 1948 left undefined the concept of 'Minimum Wage.' It also did not lay down the norms for wage fixation. An analysis of Supreme Court's decisions on various cases relating to minimum wages reveals that the Court relies upon two important sources, and upholds their recommendations. They are (a) conclusions of the Committee on Fair Wages (1949) and (b) decisions taken at the 15th Session of Indian Labour Conference (1957). The Committee on Fair Wages clarified that the minimum wage is not a pauper level wage, and "minimum wage must provide not merely for the bare sustenance of life."
186. The **five norms** of the Resolution of the 15th Session of Indian Labour Conference (1957) included:
 - i. the standard working class family should be taken to consist of 3 consumption units for one earner;

- ii. 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;
- iii. 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;
- iv. 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
- v. fuel, lighting and other miscellaneous items of expenditure should constitute 20 per cent of the total minimum wage.

187. In a major intervention in this debate, Supreme Court added a **sixth element** 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:

- i. 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." However, no government at any level has so far considered this sixth norm in calculating minimum wages.

188. Minimum wages are fixed (as per Section 5 of the MW Act, 1948) by following either the committee method in which committee is constituted, it sits and visits areas, prepare and submit report, a process that takes a long time and may even remain unfulfilled, or through the **notification method**. In the latter method, the government (the concerned officer through due process) notifies the wages wait for objections and suggestion till a date. Then the wages are announced. In both the methods same norms are followed in calculating the wages. Notification method is ranked better in avoiding delays.

189. **Need-based minimum wage:** The 1938 concept of sufficient wage (the resolution of the Central Legislative Assembly), the 1946 concept of living wage (the Pay Commission of 1946), the 1947 concept of 'basic wages payable to the unskilled labour' (the First Central Pay Commission of 1947), the 1949 definition of minimum wage by the Committee on Fair wages, the 1957 idea of need-based minimum wage (the resolution of the 15th session of ILC, 1957), the third five-year plan's suggestion on the re-examination of nutritional requirements of a working class family, the 1992 concept of minimum wage in the Supreme Court verdict, etc. give a positive idea about the content of minimum wage.
190. Almost all the committees and commissions are against a subsistence level minimum. In principle, every committee constituted in this regard has agreed with the standard consumption units and calorie contents. However, the Wage Boards after Second Pay Commission (1957-59) had not found it possible to fix the need-based minimum wages demanded by Indian Labour Conference (1957). Report of the Committee on the Functioning of the System of Wage Boards (cited in the Report of NCL, 1969) found it unfeasible because the need-based minimum would be beyond the capacity of the industry to pay and also at the cost of consumers. Another objection is that the need-based minimum wage is defined in the range of fair wage as discussed by the Committee on Fair Wages, while the Committee itself defined minimum wage as the lower limit of fair wage.
191. Subcommittee 'D' of the Standing Committee of Labour Ministers (1981) recommended that the level of minimum wage should not be below poverty line. Report of the Committee of Secretaries of States (1981) has also recommended that the minimum wages should be at a level as to take a family of 3 adult units of consumption above poverty line, and the consumption basket should consist of per capita per day requirements of 2400 calories in rural areas and 2100 calories in urban areas as well as clothing, shelter, fuel, light, education, etc. The Report of National Commission on Rural Labour (1991) endorsed a similar concept of three consumption units. In practice, however, as Babu Mathew from the National Law School, Bangalore, has noted, the diet content is reduced. He said: "Wage Boards and Pay Commissions have consistently reduced the minimum wage by scaling down desirable diet to affordable diet and thereby eliminating certain food items from the list."
192. **Variable DA and price adjustments:** Though there is no definition for the term minimum wage in the Act, its section 4(1) states that the minimum rates of wages

fixed or revised by the appropriate authority for the scheduled employments shall take into account the following:

- i. a basic rate of wages and a special allowance at a rate to be adjusted at intervals with the variation in the cost of living index number applicable to such workers; or
- ii. a basic rate of wages with or without the cost of living allowance, and the cash value of the concessions in respect of supplies of essential commodities at concession rates, where so authorised; or
- iii. an all inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions, if any.

193. That means that the minimum wage constitutes (1) basic rate of wage and (2) cost of living allowance or cash value of concessions or (3) a combination of all the three components. It also means that cost of living allowance varies with changes in prices.

194. The Minimum Wages Advisory Board (1981) observed that it would be desirable to attach a variable DA formula to the minimum wages so that it may be adjusted as and when necessary to protect the real wages of the workers. The Subcommittee 'D' of the Standing Committee of Labour Ministers (1981) also recommended that variable DA should be an element of minimum wage wherever possible. Report of the Committee of Secretaries of States (1981) said that DA might be revised once in six months based on the average All India Consumer Price Index numbers of the series 1960=100. Gurudas Dasgupta Committee (1988) recommended that the minimum wages should be linked to the movement of consumer price index (CPI) to account for the cost of living. To protect the minimum wage from falling below subsistence level, the National Commission on Rural Labour (1991) suggested that the cost of living element (DA) should be linked to the minimum wage and adjusted every six months. While all these suggestions remain in paper, the real wages of workers stagnate, keeping them in perpetual poverty.

195. **Revision of wages:** The Minimum Wages Act stipulates that review/revision of minimum wages in the scheduled employments should be undertaken at intervals not exceeding 5 years. However, the first National Commission on Labour (1969) recommended that the period should be reduced to three years. At the 31st session of the Labour Ministers Conference held in July 1980, it was decided that the

minimum rates of wages may be reviewed and revised if necessary, within a period not exceeding two years, or on a rise of 50 points in the CPI members, whichever is earlier. The 36th Labour Ministers Conference held in May 1987 also reiterated these recommendations. Gurudas Dasgupta Committee (1988) recommended a revision every two years or on a rise of 50 points in the CPI. Umbrella legislation should provide a separate facility within the body to be instituted for the unorganised sector workers for the purpose of constant review of wages as and when needed, as for example with changes in prices.

196. The experience of Fifth Pay Commission is in front of us. The Pay Commission determines from time to time minimum wages, salary structures and working conditions of the government employees at both central and state levels, and also those employed in departmental undertakings. They are not only supposed to standardise the salary structure and the system of payment of DA, but also to reduce the gaps in emoluments of the maximum paid and the minimum paid employees. But the Fifth Pay Commission has done its opposite. It has revised the minimum wage of the government employees and fixed it at Rs.2550 per month. It is an increase of about 23.79 per cent over the current gross pay, but actually, it means a decline in real terms. On the other hand, the maximum basic pay for the most senior levels - Secretaries - has been fixed at Rs.26000 per month, besides various other privileges and perks. Maximum salary has been fixed as Rs.30000, an increase in 60.94 per cent. Thus, the ratio between the lowest paid and highest paid becomes 1:11.76 while the ratio was fixed as 1:10.7 by the Fourth Pay Commission. When minimum wages are fixed, the new legislation should keep in mind the following points:
1. The widening gulf between wages of various occupations shall come down gradually.
 2. The standard set by the Fifth Pay Commission regarding the minimum wage should remain *mutatis mutandis* the principle in deciding the minimum of the minimum wages in the unorganised sector.
 3. The criterion for the industry and agriculture shall be the same while fixing minimum wages.
197. Shramshakti report (p. 100) proposes panchayat or block level administrative set-up for the execution of provisions of the different labour laws, especially on payment and claims, as far as possible at lower levels. The Report said that it would be necessary to have authorities like the claims authority under section 15

of the Payment of Wages Act 1936 or section 20 of the Minimum Wages Act 1948, or the authority under section 39 (2) of the Bidi and Cigar Workers (Conditions of Employment) Act 1966, **at levels not higher than that of the Block or Panchayat Samiti**. It also said that already some State Governments have amended the central laws to provide for appointment of claims authorities under Payment of Wages Act and Minimum Wages Act at these levels. For example: Minimum Wages (Maharashtra Amendment) Act 1975, and Wage Laws (Rajasthan Amendment) Act, 1976. So, taking the apparatus down to the local level is very important.

198. The **mediation of local bodies including village panchayats in the enforcement of the rates of wages and payment thereof** is important in this context. The prevailing government enforcement machinery cannot redress their grievances. The fixation of minimum rates of wages and awareness of these rates with wide publicity itself would become a great relief to these workers. The moment rates fixed are known to the working people and the public at large, there will be implementation of the minimum rates to great extent. In the cases of dispute, the local bodies and panchayats can provide relief by persuasion and using their good relations.
199. **No to exemption:** The section 26 of the Minimum Wages Act entertains exemptions and exceptions. One of the demands in the campaign on minimum wages organised by the National Centre on Labour in 1997 was to drop these. Umbrella legislation should not have such exemptions to the detriment of its intention of providing minimum wages or earnings.
200. **No to scheduling:** The categorisation and scheduling does not cover all the workers. So, the umbrella legislation should cover all the workers. When it is applied in the unorganised sector, this will become very important. Way back in 1969, the National Commission on Labour in its report argued that the workers in the unscheduled industries should also get minimum wages. This is important, though it will be practically against the Commission's own conclusion against national minimum wages. Scheduling should stop so as to bring the whole lot of unscheduled jobs within the coverage of the umbrella legislation.
201. **Protection of crops from damage and market fluctuation:** While bodies like Tariff Commission (TC) and Commission on Agricultural Costs and Prices (CACP) fix the support prices for many industrial and agricultural commodities, the expenditure on labour was accounted at very low level and this has led to the

fixation of low prices. This should be prevented. It is said that only 5 to 10 per cent of the agricultural commodities, and those too only selected items, are procured through the government channels. So, though the small and marginal farmers are not gaining from this kind of measure, official announcement of fair minimum prices for products and crops might positively help the self-employed people who are in the open market of unorganised sector. The effectiveness of such a measure in the liberalised atmosphere, where market forces are unleashed, can be rightly suspected. It has also been observed that increase in support prices has a commensurate impact on the market prices of the primary commodities. Even within a free market, such measures and creation of awareness about such official announcements can give results if no unnecessary favour is shown to the vested interests of the trading middlemen.

202. The Umbrella Legislation for Unorganised Labour should have provisions for ensuring minimum wages/earnings for workers in situations of time-rate, piece-rate, direct sale of goods and services in the market and cost-and-profit sharing on the basis of components suggested by 15th Indian Labour Conference and Supreme Court judgements, with provisions for variable DA and price adjustments, and provision for periodic revision of wages for all economic activities without any exemption. The Board should also consider steps like provision for price insurance as a social security. The guaranteed remuneration for labour, products and service has to be seriously considered by the new legislation.

Chapter VIII: Core Labour Rights

203. It is important to understand that rights of workers are not any additional or special rights bestowed on them. Labour rights are only human rights. Unless the widely accepted labour rights are guaranteed, no labour law can be implemented. Here we shall try to deliberate on the components of labour rights that should find a place in the Umbrella Legislation for Unorganised Labour.
204. As on 1 March 1999, India signed four conventions (convention no. 5, 15, 123 and 29) out of total 12 conventions (no. 5, 7, 10, 15, 33, 58, 59, 60, 112, 123, 138 and 29) on minimum age and forced labour. India did not sign so far the ILO convention no. 182 (*The Abolition and Immediate Action for the Elimination of the Worst Forms of Child Labour*) of 1999. Such a step would have raised the age in the Indian definition of child to 18. The Child Labour (Prohibition and Regulation) Act of 1986 defined child as below 14 years of age and obtained uniformity in the definition in all the legislation. Article 15(3) provides for the Indian state to make special measures for women and children as part of fundamental right to equality. These basic rights ban (1) child labour, (2) forced labour and (3) night shift for women in specified occupations and adolescents, and guarantee (4) equal remuneration for equal work.
205. **Child labour** is banned in selected occupations and processes. However, it is allowed in all processes in the agricultural sector including animal husbandry where machines are not involved. It continues as domestic labour, rag picking (both employed and self- employed) and as assistance in home-based labour. All these sectors where child labour is not banned form part of the unorganised sector. There exists one view that the legalised child labour should be made subject to the new legislation. Such a measure can further legitimise child labour. Instead, the component of prohibition in the 1986 Act on child labour should be activated. Child labour promotes adult unemployment and deprives the children of their childhood and education. The Umbrella Legislation should have provision to compulsory education for all till the age of 18 years. With the objective of eliminating child labour in industries and occupations where it is prevalent, the Umbrella Legislation should remove the distinction between child labour engaged in hazardous and non-hazardous sections of occupations and processes as provided in the Child Labour (Prevention and Abolition) Act 1986. Child labour is against the spirit of human rights enshrined in the Constitution of India and international Covenants.

206. Though **bonded labour** system was legally banned by a legislation - Bonded Labour System (Abolition) Act, 1976, the practice still continues in various sectors of labour. In India's quarries and kilns worst forms of bonded labour still exist. Most importantly, bonded labour in India is no more a relic of the feudal past. It is getting manifested in industrial sectors in new forms. Bondedness in agriculture too has assumed new manifestations like attached labour in Punjab. It may be recalled at this point that Supreme Court in *People's Union for Democratic Rights Vs. Union of India* (AIR 1982 SC 1473) and *Bandhua Mukti Morcha Vs. Union of India* (AIR 1984 SC 802) has redefined the scope of Bonded Labour System (Abolition) Act 1976 by suggesting non-payment of minimum wages as indicator of bondage. The Act was amended in 1985 to bring the migrant workers and contract labour within the purview of the Act. Rehabilitation measures proved to be stories of failure. National Survey on the Incidence of Bonded Labour (1981) done by Gandhi Peace Foundation (New Delhi), National Labour Institute (New Delhi), and Academy of Gandhian Studies (Hyderabad) revealed the total number of bonded labourers in India as 26,17,000. The survey by various State governments in 1996 reported incidence of only 28000 bonded labour in total (Ministry of Labour, Annual Report 1997-98). It is a gross underestimation when viewed against the working conditions of millions of unorganised sector labour throughout the country. Umbrella Legislation for Unorganised Labour should have unambiguous clauses defending abolition of forced labour.
207. **Ban on night shift for women and adolescents** has invited intense debate. Section 66 (1) (d) of the Factories Act of 1948 disallows women to carry on work between 7 p.m. and 6 a.m. There is also restriction of daily working hours for women in factories, i.e., not more than 9 hours in a day and 48 hours in a week; thus, women cannot be engaged in extra hours of work in factories. These restrictions in the Factories Act, according to some, decline the employment of women in factories. But now with the impact of liberalisation and globalisation in India, there is a change in the trend of employment of women. Now, women workers are in demand especially in economic activities like garment manufacture, food processing units, electronics and information technology. Employers' Associations and other apex bodies of industries have called for relaxation of "rigid labour laws" especially those concerning women's work in the export-oriented units. These industries have formally called for introducing night shifts for women in factories.

208. In the changed scenario, there is significant pressure on the government, considering the importance of 'export-oriented units' for earning foreign exchange and the economic development of India, to propose night shift for women workers in factories by amending the law. Though India has ratified the ILO convention on night shift [Convention no. 89 - *Night Work (Women) Convention (Revised), 1948*, ratified on 27.02.1950], it is afraid that the government might amend the Factories Act of 1948 under pressure from the industrialists, especially the exporters.
209. The Export Processing Zones (EPZ) mostly employ unmarried women. However, working in an EPZ unit is often not a pleasant experience for most women because of unhealthy conditions, low pay, no leaves and exposure to sexual harassment. Protective legislation is not enforced in EPZ (Menon, 1999:10). However, women have filed PIL petitions against the denial of 'night shift,' considering it derogatory, gender-biased and denial of equal opportunities. Some women's organisations advocate that the employment of women in night shift would enhance the employment opportunities of women.
210. Section 66 (1) (d) of the Factories Act was challenged in the High Court at Chennai on 11 December 2000 by a batch of 150 petitions from all sides including employers, trade unions and women workers. The verdict said that the ban on night shift for women is unconstitutional and violative of Article 15 of the Constitution (*The Hindu*, New Delhi, 12 December 2000). The Court has also put certain conditions in the verdict like the provision of transport as mandatory. However, it is important to note that subsection 3 of the same Article (15) provides for special provisions for women.
211. The vital issue of employment of women workers in night shift should be discussed dispassionately taking into account all aspects - the social, economic and health matters. The demand for introduction of night shift for women in factories has generated very strong reactions especially among women workers, trade unions and other non-governmental organisations. All the Trade Unions are unanimous in opposing the idea. They claim the Indian employment scenario is not ripe enough for introducing such a change. It is also argued that there could be actual decline in employment of women in factories if the ban of women on night shift is lifted, because many women will have to leave jobs on being forced to work in night shift, and it might go against their economic interest in the long run (Rana, 2000a).

212. Rana (2000a) argues that the women workers will have to face the security risks, violence, and sexual exploitation not even at workplaces but while moving on the way at odd times. The factories are generally situated outside the residential limits of the cities. There shall always be a transport problem. In the case of the Act being amended, there should be suitable provisions of transport for women workers for night shift. The enforcement of these provisions will remain a big question mark. Even the historic judgement of the Supreme Court in *Vishaka & Others Vs. State of Rajasthan & Others* (Dated 13/08/1997) relating to sexual harassment in the workplace is not being implemented in the organised sector. The instances of sexual harassment among women nurses, doctors, teachers are not uncommon to cite. The fate of ordinary women workers working in night shift is beyond our imagination. However, abundant caution should be taken and adequate legal protection is given in case the ban is lifted.
213. The **Equal Remuneration Act, 1976** (amended in 1987) is meant “to provide for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the ground of sex, against women in the matter of employment and for matters connected therewith or incidental thereto.” The Act extends to the whole of India, and it applies to 22 separate sectors (including the governmental – Local, State and Central) that may or may not have their specified schedules of employment). However, the actual situation is bit different as studies show.
214. Nirmala et al (1998) did a study on the statutory minimum wages, the existing wage and gender wage differentials of the agricultural workers of Pondicherry. They found that in spite of the Minimum Wages and Equal Remuneration Acts the labourers get less than the minimum wages, and the women get still less. They find that the government itself announced a gender wage difference of Rs.12 per day (Rs.35.40 for males and Rs.23.40 for females) for the year 1995-96. If this is true, the actual wage differential for females was Rs.7.77 as they get an average daily wage of only Rs.15.63 per person against the official wage of Rs.23.40. The actual gender wage differential came to Rs.16.54, as the actual male wage was only Rs.32.17 on an average. When male worker loses Rs.2.83, female worker loses Rs.19.77. This means that gender wage discrimination still exists (Nirmala et al, 1998).
215. However, it is also important to make use of the available labour legislation in favour of workers. For instance, the **Contract Labour (Regulation and Abolition) Act of 1970** does have provisions for regulation as well as abolition of contract

labour. The Act is meant to abolish contract labour in principle. Provisions of regulation are used in cases where the contract labour continues. To de-link regulation from abolition is detrimental to the interests of the labour. It is important to note that the retrenched, casualised and contractualised labour also becomes part of the unorganised sector labour.

216. The Supreme Court of India has called the contract labour system archaic and called for its abolition in all jobs, which are of a permanent nature. Supreme Court has upheld the claim of contract workers to permanency with the principal employer in many cases. For instance, *Gujarat Electricity Board, Thermal Power Station, Ukai, Gujarat Vs. Hind Mazdoor Sabha & Others* (JT 1995(4) SC 264 Dated 09/05/1995) and *R. K. Panda & Others Vs. Steel Authority of India Ltd.* (JT 1994(4) SC 151). As a result, the legal provision of abolition in The Contract Labour (Regulation and Abolition) Act has become an instrument of struggle for the contract workers. To forestall it, there are demands to delete the provision of abolition or restrict its applicability to few jobs. The induction of contract labour in manufacturing plants has become a major mechanism for undermining the unionised workers and reducing costs. The ILO estimates that contract labour accounts for more than 30 percent of the total workforce in manufacturing sectors of all countries. Between, 1975 and 1993, the growth of contract labour has been 13 times that of the growth of directly employed workforce (Roy, 1999:8).
217. The Supreme Court has in many cases denounced the practice of keeping **casual labour** for long periods without giving them the benefits given to regular employees of the establishment. Taking work from *ad hoc* or daily-wage workers must be only for short periods or as stopgap arrangement. In January 2001, Supreme Court has given a similar judgement denouncing the unfair labour practice in the case of *Gujarat Agricultural University Vs. Rathod Labhu Bechar* (2001 SOL Case No. 036 Dated 18/01/2001). The Honourable Court held that it has “no hesitation to denounce the practice.” After considering the genuine issue of financial viability, they added that in case of no ability “such enterprise or institution should not spread its arms longer than its means.” In an earlier judgement dealing with Postal employees the Learned Single Judge relying on the decision of this Court in *Daily Rated Casual Labour Employed under P & T Department Vs. Union of India and others* (1988(1) SCC 122) directed the appellant to submit a scheme for conferring permanent status to the respondents. The Supreme Court called this practice “exploitation of labour.” It recalled the Directive Principles of State Policy contained in Articles 38 and 39(d) to show hostile discrimination against those workers. In this case the Court observed that

the “government cannot take advantage of its dominant position, and compel any worker to work even as a casual labourer on starvation wages” (Antony, 2001). Such positive legal verdicts stand applicable throughout India in all sectors, as these are based on concrete Constitutional provisions.

218. Considering the fact that vast majority of the unorganised workers fall under contract or casual employment relations, and considering the fact that these employment relations are exploitative, the Umbrella Legislation for Unorganised Labour should safeguard the rights of those engaged in contract and casual work.
219. India has not yet ratified the ILO conventions on **rights to organise and collective bargaining** that fall within the ILO Declaration on Fundamental Principles and Rights at Work. They are (1) Convention No. 87 (*Convention Concerning Freedom of Association and Protection of the Right to Organise*) of 1948 and Convention No. 98 (*Convention Concerning the Application of the Principles of the Right to Organise and to Bargain Collectively*) of 1949. So far (as on 31 January 2000), India did not ratify these two conventions. As far as the **collective bargaining coverage** goes, as one of the ILO (ILO, 2000) studies finds, India stands at the lowest scale (just above zero level) among the UN member nations subjected to the study.
220. The **right to form trade unions** is part of the Constitutional right to form associations or unions guaranteed to all citizens under Article 19(1)(c). The mere right to form trade unions would be meaningless if it were not also backed by the right for trade unions (and their membership in turn) to carry out those activities necessary for their useful functioning. Some of these activities would certainly include the rights to proceed on strike, demonstrate, picket, hold political views and participate in the democratic processes and so on. This includes also the right to conduct their internal affairs such as meetings and elections in the manner the trade union members deem necessary and proper. Some of these rights, to a limited extent, have been protected in the Trade Unions Act, 1926 (Sankaran, 1999:17). The proposed Umbrella Legislation should ensure the right of workers in all sectors to form trade unions and engage in collective bargaining. The new legislation shall positively encourage unionisation and make it legitimate part of the dispute settling mechanism.
221. One problem faced by the hawkers and vendors and also by rickshaw pullers in towns and cities is the harassment form (a) police, (b) traffic police and (c) municipal authorities. Unequal sharing of urban public space has become the

norm, and this norm is basically behind the harassment. Relevant changes in attitude and laws are needed.

222. Thus, the labour rights scenario is found not encouraging in India. Child labour, bonded labour, contract and casual labour, unequal wages, low level of collective bargaining coverage, problems in practical union activities, harassment of workers by police, traffic and municipal authorities, etc. are some of the features that challenge the human rights situation of India. Practically, voice representation does not get the needed importance. Therefore, the new legislation should guarantee a democratic atmosphere by institutionalising core labour rights as a precondition for the laws to play their role.

Chapter IX: Social Security - Survey

223. **Context of social security:** The concept of social security has evolved out of the human quest for protection from hazards of nature, life and work. The urgency to undertake social security measures in developing countries can be seen as an expression of the failure of the conventional economic development process, one of whose fundamental assumptions was that vulnerability and deprivation would be removed as a consequence of the general development of the economy. Incomes were supposed to rise; a demographic transition would slow population growth; and more of the workforce would move into the organised sector through processes like industrialisation and modernisation. The net result would be greater security. This has been referred to as the strategy for ‘growth-mediated security’ (Dreze and Sen, 1991:22). The non-achievement of these hopes, despite numerous decades of planned economic activity and market functioning, has provided an important motivational element, leading to greater awareness among people about their low standards of living and their fundamental rights for social protection. This has led to governments in developing countries considering more direct social means to secure life and livelihood. Social security measures are required in themselves because a growth-mediated strategy does not necessarily result in security for all (Kurien and Paul, 2000:6).
224. This is also the experience of even many developed countries. These issues have been dealt with by Dreze and Sen (1991:14) who concludes that “economic growth alone cannot be relied upon to deal either with the promotion, or with the protection of, living standards. The strategy of public action for social security has to take adequate note of the problems that limit what aggregate expansion can do in enhancing living conditions.” The ‘public action’ includes measures taken at the level of the state, the community or the family.
225. As Guy Standing (1999a) points out, the twentieth century was dominated by competition between two labourist models of society – state socialism and welfare state capitalism - which reached their peak in the 1970s, and which promoted seven forms of labour security. He (1999b) considers the promotion of seven forms of labour security as the essence of social and development policy. He lists them as:
1. labour market security (adequate employment opportunities),

2. employment security (protection against dismissal),
 3. job security (occupation or career),
 4. work security (protection against accidents and excessive working time),
 5. skill reproduction security (opportunities to retain and improve skills),
 6. income security (minimum wages, comprehensive social security), and
 7. representation security (freedom of association and protection of collective voice).
226. **Approach to social security:** Dismissing the approach of the “new paternalists,” Standing presents a vision combining security of income and representation without moralistic state control, in which the right to occupational security is given pride of place. Since the 1970s, globalisation, flexible labour markets and supply-side economics have increased insecurity and inequalities. After a period dominated by libertarianism and supply-side economics, Standing is of the view, politicians and social thinkers must now find ways of promoting distributive justice, based on basic security and new forms of voice representation and regulation. (Standing, 1999a).
227. Amartya Sen explains the interlinkage of employment, wage and poverty. Sen talks about three different aspects of employment, namely, the income aspect, the production aspect and the recognition aspect. He explains that ‘poverty’ is “a function of technology and productivity, ownership of the means of production, and social arrangements for production and distribution.” Amartya Sen says: “Employment is an important means of generating and distributing income.” Moreover, it is “a factor in self-esteem and indeed in esteem by others.” For him, ‘minimum wage’ addresses the questions whether enough employment opportunities are available for those who are coming into the labour market; whether the wages for the productive activity they are engaged in are adequate for the regeneration of the worker and his/her family; whether the wage provides for redistribution of the income; and whether it provides recognition for the worker (John, 1997). Therefore, social security is in a way is a system of proper distribution of income and also a right mechanism of wage fixation. Poverty reduction thus does not become a separate welfare issue but a question of just industrial relations, of production relation, or in the end a question of social relation.

228. Ela R. Bhatt (2000) also presents an approach to social security different from the welfare perspective while talking on the women workers. In spite of hard work, the needs of the poor for social protection are inadequately met. This is especially true of the women. They experience persistent deprivation and vulnerability. The situation has worsened after the initial phases of liberalisation. The living standards and incomes of the workers have declined. This is the scenario in which social security for the unorganised sector has to be thought about. The first and most important issue is to link social security with their status as workers or working producers. The poor are all workers who contribute to all sectors of the economy. Social protection, then, is the way in which their contribution to the economy is protected and enhanced. In this sense, social protection or social security is not a welfare measure but a work security, essential to the economic life of the poor, mostly the unorganised sector workers (Bhatt, 2000).
229. Ms. Bhatt introduces the concept of 'people's sector' that brings out more clearly the role of the unorganised sector, its role in the economy, its need for social security systems, as well as its own positive ability to build its own viable integrative systems. The concept of public sector and private sector is well understood by our policy makers. All policies are aimed towards them, the statistics are collected about them and they are projected as the engines of growth for the economy. However, the truth is that these two powerful sectors put together contribute only 8 per cent of the employment, 35 per cent of the income and 33 per cent of the savings of the country (despite the possibility that the official statistics overestimate the contribution of these sectors). According to Ela Bhatt, the rest of the country's economy depends on the people's sector – the unorganised labour and the self-employed producers (Bhatt, 2000).
230. In different words and concept, Dreze and Sen (1991:28) had also pointed out the same thing. Their concept of 'public action' refers not only to what is done for a family, community or the population as a whole by the state, but it also includes what the family does. Chatterjee and Vyas (2000:85) are also of the opinion that social security needs to be viewed as a basic right or entitlement, as opposed to the view that it is 'safety net,' or welfare and charity oriented intervention.
231. The principle of social security as entitlement is not new. The definitions of the International Labour Organisation, formulated more than 50 years ago, do see social security measures as the entitlement of workers. Amartya Sen has contributed much towards entitlement approach. However, these social security schemes have brought practically no benefit to the masses of poor. The

entitlements tend to be confined to the organised sector workers. Bhatt (2000) argues that the elements of income security and social protection – food, water, health care, childcare, shelter and education – need to be treated as basic entitlements of the workers and producers of the economy. They are entitlements not only because they are citizens, but also because they are the main contributors to the wealth of the nation. Today, even without these entitlements they contribute their labour, skill and entrepreneurship to the economy. When provided with these entitlements, their productivity as well as their purchasing power will grow. They will add to the country's gross national product, enhance the economy and help fight economic crises. On the other hand, if their economic contribution is not recognised and enhanced, if they continue to be treated as the recipients of safety net policies, they will continue to be poor beneficiaries, living constantly on welfare and subsidies (Bhatt, 2000).

232. As structural adjustment proceeds, the entitlements of the organised sector are getting eroded, too, and the need for social security systems is becoming more important and central to the success of structural adjustment programmes. Bhatt (2000) rightly says that the concept of social safety nets will not be feasible in the economic situation that already exists in India and that will deepen with increasing marginalisation of labour. Social safety nets would be viable if the number of people who 'fall' into them constitute a small percentage of the workforce. But no 'net' is capable of supporting over 92 per cent of the labour force of a country, and certainly not a country where this 92 per cent is over 300 million workers!
233. Therefore, when we propose the elements of social security for umbrella legislation for unorganised sector workers, we will keep in mind such a perspective of freedom and right to entitlement for all.
234. **Labour Policy regarding Social Security in India's Five-year Plans:** The labour policy followed in the five-year plans since independence adopted an approach, which rested on considerations that the basic needs of workers for food, clothing and shelter must be satisfied. The first Plan (Part – III, Chapter XXXIV) recommended many measures like the grant of occupancy rights for house-sites, support for the movement for gift of land, labour co-operatives, financial assistance, educational stipends, minimum wages, etc. for the welfare of the agricultural workers.
235. The Second Five-year Plan (Chapter XXVII) continued the policy laid down in the First Plan with necessary modifications, called for by the socialist pattern of

society envisaged for the future. There were also proposals for development programmes under labour and labour welfare. Welfare-state policies were recommended. The Plan made provision for industrial housing. The Third Five-Year Plan made no specific reference to labour welfare but stressed that for improving work efficiency, welfare within the establishment should be ensured. As a part of reoriented policy, co-operative activity was identified as a labour welfare measure. The Draft Fourth Five-year Plan made a significant allotment of Rs.145 crores for schemes for training and other programmes for workers. The draft Fifth Five-Year Plan made a provision of Rs.57 crores for craftsmen training, employment service and labour welfare.

236. The thrust of the programmes in Sixth Plan (Chapter XXIV) was on implementing effectively different legislative enactments regarding labour and special programmes for agricultural labour, artisans, handloom weavers, fishermen, leather workers and other organised workers in the rural and urban areas. The Plan also emphasised on vocational rehabilitation of the physically handicapped, apprenticeship and training schemes, organisation of rural workers, and problems of bonded-labour, child labour, women labour, contract labour, construction labour, inter-state migrant labour, migrant shepherds and dairy cattle owners.
237. The thrust of the Seventh Plan (Chapter V) was improvement of capacity utilisation, efficiency and productivity. An important aspect of labour policy mentioned in the Seventh Plan pertains to the formulation of an appropriate wage-policy, and provisions for the welfare and working and living conditions of unorganised labour not only in rural sectors but also in the urban areas. As regards objectives and thrusts, the Eighth plan (Chapter VII) mentioned that improvement in the quality of labour, productivity, skills and working conditions and provision of welfare and social security measures, especially of those working in the unorganised sector, are crucial elements of the strategy for quantitative and qualitative enhancement of the status of labour. The Plan also laid emphasis for enforcement of labour laws especially those relating to unorganised labour and women and child labour.
238. Notwithstanding the avowed objects, the Five-Year Plans have not evolved an integrated comprehensive scheme of social security for the unorganised labour. Majority of the existing labour laws seeks to benefit the organised sector, which constitutes merely eight percent of the total workforce of around 350 million (CRUW, 2000).

239. **Definition of social security:** The definition of social security deserves close attention because it is the basis for policy choices and prescriptions. The International Labour Organisation (ILO) first proposed a comprehensive definition as: “The protection which society provides for its members, through a series of public measures, against the economic and social distress that otherwise would be caused by the stoppage or substantial reduction in earnings resulting from sickness, maternity, employment injury, unemployment, invalidity, old age and death; the provision of medical care, and the provisions of subsidies for families with children” (ILO, 1989).
240. According to Hirway (1995), the concept of social security implies a broad pro-poor approach, which has three major components. They are a promotional component that aims at improving endowments, exchange entitlements, real incomes and social consumption; a preventive component that seeks to avert deprivation in more specific ways; and a protective component (also known as safety measures) that is yet more specific in generating relief against deprivation (Hirway, 1995).
241. Dreze and Sen (1993:16) have broadly divided social security measures into two types – protective measures, and promotional measures. The former is concerned with the short-run task of preventing a decline in standards of living, and the latter with enhancing the long-term general living standard by raising the basic capability of the person or population.
242. **Elements of social security:** Social security comprises mainly two elements – job/work and income securities. That is why social security is taken linked to work or economic security. The right to work would therefore have to be viewed as a necessary concomitant of the right to social security. For self-employed people like vendors and rickshaw pullers, issues such as freedom to work and right to space become important. In fact, all human rights become relevant, as these workers and service providers face the harassment from municipal, traffic and police authorities.
243. As important as the work security is income security. Inadequate income resulting from unprotected and irregular employment, is a direct threat to their lives and families. Their income needs to be protected against the vagaries of the economy. Therefore, socially relevant minimum wages should be guaranteed. To avoid the blockage of such a possibility, atmosphere for collective bargaining and right to unionisation should also be provided. In addition to income security, certain other

basic elements of social protection are also essential towards work security. These are health care, childcare, shelter and education.

244. The sector is diverse, as we found earlier. Subrahmanya and Jhabvala (2000) points out **the problems in formulating and enforcing a social security scheme for the unorganised sector** owing to the specifics of the sector. First, the unorganised sector is not a homogeneous category. Employment relations vary considerably, and are very different from those of the organised sector. The sector comprises the following categories:

1. Those who are employed on a more or less regular basis, in establishments which are outside the scope of the existing social security legislation.
2. Those who are employed as casual labour, intermittently on contracts, with uncertain employment and income.
3. Those who are own-account workers and producers, including small and marginal farmers, who may occasionally hire the labour of others.
4. Those who do a variety of jobs from day to day, from season to season, and often even within the same day.
5. Those who are seeking work like the migrant labour.
6. Those who worked but can no longer work.

Second, a major obstacle to introducing contributory social insurance schemes for the unorganised sector is the difficulty in identifying the employer. Third, unlike the organised sector where steady and regular employment is a given fact, unorganised sector workers need employment security, income security and social security simultaneously. Fourth, the needs of these workers vary from those of the organised sector. For example, since a large proportion of the unorganised sector is women, child-oriented needs become increasingly important (Subrahmanya and Jhabvala, 2000:19).

xvii. Social security measures for unorganised sector labour are constrained by factors such as (i) lack of permanent or stable linkage between employer and employee that precludes schemes based on employer's contribution, (ii) low and unstable wages and lack of round-the-year employment which precludes schemes based on employee's contribution, and (iii) purely casual nature of employment which precludes benefits like sick leave, maternity leave, etc. That to what extent these

constraining factors can be eliminated to confer the benefits of social security to the unorganised sector labour is an issue to be tackled. Examination of the existing models of social security legislation may help us in finding some way out. Despite inherent variety in occupational specificity, the Umbrella Legislation for Unorganised Labour should provide for social security as entitlement to workers in the unorganised sector. Social security should have promotional and preventive measures addressing employment security and income security covering healthcare, childcare and old age.

Chapter X: Review of the Existing Models of Welfare Funds and Boards

245. Various **Welfare Funds and Boards** exist at the central and State levels. At the Central level, Welfare Funds exist for beedi, cine, mines and construction workers. Secondary studies are also done on them (Subrahmanya, 2000c; Rana, 2000a; JMC, undated). JMC study was exclusively on mining sector. R. K. A. Subrahmanya (2000c: 65-73) did a study on the existing Welfare Funds/Welfare Fund Boards in India. He took Welfare Funds at the Central level and also the Welfare Fund Boards at State level, especially those in Kerala for comparison. Welfare Funds represent one of the models developed in India for providing social security protection to workers. Under this mechanism, funds are raised by levying a cess on the production, sale or export of specified goods, or by collecting contributions from various sources including the employers, employees as well as the government. The funds are used for meeting the expenditure on the welfare of the workers. Though schemes are available under the Labour Welfare Funds at the Central level, workers in the unorganised sector could not however make use of them for various reasons.
246. The Government of India has set up welfare funds for workers in six classes of mines – mica, iron ore, manganese ore, chrome ore, limestone and dolomite. Welfare funds exist also for beedi workers, cine workers, dock workers and building and construction workers (Subrahmanya, 2000c:65). They provide mainly medical care, assistance for the education of children, housing and water supply, and recreational facilities. Among the States, Kerala has set up more than 20 welfare funds for the benefit of unorganised sector workers. Many of these are statutory but some are non-statutory (Subrahmanya, 2000a: 43). A statutory fund was created for financing welfare measures for plantation workers in Assam. Similar funds have been set up in Gujarat, Maharashtra, Karnataka and Punjab (Subrahmanya, 2000c: 65). Mathadi Boards exist for various groups of headload workers in Maharashtra.
247. These welfare funds have been set up by special Acts of Parliament. Beedi workers are covered by the Beedi Workers Welfare Fund Act, 1976 (and Beedi Workers Welfare Cess Act, 1976). Fixed cess is levied per bundle of 1000 beedis manufactured. Building and Other Construction Workers' Boards are constituted under the Building and Other Construction Workers (Regulation of Employment

and Conditions of Service) Act, 1996. As per the Building and Other Construction Workers' Welfare Cess Act, 1996 cess is collected at the rate of two per cent of the cost of the constructions made. Among the Funds related to mines, for mica cess is collected at a certain percentage of its export value. However, cess is levied for other mine products on the basis of the quantum of production, not on the basis of the value of production. The Cine Workers Welfare Cess Act, 1981 adopted a method of levying films on the basis of production, not on the basis of collection. There are three different rates for films in different languages (this year – 2001, a new amendment is introduced in the parliament of which information could not be included). The differential rationale and the wide variation in the rate structure of the cess are questioned (Subrahmanya, 2000c: 66-67).

248. The welfare funds fall broadly into two groups – tax-based and contributory. The funds set up by the central government are tax-based, while those set up by the government of Kerala are mostly contributory. A contributory scheme is akin to social insurance. In India, there is only one social insurance scheme and that is the Employees Social Insurance Scheme (ESIS). The experience of this scheme has not been encouraging. Nor is the experience of Kerala with contributory schemes where coverage has been limited, and there is increasing difficulty in collecting the contributions. Subrahmanya (2000c:67) thinks that, in Indian conditions, from the practical point of view, tax-based schemes would appear to work better. However, a combination of contributory and tax-based schemes can bring in finance and also encourage the participation of the actors involved particularly the workers. As far as the ESI scheme is concerned, it should be said that, despite constraints, it is still the scheme that the unorganised workers like the construction workers are aiming at (Nirman Mazdoor Panchayat Sangam demands it).
249. Benefits through Central Welfare Funds: The end use of the welfare funds is prescribed in the respective laws or schemes. The Central Welfare Funds for mine workers and beedi rollers use the fund for the improvement of public health, sanitation, medical facilities, water supplies and educational facilities, prevention of disease, and the improvement of standards of living including housing and nutrition, amelioration of social conditions and provision of recreational facilities. In actual practice, most of the expenditure from the welfare funds has been on health, education and housing. For example, in 1992-93 in the case of the limestone/dolomite mine workers 51.49 per cent was spent on health, 9.7 per cent on education/recreation and 17.83 per cent on housing (Subrahmanya, 2000c: 68).

250. *Healthcare*: The assistance and facilities provided for medical care include the purchase of spectacles for those with ophthalmic problems, reimbursement of actual expenditure for heart disorders, kidney transplants and cancer, reservation of beds in hospitals that treat tuberculosis and domiciliary treatment for those with tuberculosis, grant for treatment, diet, transportation charges, a subsistence allowance for those with mental disorders or leprosy, and the supply of artificial limbs for orthopaedic problems. The central welfare funds have adopted the integrated model of health care and have undertaken to provide medical services directly. Each fund has created its own hospitals, dispensaries and other facilities (Subrahmanya, 2000c: 68; JMC, undated). However, this approach of each board developing its own chain of hospitals could neither cater to all the needy patients nor deal with complicated diseases needing highly specialised treatment. Boards could have done better if they assigned the agencies specialising in health instead of heeding to build their own costly set up of expertise in the field that finally is found expensive but inadequate in both quantity and quality.
251. *Housing*: Shelter is one of the basic needs of the people. The mineworkers and beedi workers schemes include housing. But considering the present costs of construction, it is doubtful if the scale of assistance provided is adequate.
252. *Education*: A thrust area has been the education of the workers' children as it was felt that this would bring a qualitative improvement in their lives on a lasting basis. Among other things, scholarships, school uniforms, textbooks and stationery have been provided.
253. Barring medical care, the welfare funds set up by the central government for mine and beedi workers have no provisions for meeting expenditure on any of the well-recognised branches of social security such as occupational injury benefit, invalidity benefit, old-age benefit, survivor benefit or unemployment benefit. Sickness benefit is given as medical attention for whole of family, but no cash allowance is given in sickness. But, these welfare funds have the scope and the potential to become instruments of social security if suitable amendments are made to the laws (Subrahmanya, 2000c: 69).
254. The end use of the welfare fund has been changed in the latest Act concerning building and construction workers. It provides the benefits of immediate assistance in case of accident, payment of pension, loans and advances for construction of houses, payment of premiums for group insurance schemes, financial assistance for the education of children, payment of medical expenses for the treatment of

major ailments, payment of maternity benefit, and has provision and improvement of other welfare measures and facilities (Subrahmanya, 2000c: 69-70).

255. **Tamil Nadu:** Despite the inaction dealing with the prevalence of child labour, and despite low wage levels, Tamil Nadu is one of the pioneer States in spearheading social welfare measures. For instance, even before the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act 1996 necessitated every State to set up Welfare Board for these workers, Tamil Nadu could set up a statutory scheme in 1994, namely, The Tamil Nadu Manual Workers (Construction Workers) Welfare Scheme. The Tamil Nadu Labour Welfare Board is functioning in the State to administer the Labour Welfare Fund created under the Tamil Nadu Labour Welfare Fund Act, 1972. Tamil Nadu Manual Workers Social Security and Welfare Scheme, and a Board and Fund to run it were evolved on the basis of the Tamil Nadu Manual Workers (Regulation of Employment and Conditions of Work) Act, 1982. The Scheme has been functioning since 1999.
256. **Tamil Nadu Labour Welfare Board:** The Welfare Fund is collected annually at the revised rate of contribution at Rs.5, Rs.10 and Rs.5 per employee from the Employees, Employers and the Government respectively. The Board functions with 19 Representatives consisting of 4 Government Officials, 5 Employers Representatives and 5 Employees Representatives, 3 Member of Legislative Assembly and 2 Women Representatives. The Minister for Labour is the Chairman of the Board. The Board is implementing several welfare schemes and Rs.28,50,660 have been dispersed for 5552 beneficiaries for the year 1999.
257. The Board runs 52 Labour Welfare Centres and 71 Tailoring Centres throughout the State. Each Labour Welfare Centre consists of a Tailoring Class for women dependants of workers and a child care centre. Tailoring classes are conducted for the wives and unmarried daughters of the workers. The training period is for one year. So far 2279 persons have been given tailoring training. During the training period, a stipend amount of Rs.80 per month is being paid for each trainee. The Board pays their examination fees also. Further, a Sewing Machine is being given to the trainee who secured top marks in Lower/Higher Grade Government Examination in each centre.
258. In the childcare section, free primary school education is provided to the children, apart from providing nutritious midday meals, milk, egg, fruits and medical care, etc. Qualified doctors medically examine these children twice a month. Two sets

of uniform are also supplied to the children in each year. A new prize scheme is being implemented to encourage the children of the workers who studies the 10th and 12th standards and secured first and second top marks in each Educational District. The prize amount is Rs. 1,000 for the First Place and Rs. 500 for the Second Place. Rs. 1.89 Lakhs have been spent for the scheme during this year. Libraries are run at 9 places by the Board to encourage the reading habit of the workers and their dependants.

259. The Board has maintained Holiday homes for the workers and their families. Separate TB Wards in Government Hospitals have been constructed for the benefit of the workers – TB Sanatorium, Tambaram (26 Beds), Tiruppur (26 Beds), Asaripallam (30 Beds), Austinpatti (26 Beds) and Kilpennathur (24 Beds) at Vellore District.
260. **The Tamil Nadu Manual Workers (Construction Workers) Welfare Scheme :** The Government has constituted Tamil Nadu Construction Workers Welfare Board to administer this scheme for the welfare of construction workers, and it was initially implemented within the areas of Chennai, Madurai and Coimbatore Corporations. The scheme was extended throughout Tamil Nadu in 1997.
261. To implement the construction workers welfare schemes, “Manual Workers General Welfare Fund” has been constituted. As per Section 8A of the Tamil Nadu Manual Workers (Regulation of Employment and Conditions of Work) Act, 1982, any person who undertakes any construction work within the Tamil Nadu shall be liable to pay 0.3 per cent of the total cost of construction to the above Fund. The Government and Government Departments should also pay the above contribution to the said Fund directly. As and when other persons undertake any construction work, the Local bodies collect the 0.3 per cent of the total cost of said construction and remit the amount to the Manual Workers General Welfare Fund. As on December end 1999, the above Board has received Rs.16,74,52,803 as contribution and 1,93,601 construction workers are registered. Rs.48,40,025 has been collected as Registration Fee at the rate of Rs.25 per Worker. Every Manual Worker whose name has been registered shall after two years, renew his/her initial registration or the subsequent renewal of his/her registration, by paying Rs.10 per annum to the Board as Renewal Fee. Identity Cards have been issued to all registered construction workers free of cost.
262. Tamil Nadu Labour Welfare Board is implementing the following schemes for the welfare of the Registered Construction Workers:

1. *Group Personal Accident Insurance Scheme*: In the event of death of a registered construction worker in an accident a sum of Rs.1 Lakh is paid to the nominee of the deceased. For loss of limbs, eyes, etc. compensation is paid up to Rs. 1 lakh depending upon the percentage of loss.
 2. *Educational Assistance Scheme*: Assistance for the education of the son/daughter of a registered construction worker is given as below:

10th pass: Rs.750

12th pass: Rs. 1,000.
 3. *Marriage Assistance Scheme*: Assistance of a sum of Rs.1,000 is paid to meet the marriage expense of son or daughter of a Registered Construction Worker.
 4. *Maternity/Abortion Assistance Scheme*: Assistance of a sum of Rs. 2,000 is paid towards Maternity/Abortion to a Registered Woman Construction Worker.
 5. *Natural Death Assistance Scheme*: In the event of natural death of a registered construction worker, a sum of Rs.5,000 is paid as Assistance to the nominee of a registered construction worker.
 6. *Funeral Expenses Assistance Scheme*: In the event of death (either natural or accident) of a registered construction worker the nominee is paid as assistance, a sum of Rs.2,000 to meet the funeral expenses.
263. **Tamil Nadu Manual Workers Social Security and Welfare Scheme, 1999**: In 1997, three committees were constituted to study the conditions of the unorganised workers and to give their recommendations. One committee was constituted to study exclusively the conditions of agricultural workers. Out of the other two committees, one was to study the working conditions of unorganised workers, who come under some labour enactments and the another for the unorganised workers who are not covered by any labour enactment. Based on the report of the last two committees, the Government has in 1998 added 43 employments in addition to the existing 12 employments to the scheme of Tamil Nadu Manual Workers (Regulation of Employment and Conditions of Work) Act, 1982. The two employments viz. cycle repairs and domestic works have also been subsequently added to the schedule of the above Act.

264. Government amended the Tamil Nadu Manual Workers (Regulation of Employment and Conditions of Work) Act inserting new Section 8 B expanding the definition of the 'manual worker' and also enabling collection of contribution from the employer. The Tamil Nadu Manual Workers Social Security and Welfare Schemes for the unorganised workers were formulated in 1999. The Scheme provides for the establishment of the 'Tamil Nadu Manual Workers Social Security and Welfare Fund' and the ways for augmenting the financial position.
265. The object of the scheme is to provide (1) Group Personal Accident Relief Scheme, (2) Maternity Benefit Scheme, and (3) Terminal Benefit Scheme. The workers are entitled to enjoy the benefits under the scheme, after 12 months of registration. The Board is functioning from 1999 with Head Quarters at Chennai. In addition to the grant of Rupees Forty Lakhs, sanctioned by the Government, the Board has received Rs.47 lakhs up to 02.03.2000 by way of collection of 1 per cent of Motor Vehicle Tax. Action has been taken to computerise the activities of the Board through the ELCOT (Electronic Corporation of Tamil Nadu).
266. **Changes in the latest scheme :** Tamil Nadu Manual Workers Social Security and Welfare Board was initially suggested as a motherboard taking negative lessons from the multiplication of Boards in Kerala. The idea was that administrative expenditure could be reduced if multiplication of Boards is avoided. The Board is tripartite. Flexibility was kept to add any number of occupations and also new schemes or benefits. Initially 60 employments were included. Reasons of 'political' compulsions have forced the Government to announce a number of new separate boards – for instance for workers of auto & taxi, tailors, barbers, dhobis, palm tree climbers and handicraft workers. Then three employments have been taken out from the list of 60. Announcement of 4 more employments is in the pipeline. Addition in the schedule is made an easier process by cancelling the step of confirmation notification. The scheme is meant for both the wage-employed and self-employed. Registration is optional. A fee of Rs.25 for registration and a monthly contribution of Rs.20 were charged from the worker. Now it is a one-time contribution of Rs.100 including registration fee. Eligibility for benefits was changed to a waiting period of four months, and it is reported that period is going to be again reduced. A terminal benefit of the contribution at 12 per cent compound interest and some gratuity, and accidental death (not necessarily in the course of work) insurance for Rs.1 lakh are part of the scheme. Very recently in 2000 two more boards were announced, one for artists and the other for audio & video workers. So now, the concept of umbrella or principal board is thrown overboard.

267. **Kerala State** has set up more than 20 welfare funds for the benefit of unorganised sector workers such as *abkari*/toddy workers, agricultural workers, handloom workers, auto-rickshaw workers, cashew workers, coir workers, construction workers, motor transport workers, some artisans and others. Most of them are statutory bodies (Subrahmanya, 2000a: 43). These provide a wide range of benefits including old-age benefit, medical care, education, assistance for marriage, housing, etc. to the workers. The schemes are administered by autonomous boards and financed by contributions from employers, workers and others.
268. From Kerala, we shall see the welfare schemes for the fisherpeople, as their board is typical of those relying on common property resources. Apart from the welfare fund board, the Department of Fisheries, Kerala takes a number of steps supportive of fisherpeople and the functioning of the board. The Kerala Fishermen Welfare Societies Act 1980, 1985, 1986 and related Rules have led to delimiting and declaring the boundaries of 'Fisheries Villages' and the publication of list of all fishermen on this basis. They do this for both marine and inland fisheries. This process helped in identifying the fish-workers. Through a circular of Director of Fisheries, Government of Kerala, Trivandrum in 1987, 'the wives of fishermen engaged in fish vending' were included in the list of fishermen to be revised as on 01/09/1987 (Circular No. F.4-15928 dated 11/06/1987). By another circular dated 16/06/1987 'the widows of fishermen' were also included in the list of fishermen. Once the fishermen, their families and villages were defined and identified, it became easier for the welfare fund board to act.
269. The Kerala Fishermen Welfare Fund Act, 1985 (Act 30 of 1985) provided for the setting up of the Board and a contributory Scheme under it. The Board and Scheme came into existence in 26 January 1986. The statutory Board under Fishermen's Welfare Commissioner has three regional executives and 54 Fisheries Officers under it for looking after 235 fisheries villages of which 13 are in the inland circles. The fish-worker has to contribute Rs.30 per year for the initial three years, and then on three percent of the price of his/her catch or of the wage or earning he or she gets. The trader has to contribute one per cent of the annual turnover or an amount fixed by the Board as per relevant clauses of the Act. The owner of fishing vessel, owner of fishing net, and prawn and pisciculture owners are also bound to contribute according to the Act.
270. The Kerala Fishermen Welfare Fund Board runs 15 schemes in all. They are given below in a table:

Table: Schemes under the Kerala Fishermen Welfare Fund Board

SL. No.	Name of the scheme	Financial support as on 1996
1	Group insurance scheme	a. Accidental death or disappearance – Rs.5000 b. Permanent full injury – Rs.5000 c. Permanent partial injury – Rs.2500
2	Financial support for dependants on the natural death of fishermen during or just after fishing	Rs.15000 since 1986 (as the fishermen become ineligible for group insurance scheme)
3	Financial support for the marriage of daughters (not to be repaid)	Rs.1500 since 1995
4	Funeral expenses support for death of dependants	Rs.300 since 1991
5	Pension due to old age or physical infirmity (per month)	Rs.100
6	Temporary injury due to accident	Rs.500 since 1991
7	Funeral expenses support for dependants on the death of fishermen	Rs.5000
8	a. Support for the wards of fishermen who pass with highest marks in matriculation b. For continued studies for 2 years for the 1 st and 2 nd at State level	(since 1994) First at State level – Rs.3000 Second – Rs.2000 1 st at district level – Rs.1000 each Rs.100 per month
9	Those who undergo Family Planning	Rs.500 since 1994
10	a. Expert treatment for fatal diseases b. Pension for patients with serious diseases	Maximum of Rs.40000 Rs.100 per month since 1995
11	Sanitation scheme	Rs.2500
12	Chairman's relief fund	From Rs.100 to 2500
13	Netrajyoti (scheme for eye treatment)	Expenses needed for eye camps and surgery
14	Special grants from Board	As the Board meeting decides
15	Support for delivery related treatment and expenses	(since 1997) Rs.500 each for the first two deliveries

Source: The Kerala Fishermen Welfare Fund Board (1997)

271. Subrahmanya's study finds that the Scheme is well intended. Kerala Welfare Fund schemes including that of the fishermen provide a much wider range of benefits,

including many of the branches of social security that are included in the ILO Convention concerning Minimum Standards of Social Security. For instance, the Kerala Fishermen Welfare Fund Act provides payment for injury in any accident sustained while fishing, a lump sum assistance to dependants in the event of death, old-age pension, assistance for funeral expenses, interest-free loans for the marriage of daughters, educational assistance, and medical facilities. In actual practice however, the welfare funds in Kerala are not able to provide all the benefits because of resource constraints. On a review of the working of the schemes it has been reported, in the case of the Fishermen Welfare Fund that, “there are twelve schemes, but only pension is being met by the government” (Subrahmanya, 2000c: 70).

272. The central and the Kerala models represent two extremes, one the minimalist approach, the other the maximalist approach. Neither can be considered ideal for the future development of welfare funds in India as far as benefits are concerned. What needs to be done is to prepare a standardised list of benefits which may be provided from the welfare funds and to prioritise them, somewhat as follows: health care, invalidity, old-age and survivor benefits, maternity and child care, educational assistance, and housing (Subrahmanya, 2000c: 70).
273. Recently, an apex authority for Labour Welfare is announced. **The Kerala State Labour Authority Ordinance, 2000** is promulgated by the Governor of Kerala to establish a Labour Authority in the State to serve as an apex body to co-ordinate, regulate, streamline, monitor and control the activities of the Labour Welfare Schemes of Welfare Boards and the Government and for matters connected therewith or incidental thereto. The Government may constitute an authority to be called ‘the Kerala State Labour Authority’ for the administration of the Funds under it. The Labour Minister shall be the Patron of the Labour Authority. The membership of the Labour Authority shall consist of the Labour Secretary to Government (ex-officio Chairman), Labour Commissioner (ex-officio Chief Executive Officer and Member Secretary), an Officer each of the Finance Department and Law Department not below the rank of a Joint Secretary nominated by the Government, and Five members each representing the employees and employers in the State.
274. The Labour Authority shall, among other things, monitor and issue guidelines and direction to the Statutory Welfare Fund Boards for the proper implementation of the various schemes, advise the Government on matters relating to Labour Administration, Labour Welfare and other matters pertaining to labour, and

administer the existing non-statutory Welfare Funds and Schemes transferred by the Government to the Labour Authority.

275. Funds of the Labour Authority are the Kerala State Labour Authority Fund and the Kerala Labour Welfare (Manpower Development and Training) Fund. The Kerala State Labour Authority Fund is authorised to borrow, receive loans and grants from governments, and get contributions from Schemes administered by it. For the Kerala Labour Welfare (Manpower Development and Training) Fund, every employer shall contribute one rupee for each worker engaged by him per month to the Labour Authority and it shall be paid before such date as may be specified by the Government. The Labour Authority through Labour Welfare Fund Boards or other agencies as may be specified by the Government shall collect the Fund. The Labour Welfare (Manpower Development and Training) Fund collected shall be apportioned and utilised as follows. Seventy per cent is earmarked for the Institute of Labour Studies and Management, ten per cent for research, information and extension, ten per cent for establishment and promotional expenses of the Labour Authority, and ten per cent for human resources development through other institutions. Institutions like *Institute of Labour Studies and Management* and *Labour Academy of Advanced Learning* are also visualised in the Ordinance.
276. The apex authority for Labour Welfare, announced in the form of *Kerala State Labour Authority*, through an Ordinance in 2000 is facing rough weather now. It was promulgated by the Governor of Kerala to serve as an apex body to coordinate, regulate, streamline, monitor and control the activities of the Labour Welfare Schemes of Welfare Boards and the Government. Irrespective of political and ideological differences, trade unions related to Welfare Fund Boards have objected to such an authority over and above the working of each board to control them and that too by taking share of contribution from the specific Boards. Therefore, the concept of motherboard in the case of vast sections of unorganised workers can be thought of not as an authority over various boards, but as a single board, with State level territorial branches and with provisions of subsidiary boards for various classes of workers within it, for the best intentions of coordination and effective functioning.
277. **Maharashtra Labour Welfare Board** is a statutory body constituted by the State Government under the Bombay Labour Welfare and Fund Act, 1953 for promotion of welfare of labour and their dependants in the State of Maharashtra. Finance of the Board includes the fines realised, unpaid dues of the employees collected from various factories and establishments, six-monthly tripartite

contribution, i.e., contribution from employees, employers and the government. All factories coming under the Factories Act, 1948, all shops and establishments within the meaning of the Bombay Shops and Establishments Act, 1948 employing 5 or more persons, and all motor transport undertakings coming under the Motor Transport Workers' Act, 1961 are required to pay employees' and employer's contribution in respect of all employees on their establishment register as on 30 June and 31 December every year at the prescribed rates to the Labour Welfare Fund.

278. The Board conducts a variety of institutionalised and non-institutionalised welfare activities through 247 small and big welfare centres in around 127 cities and towns all over the State. Educational, recreational, health and sports activities form the main agenda of the Board. Facility for sewing and handicraft under a trained female teacher constitutes special programme for women. Each centre is provided with minimum 4 sewing machines. Fabrication orders are undertaken at times as a part of subsidiary occupation programme. All Welfare Centres have Montessori training facilities for children in the age group 3-6 years. These children are served mid-day snacks daily. Community crèches have been established at Mumbai, Nagpur, and Sholapur at some of the centres.
279. Welfare Commissioner is the Principal Executive Officer of the Board and is directly responsible to the Board for implementation of various activities and programmes of the Board. All Executive and financial powers of the Board are exercised through Welfare Commissioner (MLWB, 2001).
280. According to the note prepared by MLWB (2001), it is clear that their schemes do not reach out to the unorganised workers (perhaps with the exception of headload workers). The note by the Board says that it is willing to extend its welfare programme to the unorganised rural agricultural and other categories of labour as well as child labour. However, due to paucity of funds it is unable to take any steps in this direction. The Board claims that it has the necessary infrastructure to undertake any welfare activities for the benefit of unorganised urban and rural labour and child labour. If the Central Government and/or international organisations like ILO and UNFPA make necessary funds available, it may undertake implementation of some welfare programmes for the unorganised labour (MLWB, 2001).
281. **Mathadi Boards** in Maharashtra could decasualise the headload workers to a great extent. A *mathadi* is a worker who carries a load on his head, back, neck and

or shoulders. His work is mainly of physical labour and he is expected to be strong and to withstand serious physical weights for stacking. This work normally consists of loading, unloading, carrying, shifting, and stacking. All this work was performed in a gang or *tolli* system. All the workers in a *tolli* belonged to the same village and often, related to each other. According to their convenience some of them used to go to their native places, and some others, mostly their relatives used to come and take their place in the *tolli*. The *tolli* workers used to work under a head known as *mukadam*, who actually used to arrange for the work, was responsible to the employer, got the labour charges from the employers, and distributed the wages among the workers. However, there was no single fixed employer, and the situation was one of one-employee-multiple-employer. Often, the *mukadam*, by conniving with the employer, exploited *tolli* workers. Since the availability of the work was dependent on the arrival, availability and departure of ships, trains, goods trucks or customers, it was extremely difficult to predict the time and volume of work. As a result, there were no fixed hours of work, no overtime, and no paid holiday or leave. In addition, the location of work was also spread all over Greater Mumbai (Datta, 1998).

282. During 1950s, tripartite bodies could get the dockworkers statutory rights through a process of decasualisation. Decasualisation scheme for the dock labourers (and for the *badli* workers in the textile mills in Mumbai about the same time) was the first of its kind to evolve a method to secure basic protective social security for the unorganised workers by regularising their intermittently available continuous work and developing employer-employee relationship. Under this scheme the tripartite body could get the workers as a statutory right an attendance allowance of 50 per cent of daily wages, weekly off, one-day holiday wage and 12 days' minimum guaranteed wages.
283. Anna Sahib Patil who had the experience of working on the docks during the dock workers struggle to decasualise themselves in the early 1950s, initiated organising *mathadis* in the late 1950s in Mumbai. Efforts on similar lines of work were also made in Pune by Baba Adhav and in Dhule by Paranjpe to organise the *mathadis*. Committees were appointed. The recommendations of three committees formed the basis of the enactment of **the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969**. Since 1969 the Mathadi Tripartite Boards regulate *mathadi* labour market. Today there are around 50,000 registered employers with almost 1.5 lakh workers registered under 30 different boards in Maharashtra. A chairman appointed by the government of Maharashtra heads each of these boards and in addition there are

equal number of representatives from the unions and employers association. Each board has its own staff including secretary, personnel officer, chief accountant, inspectors and clerks. The staff gets paid out of the levy - which is negotiated every 3-4 years, and charged on the employers (Datta, 1998).

284. Now, income tax payers are also there among mathadis. They pay professional tax. Dearness allowance is CPI linked. PF contribution by workers is 8.33 per cent. Hospital contribution is Rs.20 per month. They get medical benefits and HRA. Wage variation is still sharp and it fluctuates from less than Rs.1000 to Rs.10,000 per month. Besides better health facilities social security gives importance also to housing and education. Four thousand mathadi workers, with the help of mathadi boards, have been able to get housing facilities on ownership basis. For this purpose, they have taken loans from GIC, HDFC, and also drawn from their provident fund. The boards are also trying to promote formal education among mathadi families. Since 1982, they have instituted quite a few scholarships for the children of mathadi workers. More than 100 children have been given scholarships till 1997 (Datta, 1998).
285. **Important learnings** from the discussion on the various Labour Welfare Boards are given here. (i) One of the major reasons for the manual workers being denied of any legal protection was that they were caught in a labour process where it was virtually impossible to establish any kind of regular employer-employee relationship. As a result of this the workers in this sector do not qualify to benefit from literally any protective social security measures. Further, they are unable to take benefits from most of the promotional social security measures. The casual manual labour market has all the characteristics of unorganised flexible labour market. It has piece-rated wage system that makes wage-cost flexible. It has numerical flexibility along with easy exit route for the employer. The labour cost varies according to the amount of work done by the worker and work available in a multiple-employer situation. In spite of all these constraints, the workers here have been able to get basic protective social security mainly through **public action**. Mathadi workers and dockworkers are instances.
286. (ii) Mathadi Boards in Maharashtra could regulate the open entry of new employable workers through a process of **decasualisation** of existing workers by bringing them into organised set-up. Young blood can be brought in to such organised structures through a process of recruitment, and age-based superannuation and other social security measures can be proposed to such organised centres of labour pool. Organising the unorganised sections through

innovative ways and means has to become part of the new social security steps. Some of the poverty alleviation programmes has such a component of organisation.

287. (iii) **Lesson from Kerala and Tamil Nadu experience**: It can be noted that with the latest ordinance, Kerala is trying to integrate or inter-link its various enactments in the area of social security legislation. While in Tamil Nadu, the latest trend is towards individuation of enactment though there the authorities had in between the idea of a motherboard for social security legislation. The experience of both the States in fact points out the need for some sort of linkage among the various welfare boards. Both commonality and variety has to be taken care of while structures for social security schemes are built up. Kerala started from individual schemes and ended up with an apex body to interlink them, while Tamil Nadu had to traverse an opposite path. The experience of welfare boards in both the States tells us that a motherboard that can accommodate variety serves a better model. It should also be noted that any kind of apex authority devised to control would be objected, as the latest development in Kerala reveals (Para 248).
288. (iv) The central welfare funds are administered departmentally by the Ministry of Labour through Welfare Commissioners appointed by the government, with the help of advisory committees who have no financial or administrative powers. They require to be sensitised to introduce a spirit of **initiative** among them.
289. (v) Moreover, an unnecessary **multiplicity of funds** has led to administrative problems and proved uneconomical. For mining sector, three separate funds have been constituted – one for mica, one for limestone and dolomite and another for iron ore, manganese ore and chrome ore mines. The cost of administration of central welfare funds varied from 0.83 per cent of the total benefit expenditure in the case of cine workers to 22.1 per cent of the benefit expenditure in the case of the Limestone and Dolomite Labour Welfare Fund for the year 2000-2001. The total average of administrative cost of central welfare funds for the same year was 7.96 per cent. The problem of multiplicity can be seen in the working of the welfare funds set up by the government of Kerala, which are administered by autonomous boards. There are as many boards as there are funds. Steps should be taken to **reduce overheads** by integrating welfare funds.
290. (vi) By establishing Board for the sector as a whole and using the mechanism of cess collection from products, it can **overcome the problem of identifying individual employers**, which is often a major obstacle in the unorganised sector.

291. (vii) In some cases, cess shall better be a certain percentage of **sale value**, and in such cases, it need not be on the basis of quantum of production or sale. However, this is applicable only for product based occupations and the case of service providers have to be separately tackled.
292. (viii) Cess collection from products is possible at various points of transaction like wholesale, retail and export stages.
293. (ix) It is advisable to combine tax-based as well as contributory systems of financing of Fund under the Board, because it would enhance the financial viability of the Fund on the one hand, and the initiative of the workers on the other.
294. (x) The actual per capita expenditure on medical care incurred by the State governments under the Employees State Insurance Scheme during 1994-95 ranged from Rs 315 to Rs 1,035. It can be seen that the expenditure incurred on medical care from the welfare funds is comparatively low. Due to the increasing specialisation of health care and also due to the increasing spread of private and public hospitals, **the model of actual health service provision has proved to be neither popular nor viable**, either in the case of welfare funds or the Employees' State Insurance Scheme. Both would do well to adopt the model of reimbursing expenditure, or provide the services indirectly by entering into agreement with the providers of the service, confining their own function to the financing of the services.
295. (xi) **Health is to be retained as a component of social security.** Studies show that health matters in the unorganised sector, as the workers have to spend more on health problems. Medical insurance shall be taken up in large scale.
296. (xii) One of the major problems of administration of the central welfare funds is **the identification of the beneficiaries.** The welfare funds do not have a system of **registration.** Instead they have introduced the system of identity cards. The identity cards are required to be issued by the employers, who have not been responsive to this need. The Ministry of Labour has reported that identity cards for beedi workers have been issued for about 2,700,000 workers while the total number of beedi workers is said to be about 4,300,000. The workers cannot get the benefit of the welfare funds unless they have identity cards. Thus nearly 1,600,000 workers have been denied the benefits because identity cards have not been issued.

On the other hand, in Kerala, the system of registration exists but the schemes being optional the number of workers who have registered varies according to the scheme, and in some case coverage has been very low. The new Board has to take up registration of workers in a useful and meaningful way.

297. (xiii) Though the Acts under which the Central Welfare Funds have been set up do not prescribe any ceiling, **in practice there is a ceiling** in the application of the benefits of the welfare funds. This used to be Rs 1,600 and was raised to Rs 3,500 in 1991. Income ceiling screens most of the workers from availing the benefits, and in some cases this measure goes against the very meaning of the legislation. If one gets more than Rs. 1600 per month, that worker is not covered by the Payment of Wages Act. Similar filters exclude in practice most of the eligible workers.
298. (xiv) In spite of the many problems associated with the welfare funds and their implementation, they provide one of the most important ways of reaching unorganised sector workers. In the new structure, these problems should be resolved. Welfare Boards, whether at State or Centre, have addressed situations where employer-employee relationship exists. Since most of the unorganised workers are self-employed or homebased, the structure and method of functioning could not be replicated. Issues of establishing identity of workers, constitution of board, financing and disbursement of funds, etc. have to be thought of in this light. The concept of motherboard should be brought in. More powers to the Board should be thought of.

Chapter XI: Social security for unorganised sector workers

299. In this section, we are putting forth the possible social security schemes for the unorganised workers. As normal healthy life with dignity is a minimum need for all workers, for all those involved in productive labour and contributing to the economy of the nation, we suggest areas that should be covered under various schemes. In addition, some cover (such as scheme of group insurance and the like) is also suggested to take care of the underemployment and loss of job. However, the case of 'undeserved want' where the person never worked is left out, as it should be taken up along with the social security measures meant for the citizens in general. The umbrella legislation should give effect to the provisions laid down in the Article 41 of the Constitution of India such as the rights to work, to education and to public assistance in case of unemployment, old age, sickness and disablement.
300. The social security measures for the unorganised workers should 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, family pension)
 - (h). Some cover in case of loss of earning.
 - (i). Besides these, there should be schemes, either independent or in association with governments, welfare bodies, NGOs and social organisations, for skill upgradation and the education of workers, and elimination of child labour, forced labour, and unfair labour relations and practices.

(j). Monsoon Allowance

301. Healthcare should include medical care and sickness benefits such as leave and allowance. It is better to leave the actual medical care to the hands of specialised agencies than the apex Board taking it on its own hand. But, the Board will have to take care of the expenses involved. This can be paid as medical allowance. Schemes of medical insurance should be thought of in support of the healthcare. In the case of regular workers in the unorganised sector, contributions from the workers and employers should be collected by the Fund/s to be set up under the Board/s. Contributions can be collected from the self-employed groups also. The same can be done in certain optional schemes where workers are willing to pay. In the occupations declared as hazardous there should be special health schemes, or else such processes should not be allowed in the unorganised sector. The latter proposal is unlikely to happen in the liberalised atmosphere. In spite of drawbacks, the unorganised workers prefer ESI facility, as their spending on health is otherwise high.
302. Maternity benefits and provision of early childcare facilities are two related important issues that need serious consideration. Maternity benefit is available only in the organised sector and very rarely in the unorganised sector. The provision of crèches was never followed strictly. Both views exist that argue for considering maternity and childcare together as well as separately. However, early childhood is found inseparable from maternity for all practical and psychological purposes. Women, children and families in the unorganised sector are the major victims in this regard because of lack of any positive initiative. Here also, insurance can be introduced, as the existing schemes like ESI have either failed or are not in a position to be extended. The Board should introduce relevant schemes and take up programmes to popularise the schemes. This should include strengthening of local women leaders in promoting insurance by training them to explain the concept of insurance, its procedures and benefits, so that social security is extended to rural women on a large scale. The Board or Boards should see that all extension work in both urban and rural areas are closely monitored and followed up. As women need special and greater attention, the Board/s should see that this scheme of social security, i.e., maternity and early childcare is made a compulsory security measure in the unorganised sector.
303. Provident Fund benefits form the only range of financial support that workers enjoy. In the unorganised sector also, workers do need to avail such facility. It is not that this facility is absent in the whole sector. PPF for the self-employed and

Employees Provident Fund for the workers should be made universal in the unorganised sector. The Board at a central level should take steps in this regard for its registered workers.

304. Family benefits should form mainly the educational assistance to the children and dependants of the worker's family. Promotional measures like 'food for education' schemes should also be introduced. For this, the Board/s can work in tandem with other bodies.
305. Amenity benefits include schemes for housing and basic amenities such as drinking water, sanitation, electricity, etc. Here also, space is there to work in alliance with other bodies.
306. Compensation or Employment injury benefit (including invalidity benefit and survivor's or dependant's benefit) should be provided to the unorganised workers. Umbrella legislation has to introduce provisions for this without leaving this subject to the existing Workmen's Compensation Act of 1923 that proved dilatory and there have been cases of failure where employer-employee relation is disputed.
307. Retirement and post-retirement benefits include gratuity payment in case of superannuation, or additional lump sum compensation in case of voluntary retirement, and family pension. In the unorganised sector where there are schemes of decasualisation, or in rare cases of regular workers, retirement benefits are given. We suggest that the Board should make provision of paying retirement-related benefits for the registered workers, if they do not get such benefits from the individual managements.
308. Some cover for underemployment and loss of jobs should be introduced, as the sector is replete with occupations of seasonal nature, incidence of loss of jobs, etc. In Kerala, group insurance was introduced for fish-workers. The same model with improvements can be adopted, if the Board/s think so.
309. The schemes need measures of massive scale. This means big responsibility for the new Board/s and the Fund/s under them. However, these do not sound impossible. There are other issues also to be taken up by the Board/s. For instance, certain allowances that include bonus, festival allowance, etc. These are considered neither salary nor social security elements, though judgements are there to support that these necessarily belong to the workers. The Board/s have the

responsibility to promote facilitation of these payments through either independent measures or while dealing with wages (and overtime payments, etc.).

310. Keeping in view of the mandate given by Article 41 of the Constitution of India, the umbrella legislation and any other complementary legislation of the States should give effect to the provisions laid down in the Article such as the right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement.

Chapter XII: Classification of Occupations

311. Before going into the modalities of setting up an Unorganised Sector Workers Board, there is a need to classify the occupations in the unorganised sector.
312. The Minimum Wages legislation have listed the occupations under two parts – industry (Part – I) and Agriculture including forestry (Part – II). The National Industrial Classification (NIC) of 1987 followed by CSO (Central Statistical Organisation) contained ten primary groups with many divisions within each group (CSO, 1987). The CSO has revised the NIC in 1998 where the number of primary sectors are taken to 17 (from A to Q) with a total of 99 divisions (CSO, 1998). The coding of the primary sectors as per NIC 1998 is as follows:
- A. Agriculture, Hunting and Forestry
 - B. Fishing
 - C. Mining and Quarrying
 - D. Manufacturing
 - E. Electricity, Gas and Water Supply
 - F. Construction
 - G. Wholesale and Retail Trade; Repair of Motor Vehicles, Motorcycles and Personal and Household Goods
 - H. Hotels and Restaurants
 - I. Transport, Storage and Communications
 - J. Financial Intermediation
 - K. Real Estate, Renting and Business Activities
 - L. Public Administration and Defence; Compulsory Social Security
 - M. Education
 - N. Health and Social Work

O. Other Community, Social and Personal Service Activities

P. Private Households with Employed Persons; and

Q. Extra-Territorial Organisations and Bodies.

313. However, the industrial classification of economic activities is not found much helpful in arriving at the kind of distinct groups/classes of occupations and processes existing in the unorganised sector. Therefore, with the intention to seek common parameters and patterns for arriving at a broader clubbing of jobs and processes in the unorganised sector, 106 jobs were taken at a random basis for analysis, based on available secondary sources. The data sheet and the count of groups are attached as **Annexures**. We thought that this exercise would be useful in classifying unorganised sector economic activities into groups with similarities.
314. Factors considered for classification are as follows. Recruitment, payment, unionisation, casual nature, relation to child labour, family labour and migrant labour, wage and earning levels, skill level, homebased activity, source of raw materials, access to capital, debt bondage, nature of output (product or service), and occupational hazards and diseases were taken into account. Samples from both self-employed and employed groups are considered. Following were the major conclusions from the exercise that we have done.
315. As far as classification is concerned, the data as such were not providing any internal logic to arrive at exclusive groups of unorganised labour. Neither single factor nor combined factors could provide absolutely exclusive classes. Nevertheless, combining various factors at different levels, 23 classes were arrived at in our analysis. However, no exhaustive classification could be done. Within the strength of 106 samples, 23 classes were formed. The classes are given below:
1. Workers dependent on open access and common property resources.
 2. Workers engaged in putting-out system of work such as weavers.
 3. Non-motorised transport workers (rickshaw pullers, boatmen, etc.).
 4. Motorised transport workers.
 5. Contract workers.
 6. Work-contracted homebased workers.

7. Traditional service workers.
 8. Pastoral toilers.
 9. Workers in child labour-prevalent occupations.
 10. Migrant workers.
 11. Small credit dependent traders such as hawkers and vendors.
 12. Construction workers.
 13. Manual workers of unspecified jobs.
 14. Service sector workers (excluding traditional services).
 15. Agriculture labourers.
 16. Small farmers.
 17. Mining and quarrying workers.
 18. Food processing workers.
 19. Workers in timber, fibre and pulp based activities.
 20. Engineering industry workers.
 21. Electrical and electronic industry workers.
 22. Village and khadi industry workers.
 23. Other miscellaneous workers.
316. These 23 classes have less exclusive members and more common members. For instance, as the analysed data sheet shows, class-1 has only four exclusive members, and they are serially numbered 9, 24, 43 and 65. At the same time, class-1 is occurring 12 times additionally along with other combinations. That means class-1 has a total membership of 16 in our sample. This also means that the same member can occur simultaneously in more than one class. For instance, Agarbatti making comes in class-6 as well as in class-9. Animal husbandry is coming in classes 1, 9 and 15. This shows that absolute classification is a difficult proposal.

317. As we said, these classes were arrived at on the basis of various factors at various levels. For instance, class-1 is based on the source of raw materials, and class-2 on the basis of mode/organisation of production. Contract workers (class-5) are those employed through contractors (mode of recruitment). Class-6 is also based on a similar factor where work is contracted for homebased workers. There are child labour prevalent and migrant labour prevalent occupations (classes 9 and 10). Small vendors are credit dependent (class-11). Construction workers (12) and Agriculture workers (15) follow partly industrial classification and partly their sheer numerical strength.
318. Let us give some thoughts to the logic of classification. National Industrial Classification (NIC) of economic activities (of both 1987 and 1998) is on the basis of “the nature of economic activity carried out in an establishment” (CSO, 1998:9). NCO (National Classification of Occupations – 1968) bases itself on the nature of occupation. In the unorganised sector, both these principles can be used but combined with other elements. Some purpose-based classification such as one meant for social security legislation can also be thought of. For instance, as earlier mentioned Subrahmanya and Jhabvala (2000:19) point out six categories. They are (i) the regular unorganised sector employees outside the scope of the existing social security legislation, (ii) casual labour, (iii) own-account workers and producers, including small and marginal farmers, who may occasionally hire the labour of others, (iv) those who do a variety of jobs from day to day, from season to season, and often even within the same day, (v) job seekers like the migrant labour, (vi) and those who worked but can no longer work. This classification is definitely useful for the purpose of devising social security schemes. However, this will not be useful for the purpose of fixing minimum wages (or minimum prices for products as, for instance, in the case of small farmers).
319. Then, can the classification be based on a distinction between worker and producer? This would be more or less equivalent to the distinction between the employed and self-employed sections. In our analysis, no substantial group emerged to be denoted as self-employed alone. In almost all the occupations, we can find both self-employed and employed workers. Even among hawkers and vendors, one can find employed workers, though vast majority of them are self-employed and own-account workers. And as such, we have considered them as a self-employed group. The unorganised sector has generated jobs handled by both the self-employed and employed workers, and it is meaningless to distinguish and separate them as distinct groups either within the same occupation or in general. This is not to deny at all the difference between them.

320. We can think whether a division is possible on the basis of the nature of product of labour. Product based and service based industries can be differentiated. However, this does not serve any specific purpose here. The consideration on the basis of primary, secondary and tertiary sectors would not also be useful as it results only into three bigger and broader categories.
321. Another factor is that one finds the same person taking the role of different occupations. Take the case of a marginal farmer for instance. He or she is a working producer, own-account worker and self-employed. At the same time, he/she is not the kind of own-account worker in the strict sense, because he/she employs some agricultural labourers at times of need. The same person gets employed as agriculture worker or construction worker at other times. Here, he/she is self-employed, and sometimes employed. Whichever sector he/she is spending more time can be considered his/her main occupation on the lines of the norms followed by NSSO and the Census.
322. Now the question is where this classification and these classes take us. Our reading of the National Industrial Classification (NIC) of economic activities (of both 1987 and 1998) and the present classification exercise point out that single-method approaches are not helpful in differentiating groups in a substantial way. Mixed approaches are to be tried wherein empirical studies and surveys, NIC and NCO (National Classification of Occupations) structures of classification, skill levels, modes of production, occupation status, nature of resources involved, any unique distinguishing factor, etc. can be applied. Thus, different groups are formed on different logics. We feel that this eclectic is more a problem of the sector than one of rationality. If the logic is fragmented, it is only a reflection of the diversity of the unorganised sector itself.
323. Classification should be an on-going process. For instance, if child labour prone group is existing under the board, after some period the group can be removed when sufficient improvement is reported in the sector on the occurrence of child labour. Thus, options should be kept always open and flexible to accommodate newer classes and eliminate existing classes. And there should be provision for such a set-up in the Board to be constituted.
324. However, given the limitations of classification, we are suggesting a tentative but comprehensive list of groups that can be useful in wage fixation and in undertaking studies to assess the undergoing changes in the respective group of industry and occupation. For the purpose of social security measures and cess

collection, separate group consideration would be necessary. However, we are suggesting the following subgroups to be set up under the main umbrella board for unorganised workers:

325. (1) *Agriculture and animal husbandry workers*: This excludes cultivators and includes all workers of horticulture, sericulture, bee-keeping etc. Bee keeping is otherwise considered part of the group of Khadi and cottage industries that is distributed among different divisions in our classification. Numerically, this is the biggest group.
326. (2) *Cultivators*: This constitutes those involved in small and marginal farming including the forest and wasteland cultivators and also the sharecroppers. Those who rent out the land or the owners of lands in case of sharecropping shall not be the beneficiaries of the legislation.
327. (3) *Fish workers*: Fish-workers of inland, backwater, estuarine, marine and aquaculture fisheries and related workers constitute this group. As against the common perception, they are skilled workers.
328. (4) *Forest workers*: This includes also the forest produce gatherers.
329. (5) *Manual workers*: Generally, manual workers are considered unskilled workers. But all of them are found performing some skills. In our classification exercise, we treated them as semiskilled. All manual workers who are not coming within the purview of other groups and the headload workers come under this group. Domestic workers are included in this group.
330. (6) *Construction workers*: Though a new central legislation has come up for these workers, majority of them is still outside the purview of this legislation. Unorganised construction workers constitute a numerically bigger group.
331. (7) *Transport workers*: As far as the work organisation is concerned, these workers have to report to the employer. This is a service-based industry, and the group includes both the motorised and non-motorised transport workers including own-account workers among them.
332. (8) *Workers in the putting-out system*: All the weavers come under this class. Cotton, silk, and carpet weaving are included here. This group is classified on the basis of work organisation. The loan and raw materials provided to the weavers bond them practically to the master weaver or the trader. At the same time, all weavers are considered self-employed. However, a major process in the textile

industry comes under this group that includes handloom, powerloom and carpet weaving.

333. (9) *Work-contracted homebased workers*: Homebased work has come up in a large scale in the unorganised sector. A number of non-factory based activities, factory related small level ancillary activities such as assembling, etc. are done at home where family labour is engaged. These are mostly piece-rated contract work. Those involved in this contracted homebased work except the putting-out system of work come under this class.
334. (10) *Unregistered factory based workers*: Ancillarisation and liberalisation have transferred more components of the organised sector activities to the unorganised sector and generated new activities as well. This class would comprise of a large number and variety of industries and occupations.
335. (11) *Non-factory based industrial workers*: Workers belonging to service and information-based industries, small establishments such as eateries, shops and manufactories, etc. are included here. Food processing workers, for instance, are distributed among this class and the class-10 (*unregistered factory based workers*).
336. (12) *Mining and quarrying workers*: The workers who do not come in the purview of Mines Act, the contract and casual workers of the registered mines, and the workers of the informal mining are considered here.
337. (13) *Hawkers and vendors*: This is a group of small traders both mobile and fixed. Small vendors of cooked food, vegetable and fruit vendors, door to door salespersons, etc. can come under this class.
338. (14) *Freelance workers*: This class includes a type of own account workers. They may be homebased or otherwise. They can be on contract basis or otherwise. Similar to homebased workers, freelancers of various hues are getting into new occupations that are unorganised. These include also medical transcriptionists and call centre workers who are called *tele-workers* (information based freelance workers). Some sections of these tele-workers are also on regular basis while some of the data entry operators are on freelance basis.
339. (15) *Miscellaneous workers*: This class includes the workers not classified elsewhere in the 14 classes listed.

340. (i) This classification that we tried now is based on the principles of organisation of work, nature of resources, or space of work or even on the basis of sheer numerical strength. Thus, multiple factors are used. (ii) It is possible to consider forest workers and fishery workers together as a single class as *workers dependent on open access and common property resources* where those dependent on village commons can also be included. Then the classes can come down to a total of 14. (iii) For the classification study, it is advisable to do a more detailed survey than what we did. The point however is that the classification should be kept as a continuous and flexible process.

Chapter XIII: Unorganised Sector Workers' Board

341. The **Unorganised Sector Workers' Board** that we propose is more or less similar to any workers' welfare board. However, the condescending approach of welfare should not come in the way of empowerment of the workers. As made already clear, the fruits of labour contributed by the unorganised workers should go partly to them, as eligible as any other citizens are while participating in the economy. With this idea, we are not attaching the word 'welfare' to the name of the Board. This Board will also be different from the existing ones in its integral federal nature of being a motherboard in its territory-wise (States) and class-wise (subgroup consideration) ramification. The central level Board should have its branches as separate Boards in all States and Union Territories that should have their own Funds. The Board is a statutory executive authority. The Board should derive its powers from the proposed Act. Boards at all levels should have powers of conciliation and arbitration if the parties involved agree. This section would deal with constitution, financing and administration of the Board/s in general, registration of workers and enforcement mechanism linking these with local self-governments. Board here means both the central level board and the State/UT level ones.
342. **Composition and Constitution of the Boards:** 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*.
- (1) The Board is a statutory executive authority. The Board shall derive its powers from the Act.
 - (2) 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.
343. **Membership of the Boards:** Boards should be multipartite. Membership of the Boards in general should consist of:
- (1) representatives from the government,
 - (2) representatives from (a) central level trade unions and (b) unorganised sector unions or associations of workers,
 - (3) representatives from among employers and employers' associations,
 - (4) representatives from NGOs and other social organisations working among the unorganised workers or on their problems,

- (5) members from among elected representatives in legislative bodies (Lok Sabha, State Assembly, three-tier panchayats), and
- (6) persons of expertise on labour, health, insurance, occupational hazards, problems of women, human rights and conservation of natural resources, and also other technical experts.

The Boards should have independent Chairpersons and Member-Secretaries.

344. **Powers and 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 be entrusted with the registration of workers that it shall do with the help of all its constituents, PRIs and Nicnet.
- (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, Municipal and Traffic authorities.
- (4) The Union Board shall have powers of conciliation and arbitration if the parties involved agree.
- (5) The Union Board shall constitute a Fund for the execution of its functions.

345. **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, is entrusted with the formulation of schemes, and can 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 commodities, and public space in relation to 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 and its authorised offices at other levels 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.

346. **Functions of the Subsidiary Boards :**

- (1) Each Subsidiary Board, in close association with the State Board, shall:
 - (a) study the 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.

347. **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 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.

348. **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.
349. The constitution of the present Board/s in no way affects **the existing Boards**. The proposed Board/s should keep the option to accept the existing Boards, both the ones existing at the central level and the various Boards working in different States, if they want to join the new structure of the umbrella board. Both the options of merger and co-operation are open. However, the existing boards are free to retain their independence.
350. **Term, quorum, etc.:** The term of office of all the Boards and their offices (e.g., WFCs) shall be for five years. One-third attendance shall be the quorum for all the meetings of the Board. From the side of the Board, none of its members including Chairperson and Member-Secretary shall be paid salary or honorarium. 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.
351. The Board with the assistance of the staff and/or with the hired competence of other bodies should be involved in devising and implementing schemes and measures meant for the empowerment of the workers. The **Schemes** include the social security schemes suggested in the section on social security for unorganised sector workers (section XI of this document). They are healthcare, maternity and early childcare, Provident Fund benefits, family benefits, amenity benefits (housing and basic amenities), compensation or employment injury benefit (including invalidity benefit and survivor's or dependant's benefit), retirement and post-retirement benefits, and some cover loss of employment and/or earning. The schemes include also the other measures like skill upgradation suggested in the same section.
352. **Union Board Fund and State Board 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 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.

353. **Financing:** A combination of both **cess-based and contributory** modes of financing would be ideal in building up the Funds. For the purpose of specific schemes, **cess collection at source at various levels** (for instance, at levels of wholesale, retail, export, production, etc.), contribution in possible cases from employers and employees, scheme-wise collection of contribution from the self-employed, and contribution from the governments at various levels should be managed. Whenever governments and PSUs become employers, their share of contribution in their capacity of employers should be additionally collected. The Funds should be set up in such a way that they should be eligible for receiving grants and donations from all legally permitted sources. Every worker should be encouraged to contribute part of his/her earnings to some relevant schemes. Funds under the Boards shall collect contribution, wherever employer-employee relationship exists, from employers and employees. In such cases, employers shall contribute 20 per cent of the wages they pay to the workers; workers shall contribute 15 per cent of their wages and Central and State governments shall contribute 20 per cent of the wages. Wherever, the workers are self-employed or do not have any employer, such workers shall contribute 25 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.

354. **Management of Funds:** Transparency should be there in the management and sharing of Funds. The accounts of the Funds of the respective State Boards shall be audited by a Chartered Accountant approved by the respective governments, subject to further audit by the CAG. Respective State Boards and the Union Board

shall submit the Audited Accounts along with annual reports to the respective governments that shall slate them to the legislature for discussion. Copies of these documents at the State level shall be submitted to the Union Board for information. Funds should be invested only in the approved Securities of the Government.

355. **Wage fixation machinery:** For fixing minimum wages, the State Boards should make use of the existing machinery, as far as possible. However, the Boards should have to develop its own machinery in the context of the unprecedented emergence of new employments. It is advisable to develop a structure with subgroups after combining elements from the existing wage boards and minimum wage and price fixation machinery. The final classification (of 15 groups) arrived at in section XII can be temporarily used as subgroups. This is important because the Boards would be definitely in need of a running system of wage fixation. Regarding nature of wages and earnings to be provided, section VIII of this document gives some details and directions. There should not be scheduling formalities to include occupations for the minimum wage consideration. On an average, minimum wages should be equivalent to the initial salary drawn by the Class IV (Group D category) employee of the central government. It should be reiterated that labour, products and service should not go unremunerated. So, provision should be there to reward the labour put up by small and marginal farmers, sharecroppers, fisher-people, forest workers, hawkers and vendors, service providers and other self-employed people.
356. **Conservation of natural resources and promotion of labour rights:** The Board shall take steps, as far as possible, to protect CPRs, rationally tap the open access resources, and conserve natural resources and agricultural lands. In the labour rights front, the Unorganised Workers Board has to put up a brave front against child labour, bonded labour, contract and casual labour, unequal wages and encourage unionisation and collective bargaining. It has also to protect workers against the harassment of workers by police, traffic and municipal authorities. It has to see that voice representation and collective bargaining do get the needed importance. Therefore, the new legislation should guarantee a democratic occupational (industrial) atmosphere and a sustainable resource situation as the preconditions for the effective implementation of the umbrella legislation.
357. **Registration of the workers :** (i) There should 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 the office registration. For instance, when a worker tries to register at Delhi or at any place providing enough unorganised sector jobs, local authorities shall not deny the registration on the plank of dispute on the place of origin as (a) it infringes the Fundamental Rights of the citizen (worker).

358. (ii) Registration should be a one-time affair by paying a nominal fee as decided by the Union Board. (iii) Provision should 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. (iv) If needed, photo identity cards can be changed every ten years by charging a fee. This process should be simple and should not have any other implication on the registration. (v) In the case of loss of registration papers, there should be provision to provide duplicate ones.
359. (vi) The agency carrying out the Registration should be, as far as possible, the lowest rung of the local authority. For instance, village Panchayats 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. As the legislation is to be made applicable throughout the nation, appropriate governments in 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 should also be involved as relevant counterparts of the local authorities in Panchayat and Municipal bodies.
360. (vii) At the local level, unions, NGOs, concerned individuals, etc. should be allowed to facilitate the registration of workers. Registration should be a simple procedure as far as possible and without financial implication from the side of workers. The umbrella legislation itself should have in-built provisions for this.
361. (viii) Registered worker should be provided with a Registration Number. This is possible if the Nicnet (of National Informatics Centre) facilities are extended to the village level. Already the NIC network exists till district level. This has to be extended further. A permanent number (digital) is needed to account for the identity of the worker, to avoid doubles, and to maintain continuity in records. The

content of the register number shall be constructed as Census village code/ month and year of registration/ serial number.

362. (ix) 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 below:

Register Number:

Space for Photo

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.):

363. (x) Registration should be possible throughout the year. (xi) Though the issuing authority at the local level is the assigned office at the local self-government, the registration is with the central level Board to come into existence. The arrangement with local self-governments and Nicnet should form part of the legislation to come.
364. **Enforcement mechanism** The enforcement and dispute settlement mechanism should be a key component of the Umbrella Legislation. Involvement of (i) local governments, (ii) tripartite or multipartite bodies and (iii) decentralised machinery have been suggested in various reports. The local self-governments, whether Panchayats or Municipal Bodies, should be brought in also as one of the appropriate links to enforce the umbrella legislation and to settle the disputes in the unorganised sector. Different sessions of the Indian Labour Conference have recommended tripartite bodies as existing in Kerala. Various committees, commissions and wage boards have a long-standing suggestion to involve tripartite bodies where the government can be the local authorities. To the National Commission on Agricultural Labour (1976), the success of enforcement of minimum wages depends upon the co-ordinated efforts of the local bodies and watchdog committees supplemented by measures to encourage and support for forces working towards unionisation of agricultural labourers. The National Commission on Rural Labour (1991) has called for the creation of tripartite body at the district level and conciliatory machinery at the village level involving the Panchayat institutions and with the participation of trade unions, workers associations and voluntary agencies. Hillary Pais, Chairman of the Commission's Group on Minimum Wages is of the opinion that minimum wages are best enforced in Kerala, where a tripartite system functions even at the Panchayat level. A multipartite system can replace tripartite system when the employer is not identifiable, or where the workers are self-employed or own account workers.
365. The tripartite mechanism will be effective only if it is decentralised and more locals are involved. The enforcement machinery of the labour department has

proved wanting in implementing provisions of the Minimum Wages Act in the sweated industries in the organised sector, leave alone unorganised, informal and agricultural sectors. In such circumstances, it is all the more important to involve the local authorities and unions. However, wherever possible, existing governmental machinery can be made use of in inspection and enforcement.

366. Inspection and record maintenance: Employers shall maintain the following records:
1. Wage-cum-muster roll with details including deductions, OT, etc.
 2. Annual return in respect of employment of all workers including contract and casual workers.
 3. Trade Unions, NGOs and the aggrieved workers shall submit the complaints upon which also inspection shall be conducted. The Board shall have powers to conduct periodic inspections through its members or group of members. The Board shall have the right to make use of the machinery associated with Labour Ministry and Departments. The Board shall have powers to conduct inspections if any complaint for non-deposit of contribution by any employer is made by any person.
367. Dispute settlement: If tripartite/multipartite mechanism of conciliation and arbitration fails, and the worker's right is violated, the worker can approach Labour Court.
368. Involvement of local self-governments, engaging tripartite/multipartite boards and the promotion of unionisation are the three means to be employed in the enforcement of the umbrella legislation.
369. Umbrella legislation shall have provision for fast resolution of labour disputes.

Chapter XIV: Summary

370. An exhaustive definition of unorganised sector workers is not possible. On the basis of certain common features, the casual/ *badli* and contract workers in the organised sector are included in the unorganised sector. Anganwadi and Balwadi workers, health workers including swasthya rakshak are also included in the unorganised sector. Workers depending on CPRs such as fish workers, forest workers, forest produce gatherers, minor mineral miners, quarry workers, sand miners, potters, forest cultivators, pastoral toilers including adivasis, grazers, etc. come under this category. Cultivators and marginal farmers, sharecroppers, agricultural workers, rural non-agricultural labour, khadi and cottage industry workers are also part of this sector. Home-based workers, artisans, most of the semiskilled and unskilled workers doing manual and helper jobs, and a section of self-employed persons such as hawkers and vendors, rag pickers and rickshaw pullers come under the unorganised sector. Construction workers, transport and courier workers, migrant labour, sales workers, hotel workers, unregistered factory workers, traditional workers like barbers, washer-people, tree-climbers, boatmen, toddy tappers, etc. come under the unorganised sector. The list is incomplete.
371. Most of the workers in unorganised sector do not get the benefits of the existing social security benefits. All the workers who are not covered by the existing Social Security Laws like ESI Act, EPF and Miscellaneous Provisions Act, PGA and Maternity Benefit Act can be considered as part of the unorganised sector or for any reason, who do not get the benefits of the Social Security laws. Hence the new legislation.
372. For the effective protection of rights of the unorganised sector workers and implementation of provisions in this regard, a statutory body, *Unorganised Sector Workers' Board* with substantial powers shall be set up. The Board shall be a statutory executive authority deriving its powers from the Act.
373. 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:
- (1) Union Board, the central level Board, which is the co-ordinating national level Board;

- (2) State Boards, the bodies of the Unorganised Sector Workers' Board at the State or Union Territory level;
- (3) Subsidiary Boards that work at the State level;
- (4) District Boards, the district units of the Board, co-ordinated by the State Boards of the respective States to which the districts belong; and
- (5) Worker Facilitation Centres (WFCs) are the Board offices of District Boards, working in Panchayats and areas of worker concentration.

374. The Board as a whole shall be enacted by the Parliament through the present Act.

- (1) The Union Government shall constitute the Union Board.
- (2) The respective State Governments shall constitute the State Boards.
- (3) 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 the Scheduled and Tribal Areas.
- (4) The State Boards shall constitute the Subsidiary Boards.
- (5) District Administration in consultation with the District Panchayat shall constitute the District Board.
- (6) The District Board shall constitute the Worker Facilitation Centres.
- (7) The constituting authorities shall designate the Chairperson and Member-Secretary, while constituting the Boards and WFCs.
- (8) One-third of membership to all the Boards (and WFCs) shall be reserved for women.
- (9) The term of office is five years.

375. Options of merger and co-operation are left open to the willing Boards that already exist.

376. Union Board shall take up the registration of the unorganised sector workers with the help of the local boards, PRIs and NICnet. The Board should give registration

at the local level to all workers of the unorganised sector. The board should provide registration number, identity card and passbook to every worker.

377. State Board in consultation with Subsidiary Boards shall devise and implement Schemes for the unorganised sector workers.
378. District Boards and Worker Facilitation Centres are the Boards nearest to the workers and hence these bodies shall take the responsibility in reaching the benefits at the doorstep of the workers.
379. The Schemes shall be based on the following social security measures:
 - (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) Some cover in case of loss of earning.
 - (i) Besides these, there should be schemes, either independent or in association with governments, welfare bodies, NGOs and social organisations, for skill upgradation and the education of workers, and elimination of child labour, forced labour, and unfair labour relations and practices.
 - (j) Monsoon Allowance.
380. For running Schemes and other expenditures, Union and State Boards shall constitute separate Funds. And the revenue shall be shared as per decided norms.
381. To begin with, Subsidiary Boards for different classes of workers shall be formed from among the following available classes in a State/UT:

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
382. The Boards deals with four major areas of functions apart from the massive work of administration, enforcement and dispute settlement. These are (i) creation of democratic labour rights situation, (ii) conservation of natural and common property resources, (iii) ensuring minimum wages/earnings, and (iv) providing social security and welfare measures.
383. Child labour, begar, nominal wages, forced labour (and all forms of bonded labour), gender discrimination are punishable under the Act.
384. Provision is there for setting up special committees by the Boards 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.
385. A fairly large section of unorganised sector workers depends on the natural resources such as forests, seas, water bodies and mineral and stone deposits. These resources are either direct products (for some people such as fisher people, forest

produces gatherers and sand miners), or essential raw materials (for others such as potters, farmers and cattle grazers). Unless these resources are protected and their rationalised tapping is practised, the proposed legislation will not help in the long run the people depending on these resources for livelihood. Therefore, Special Committees of the Boards should strive, as far as possible, for protecting CPRs, open access resources and agricultural lands.

386. The State Boards shall declare vocation-specific minimum wages every two years following the necessary procedural norms. The Board shall try to use the existing machinery and also develop its own wage and price fixation machinery. The State Boards shall declare minimum prices for products every two years with the help of the Boards' wage and price fixation machinery.
387. 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. The minimum wage shall constitute (i) Basic rate of wage, (ii) Cost of living allowance and (iii) Cash value of concessions. The minimum wage shall mean that the cost of living allowance varies with changes in prices. The Board in consultation with the Wage Fixation Machinery shall see to it that the widening gulf between wages of various occupations comes down gradually. The criterion for the industry and agriculture shall be the same while fixing minimum wages and minimum prices. There shall not be any scheduling formality to include occupations for the minimum wage consideration. 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.
388. If the parties agree, Boards shall conciliate and arbitrate. Enforcement and dispute resolution should bring in the service of local self- governments including panchayats. Promotion of unionisation as well as tripartite/multipartite conciliation shall be the other means. The worker is free to approach Labour Court in case of violation of rights.

Chapter XV: Bibliography

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Chapter XVI: Annexures

- Classification of Occupations and jobs in the unorganised sector – Data Sheet
- Classes of Activities
- Classification of occupation and jobs in the unorganised sector with classes

Sample Study: Annexure 1

Classification of Occupations and Jobs in the Unorganised Sector - Data Sheet

Codes: Yes - 1; No - 2; Not Applicable - na; Not Clear - a

Sl. No	Occupation/Activity	Characteristics																												NIC 1987 (3 digits)						
		Employed											Self-Employed											General												
		Direct Employment	Through Contractor	Work Contracted	Piece-Rate	Time Rate	Organised into Trade Unions	Mostly Casual	Prevalence of Child Labour	Low wage	Home based	Ownership of Tools & Machinery	Raw materials Owned	Raw Materials Supplied	Raw Materials from Open Resources	Organised into Associations	Mostly Cooperative	Less Access to Capital	Free Produce	Linked Produce	Source of Capital - Banks	SO C - Non-bank	Home based	Low Earnings	Seasonal / Intermittent	Semi-skilled	Skilled	Highly Skilled	Family labour engaged	Mostly Migrants	OH	OD	Debt Bounded	Service		
1	2	3	4	5	6	7	8	9	10	11	#	13	14	15	16	17	18	19	#	#	22	#	#	#	26	#	#	#	30	#	#	#	#	#	36	
1	Agar batti making	1	0	1	1	0	0	1	1	1	1	a	0	1	0	0	0	1	0	1	0	1	1	1	0	1	1	0	1	0	1	1	a	0	305	
2	Agriculture machinery handling	1	0	0	1	1	0	1	0	0	0	na	na	na	na	na	na	na	na	na	na	na	na	na	1	0	1	0	0	0	1	0	0	0	0	039
3	Agriculture Workers	1	0	1	1	1	0	1	1	1	0	na	na	na	na	na	na	na	na	na	na	na	na	na	1	1	1	0	1	0	1	1	1	0	000	
4	Animal husbandry	1	0	0	0	1	0	1	1	1	0	1	1	0	1	0	0	1	1	0	0	1	na	0	0	1	1	0	1	0	1	1	1	0	020	
5	Bakery work	1	0	1	1	1	0	1	1	1	0	1	1	0	0	0	0	1	1	0	0	1	1	0	0	1	1	0	1	0	1	0	1	0	205	
6	Band workers	1	1	0	1	1	0	1	0	1	0	na	na	na	na	na	na	na	na	na	na	na	na	na	1	0	1	0	0	0	0	0	0	1	953	
7	Bangles manufacturing	1	0	1	1	0	0	1	1	1	0	1	a	a	0	0	0	1	0	1	0	1	1	1	0	1	1	0	1	0	1	1	1	0	321	
8	Barbers	1	0	0	1	0	1	1	0	1	0	1	1	0	0	1	0	1	na	na	0	1	0	0	0	0	1	0	0	0	0	1	0	0	1	962
9	Beads making	1	0	1	1	0	0	1	a	1		1	1	0	1	0	0	1	1	0	0	1	1	1	a	1	1	0	a	0	1	0	0	0	321	

Sl. No	Occupation/Activity	Characteristics																												NIC 1987 (3 digits)								
		Employed														Self-Employed										General												
		Direct Employment	Through Contractor	Work Contracted	Piece-Rate	Time Rate	Organised into Trade Unions	Mostly Casual	Prevalence of Child Labour	Low wage	Home based	Ownership of Tools & Machinery	Raw materials Owned	Raw Materials Supplied	Raw Materials from Open Resources	Organised into Associations	Mostly Cooperative	Less Access to Capital	Free Produce	Linked Produce	Source of Capital - Banks	SO C - Non-bank	Home based	Low Earnings	Seasonal / Intermittent	Semi-skilled	Skilled	Highly Skilled	Family labour engaged	Mostly Migrants	OH	OD	Debt Bounded	Service				
1	2	3	4	5	6	7	8	9	10	11	#	13	14	15	16	17	18	19	#	#	22	#	#	#	26	#	#	#	30	#	#	#	#	#	36			
	ng/pl ercin g																																					
10	Beauty parlour and hair dressing	1	0	0	1	0	0	1	0	0		1	1	0	0	a	0	a	na	na	a	1	0	na	0	0	1	0	0	0	1	0	0	0	1	0	962	
11	Beedi Workers	0	0	1	1	0	0	1	1	1		1	1	1	0	1	0	1	1	1	0	1	1	na	0	1	1	0	1	0	1	1	1	1	0	0	226	
12	Bicycle industry work	1	0	1	1	1	0	1	0	1		na	na	na	na	na	na	na	na	na	na	na	na	na	0	1	1	0	0	1	1	0	a	0	0	376		
13	Bindi workers	1	0	1	1	0	0	1	1	1		1	0	1	0	0	0	1	0	1	0	1	1	1	0	1	0	0	a	0	0	0	a	0	0	XIO		
14	Blacksmiths	1	0	0	1	1	0	1	1	1		1	0	1	0	0	0	1	1	1	0	1	1	1	0	1	1	0	1	0	1	1	0	1	1	0	343	
15	Boat/Ferry workers	1	0	0	1	1	0	a	0	1		1	1	0	0	0	0	1	1	0	0	1	0	1	0	1	1	0	0	0	1	0	a	1	0	711		
16	Book binding works	1	0	1	1	0	0	0	1	1		1	1	1	0	0	0	1	1	1	0	1	1	a	0	1	1	0	0	0	1	0	0	1	0	288		
17	Brick-kiln workers	1	1	0	1	0	0	1	1	1		na	na	na	na	na	na	na	na	na	na	na	na	na	1	1	1	0	1	1	1	1	1	1	0	320		
18	Brushmaki	1	0	1	1	0	0	1	1	1		1	0	1	0	0	0	1	0	1	0	1	1	1	0	1	1	0	1	0	1	0	a	0	0	313		

Sl. No	Occupation/Activity	Characteristics																												NIC 1987 (3 digits)								
		Employed														Self-Employed										General												
1	2	3	4	5	6	7	8	9	10	11	#	13	14	15	16	17	18	19	#	#	22	#	#	#	26	#	#	#	30	#	#	#	#	36				
	ng																																					
19	Building and Road Maintenance workers	1	1	0	1	1	0	1	0	1		na	na	na	na	na	na	na	na	na	na	na	na	na	0	1	1	0	0	1	1	1	0	1	1	0	1	500-501
20	Bulb manufacture	1	0	1	1	0	0	1	a	1		na	na	na	na	na	na	na	na	na	na	na	na	0	1	1	0	0	a	1	1	a	0	0	0	363		
21	Bullock/camel-cart operators	na	na	na	na	na	na	na	na	na	na	1	1	0	1	0	0	1	1	0	0	0	0	0	0	0	0	0	0	1	0	0	0	0	1	0	1	704
22	Butchers	1	0	0	1	1	0	1	0	1	0	1	1	1	0	0	0	1	1	0	0	1	0	1	0	1	1	0	1	1	0	1	1	0	0	0	200	
23	Cable TV operation	1	0	0	0	1	0	1	0	1	0	1	1	0	0	1	0	a	1	0	a	1	0	0	0	1	1	0	0	0	0	0	0	0	1	954		
24	Cane/Reed workers	1	0	1	1	0	0	1	0	1	0	1	1	1	1	0	0	1	1	1	0	1	1	1	0	1	1	0	1	0	1	0	a	0	0	279		
25	Carpentry	1	1	0	1	1	0	1	0	1	0	1	1	1	0	0	0	1	1	1	0	1	1	0	0	1	1	1	0	0	1	0	a	1	0	1	272	
26	Carpent weaving	1	0	1	1	0	0	1	1	1	1	1	0	1	0	a	0	1	0	1	0	1	1	1	0	1	1	0	1	0	1	1	1	0	1	0	264	
27	Chikan work	1	0	1	1	0	0	1	1	1	1	1	1	1	0	a	0	1	0	1	0	1	1	1	0	1	1	0	1	a	a	1	0	0	1	262		
28	Cinema work	1	0	0	1	1	1	1	0	1	0	0	0	1	0	1	0	0	1	1	0	1	0	0	0	1	1	1	0	0	1	0	0	0	1	950		

Sl. No	Occupation/Activity	Characteristics																												NIC 1987 (3 digits)						
		Employed														Self-Employed										General										
1	2	3	4	5	6	7	8	9	10	11	#	13	14	15	16	17	18	19	#	#	22	#	#	#	26	#	#	#	30	#	#	#	#	36		
29	Coaching Institutions	1	0	0	1	1	0	1	0	0	0	1	1	0	0	0	0	1	1	0	0	1	1	1	1	0	1	0	0	0	1	0	0	1	921	
30	Coir industry	1	0	0	1	0	1	1	0	1	0	1	1	1	0	1	1	1	1	1	0	1	1	1	0	1	1	0	1	1	0	1	0	0	0	255
31	Confectionery workers	1	0	0	1	0	0	1	1	1	0	1	1	0	0	0	1	1	0	0	1	1	1	0	1	1	0	0	0	1	0	1	0	0	209	
32	Construction workers	1	1	0	0	1	0	1	0	1	0	0	0	1	0	0	0	1	1	0	0	1	0	0	0	1	1	0	0	1	1	1	0	1	500	
33	Courier workers	1	0	0	0	1	0	1	0	1	0	1	1	1	0	0	0	1	1	1	0	1	0	0	0	1	1	0	0	0	0	0	0	1	751	
34	Data entry operators	1	0	0	1	1	0	1	0	1	0	1	0	1	0	0	0	1	1	0	0	1	1	0	0	0	1	0	0	0	0	1	0	0	892	
35	Domestic workers	1	0	0	0	1	0	1	1	1	na	na	na	na	na	na	na	na	na	na	na	na	na	na	0	1	0	0	na	1	1	0	1	1	960	
36	Dyeing	1	0	1	1	0	0	1	0	1	0	1	1	1	0	a	0	1	1	1	0	1	1	1	0	0	1	0	1	0	1	1	0	0	236	
37	Electronic and Electrical goods repairs	1	0	0	0	1	0	1	0	1	0	1	0	1	0	0	0	1	1	0	0	1	0	0	0	0	1	1	0	0	1	0	0	1	971-2	

Sl. No	Occupation/Activity	Characteristics																												NIC 1987 (3 digits)						
		Employed														Self-Employed										General										
1	2	3	4	5	6	7	8	9	10	11	#	13	14	15	16	17	18	19	#	#	22	#	#	#	26	#	#	#	30	#	#	#	#	36		
38	Electroplating	1	0	0	1	0	0	1	0	1	0	na	na	na	na	na	na	na	na	na	na	na	na	na	0	1	1	0	0	1	1	1	0	0	330	
39	Embroidery work	1	0	1	1	0	0	1	1	1	1	0	1	0	0	0	1	0	1	0	1	1	1	0	0	1	0	1	0	1	0	1	1	1	0	262
40	Envelope making	1	0	1	1	0	0	1	1	1	1	1	1	0	0	0	1	0	1	1	1	1	0	1	0	1	0	0	1	0	0	0	0	0	0	289
41	Firework/crackers industry	1	1	0	1	0	0	1	1	1	1	na	na	na	na	na	na	na	na	na	na	na	na	na	0	1	1	0	1	1	1	1	1	1	0	308
42	Fish processing	0	1	0	0	1	0	1	1	1	0	na	na	na	na	na	na	na	na	na	na	na	na	na	1	1	1	0	0	1	1	1	1	0	203	
43	Fish workers	1	0	0	0	1	0	1	0	1	0	1	0	0	1	1	0	1	1	0	0	1	0	1	1	1	1	0	1	1	1	1	0	0	060-1	
44	Florists and garland makers	1	0	1	1	0	0	1	0	1	1	1	0	0	0	0	1	1	0	0	1	0	1	0	1	1	0	1	0	1	0	a	0	689		
45	Flour mills	1	0	0	0	1	0	1	0	1	na	1	0	1	0	0	1	1	0	0	1	0	1	0	1	1	1	0	1	1	a	0	0	204		
46	Footwear industry	1	0	1	1	0	0	1	1	1	1	0	1	0	a	0	1	0	1	0	1	0	1	0	1	1	0	1	0	1	0	a	1	291		
47	Forest workers	0	1	0	0	1	0	1	0	1	0	1	0	0	1	0	1	1	1	0	1	0	1	1	1	1	0	1	0	1	0	1	0	054-050		
48	Foundry	1	0	0	1	0	0	1	1	1	1	1	1	0	0	0	1	0	1	0	1	0	1	0	1	0	1	0	1	1	0	0	0	345		

Sl. No	Occupation/Activity	Characteristics																											NIC 1987 (3 digits)							
		Employed											Self-Employed											General												
1	2	3	4	5	6	7	8	9	10	11	#	13	14	15	16	17	18	19	#	#	22	#	#	#	26	#	#	#	30	#	#	#	#	36		
49	Garment industry	1	0	0	1	0	0	1	1	1	1	1	0	1	0	1	0	1	0	1	0	1	0	1	0	1	1	0	1	1	1	0	0	0	260-2,265	
50	Gem cutting	1	0	0	1	0	0	1	1	1	1	0	1	0	1	0	1	0	1	0	1	1	1	1	0	1	1	0	1	1	1	1	1	0	383	
51	Ginning workers	1	0	0	0	1	0	1	0	1	0	na	na	na	na	na	na	na	na	na	na	na	na	na	na	1	1	1	0	0	a	1	1	a	0	230
52	Glass ware	1	0	0	1	0	0	1	1	1	0	na	na	na	na	na	na	na	na	na	na	na	na	na	0	1	1	0	0	1	1	0	a	0	321	
53	Gold smiths	1	0	0	1	0	0	1	1	0	0	1	1	1	0	1	0	1	0	1	1	0	1	1	0	0	1	1	1	1	0	1	0	0	1	383
54	Handloom weaving	1	0	1	1	0	0	1	1	1	1	1	0	1	0	0	0	1	0	1	1	1	1	1	1	1	1	0	1	0	0	1	1	1	0	232-4,241,244,247.5
55	Hawkers and vendors	na	na	na	na	na	na	na	na	na	na	1	1	0	0	0	0	1	1	0	0	1	0	1	0	1	0	1	1	1	1	1	1	1	1	65-69
56	Headload workers	1	0	1	1	0	0	1	0	1	0	1	0	0	0	0	0	1	1	0	0	1	0	1	0	1	0	0	0	1	1	1	0	1	0	706
57	Health workers	1	0	0	0	1	0	1	0	1	0	1	1	1	0	0	0	1	1	0	0	1	0	1	0	1	1	1	1	0	0	1	1	0	1	930
58	Honey gatherers (tribes &)	na	na	na	na	na	na	na	na	na	na	1	0	0	1	0	0	1	1	1	0	1	0	1	1	1	1	1	0	1	0	1	0	1	0	054

Sl. No	Occupation/Activity	Characteristics																												NIC 1987 (3 digits)						
		Employed														Self-Employed										General										
1	2	3	4	5	6	7	8	9	10	11	#	13	14	15	16	17	18	19	#	#	22	#	#	#	26	#	#	#	30	#	#	#	#	36		
	nomads)																																			
59	Horticulture and floriculture	1	0	0	1	1	0	1	1	1	0	1	1	0	1	0	0	1	1	0	0	1	0	1	0	1	1	1	0	1	0	1	0	0	0	007
60	Hotel work (eateries)	1	0	0	0	1	0	1	1	1	0	1	1	0	0	0	1	1	0	0	1	0	1	0	1	1	1	0	1	1	1	0	1	0	690	
61	Lock making	1	0	0	1	0	0	1	1	1	0	1	0	1	0	1	0	1	1	0	1	1	1	0	1	1	0	1	1	1	1	1	1	0	343	
62	Manual workers for unspecified jobs	1	1	0	1	1	0	1	0	1	0	na	na	na	na	na	na	na	na	na	na	na	na	1	0	1	0	0	1	a	0	1	1	x00		
63	Masala making	1	0	0	1	1	0	1	0	1	1	0	1	0	a	0	1	1	0	0	1	1	1	1	0	1	1	0	1	1	1	a	0	219		
64	Match industry workers	0	1	1	1	0	0	1	1	1	1	na	na	na	na	na	na	na	na	na	na	na	na	na	0	1	1	0	1	1	1	1	1	0	307	
65	Minor forest produce gatherers	na	na	na	na	na	na	na	na	na	na	1	0	0	1	0	0	1	1	1	0	1	0	1	1	1	1	1	0	1	0	1	0	0	054	

Sl. No	Occupation/Activity	Characteristics																												NIC 1987 (3 digits)						
		Employed														Self-Employed										General										
1	2	3	4	5	6	7	8	9	10	11	#	13	14	15	16	17	18	19	#	#	22	#	#	#	26	#	#	#	30	#	#	#	#	36		
66	Minor Minerals mine workers	0	1	0	1	1	0	1	1	1	0	na	na	na	na	0	na	na	na	na	na	na	na	na	0	1	1	0	1	1	1	1	0	0	1	150-9
67	News paper vendors	1	0	0	1	1	0	1	0	1	0	1	0	1	0	0	0	1	1	0	0	1	0	1	0	1	0	0	0	1	1	0	0	1	680	
68	NGO workers	1	0	0	0	1	0	1	0	1	0	na	na	na	na	na	na	na	na	na	na	na	na	na	0	1	1	1	0	0	1	a	0	1	941-2	
69	Night-soil carriers	1	0	0	0	1	0	1	1	1	0	na	na	na	na	na	na	na	na	na	na	na	na	na	0	1	0	0	0	0	1	1	0	1	910	
70	Oil extractors	1	0	0	1	1	0	1	1	1	0	1	0	1	0	0	0	a	1	0	0	1	1	1	0	1	1	0	1	0	a	0	0	215		
71	Packing workers	1	0	0	1	0	0	1	1	1	0	na	na	na	na	na	na	na	na	na	na	na	na	na	0	1	1	0	0	0	1	0	0	0	281	
72	Panwallahs	na	na	na	na	na	na	na	na	na	na	1	1	0	0	0	0	0	1	0	0	1	0	0	0	1	1	0	0	1	a	a	0	1	655	
73	Pappad making	1	0	1	1	0	0	1	0	1	1	1	1	0	0	0	0	1	1	1	0	1	1	1	0	1	1	0	0	0	0	0	1	0	219	
74	Petrol bunk/pump workers	1	0	0	0	1	0	1	0	1	0	na	na	na	na	na	na	na	na	na	na	na	na	na	0	1	1	0	0	1	1	1	0	1	641	
75	Pickle making	1	0	0	1	0	0	1	0	1	1	1	1	0	0	0	0	1	1	1	0	1	1	1	0	1	1	0	1	0	0	0	0	0	202	

Sl. No	Occupation/Activity	Characteristics																												NIC 1987 (3 digits)					
		Employed														Self-Employed										General									
1	2	3	4	5	6	7	8	9	10	11	#	13	14	15	16	17	18	19	#	#	22	#	#	#	26	#	#	#	30	#	#	#	#	36	
	ng																																		
76	Pottery	1	0	0	1	0	0	1	1	1	1	1	0	1	0	0	1	1	0	0	1	1	1	1	1	1	0	1	0	1	a	1	0	0	322
77	Powerloom weaving	1	0	0	1	0	0	1	0	1	0	1	0	1	0	0	1	0	1	0	1	0	1	0	1	1	0	0	1	1	1	0	0	0	234,241.4,244.4,247.6
78	Printing press work	1	0	0	0	1	0	1	0	1	0	1	1	0	0	0	1	1	0	1	1	0	1	1	0	1	1	0	0	0	1	a	0	0	285
79	Quarry workers	1	1	0	1	0	0	1	0	1	0	na	na	na	na	na	na	na	na	na	na	na	na	na	0	1	1	0	0	1	1	1	1	0	150-159
80	Ragpickers	na	na	na	na	na	na	na	na	na	na	1	1	0	1	0	0	1	0	1	0	1	0	1	0	1	0	0	1	1	1	1	1	1	X10
81	Rice milling	1	0	0	1	1	0	1	0	1	0	1	0	1	0	0	0	0	1	0	1	1	0	0	0	1	1	0	0	0	1	1	0	0	204
82	Rickshaw Pullers	na	na	na	na	na	na	na	na	na	na	0	na	na	na	0	0	1	1	0	0	1	0	1	0	0	1	0	0	1	1	0	0	1	706
83	Sales persons in shops & establishments	1	0	0	0	1	0	1	0	1	0	na	na	na	na	na	na	na	na	na	na	na	na	na	0	1	1	0	0	0	1	0	0	1	60-68
84	Salt Pan workers	na	na	na	na	na	na	na	na	na	na	1	0	0	1	0	0	1	0	1	0	1	0	1	1	1	1	0	1	1	1	1	1	0	208

Sl. No	Occupation/Activity	Characteristics																												NIC 1987 (3 digits)					
		Employed														Self-Employed										General									
1	2	3	4	5	6	7	8	9	10	11	#	13	14	15	16	17	18	19	#	#	22	#	#	#	26	#	#	#	30	#	#	#	#	36	
85	Sand mining	1	1	0	1	0	0	1	0	1	0	0	0	0	1	0	0	1	1	1	0	1	0	0	1	1	1	0	0	0	1	a	0	0	150
86	Saw mill workers	1	0	0	1	1	0	1	0	1	0	na	na	na	na	na	na	na	na	na	na	na	na	na	0	1	1	0	0	0	1	1	0	0	270
87	Security workers	1	1	0	0	1	0	1	0	1	na	na	na	na	na	na	na	na	na	na	na	na	na	na	0	1	1	0	0	1	1	0	0	1	x10
88	Sericulture (silk rearing) workers	1	0	0	1	1	0	1	1	1	0	1	1	0	0	0	0	1	1	0	a	1	1	1	1	1	0	1	a	1	a	a	0	0	019,027
89	Service Station workers	1	0	0	0	1	0	1	0	1	na	na	na	na	na	na	na	na	na	na	na	na	na	na	0	1	1	0	0	0	1	1	0	1	398
90	Shepherds	na	na	na	na	na	na	na	na	na	na	1	1	1	1	0	0	1	1	1	0	1	0	1	0	1	0	0	1	a	1	0	0	022	
91	shoe shining workers	na	na	na	1	0	0	1	1	1	na	1	1	1	0	0	0	1	1	0	0	1	na	1	0	1	0	0	1	1	a	0	1	969	
92	Small farmers	na	na	na	na	na	na	na	na	na	na	1	1	0	0	0	0	1	1	1	0	1	0	1	1	1	1	0	1	0	1	0	1	0	000
93	Soap manufacturing	1	0	0	1	1	0	1	1	1	1	1	0	0	0	0	1	1	0	0	1	1	1	1	0	1	1	0	1	1	a	0	0	305	
94	Sports	1	0	1	1	0	0	1	1	1	1	0	1	0	0	0	1	0	1	0	1	1	1	1	0	1	1	0	1	0	a	0	0	385	

Sl. No	Occupation/Activity	Characteristics																												NIC 1987 (3 digits)					
		Employed														Self-Employed										General									
3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35			
1	2	3	4	5	6	7	8	9	10	11	#	13	14	15	16	17	18	19	#	#	22	#	#	#	26	#	#	#	30	#	#	#	#	36	
	goods industry																																		
95	Steel vessels and utensils manufacturing	1	0	0	1	1	0	1	1	1	0	1	0	1	0	0	0	1	0	1	0	1	0	1	0	1	1	1	1	1	1	1	0	0	346
96	Stone crushing workers	1	1	0	1	0	0	1	1	1	0	na	na	na	na	na	na	na	na	na	na	na	na	na	0	1	1	0	1	1	1	1	1	0	150
97	Sweepers	1	1	0	0	1	0	1	0	1	0	na	na	na	na	na	na	na	na	na	na	na	na	0	1	0	0	0	0	0	1	1	0	1	910
98	Telephone booth workers	1	0	0	0	1	0	1	0	1	0	1	1	0	0	0	1	1	0	1	1	0	0	0	1	1	0	1	0	0	0	0	1	752	
99	Temple workers	1	0	0	0	1	0	1	0	1	0	na	na	na	na	na	na	na	na	na	na	na	na	0	1	1	0	0	0	1	0	0	1	940	
100	Tendu leaves collection	na	na	na	1	0	0	1	1	1	0	1	0	0	1	0	0	1	1	1	0	1	0	1	1	0	0	1	0	1	0	1	1	054	
101	Toddy tapping and relat	1	0	0	1	0	0	1	0	1	0	1	1	0	0	0	1	1	0	0	0	1	0	1	1	1	1	0	1	0	0	0	223		

Sl. No	Occupation/Activity	Characteristics																												NIC 1987 (3 digits)							
		Employed														Self-Employed										General											
		Direct Employment	Through Contractor	Work Contracted	Piece-Rate	Time Rate	Organised into Trade Unions	Mostly Casual	Prevalence of Child Labour	Low wage	Home based	Ownership of Tools & Machinery	Raw materials Owned	Raw Materials Supplied	Raw Materials from Open Resources	Organised into Associations	Mostly Cooperative	Less Access to Capital	Free Produce	Linked Produce	Source of Capital - Banks	SO C - Non-bank	Home based	Low Earnings	Seasonal / Intermittent	Semi-skilled	Skilled	Highly Skilled	Family labour engaged	Mostly Migrants	OH	OD	Debt Bondage	Service			
1	2	3	4	5	6	7	8	9	10	11	#	13	14	15	16	17	18	19	#	#	22	#	#	#	26	#	#	#	30	#	#	#	#	#	36		
	ed work																																				
102	Toys making	1	0	1	1	0	0	1	1	1	1	1	1	1	0	0	0	1	1	1	0	1	1	1	0	1	1	0	1	0	1	0	0	0	0	389	
103	Transport workers (drivers, conductors, cleaners, etc)	1	0	0	0	1	0	1	0	1	0	0	1	0	0	1	0	1	1	0	0	1	0	1	0	1	1	0	0	1	1	1	0	1	1	701-3	
104	Washermen	1	0	0	1	0	0	1	0	1	0	1	1	0	1	0	0	1	1	0	0	1	1	1	0	1	1	0	1	0	1	0	1	1	0	1	961
105	Wayside Mechanics and workshop workers	1	0	0	0	1	0	1	1	1	0	1	1	1	0	0	0	1	1	0	0	1	0	1	0	1	1	0	0	1	1	1	1	0	1	1	974
106	Welding workers	1	0	0	1	0	0	1	0	1	0	1	1	1	0	0	0	1	1	0	0	1	0	1	0	1	1	0	0	0	1	1	1	0	0	0	345

Sample Study: Annexure 2

Classes of Activities

Class No.	Name of the Class
1	Workers dependent on open access and common property resources
2	Workers engaged in putting-out system of work such as weavers
3	Non-motorised transport workers (rickshaw pullers, boatmen, etc.)
4	Motorised transport workers
5	Contract workers
6	Work-contracted homebased workers
7	Traditional service workers
8	Pastoral toilers
9	Workers in child labour-prevalent occupations
10	Migrant workers
11	Small credit dependent traders such as hawkers and vendors
12	Construction workers
13	Manual workers of unspecified jobs
14	Service sector workers (excluding traditional services)
15	Agriculture labourers
16	Small farmers
17	Mining and quarrying workers
18	Food processing workers
19	Workers in timber, fibre and pulp based activities
20	Engineering industry workers
21	Electrical and electronic industry workers
22	Village and khadi industry workers
23	Other miscellaneous workers

Sample Study: Annexure 3
Classification of Occupations and Jobs in the
Unorganised Sector with Classes

Sl.No.	Occupation/Activity	Class Occurrence (refer Annexure 2 for class names)
1	Agarbatti making	6,9
2	Agriculture machinery handling	15
3	Agriculture Workers	9,15
4	Animal husbandry	1,9,15
5	Bakery work	9
6	Band workers	5,14
7	Bangles manufacturing	9
8	Barbers	7,14
9	Beads making/piercing	1
10	Beauty parlour and hair dressing	14
11	Beedi Workers	9
12	Bicycle industry work	10
13	Bindi workers	9
14	Blacksmiths	7,19,14
15	Boat/Ferry workers	3,7,14
16	Bookbinding works	9,14
17	Brick-kiln workers	5,9,10
18	Brush making	9
19	Building and Road Maintenance workers	5,10,12,14
20	Bulb manufacture	21
21	Bullock/camel-cart operators	1,3,7,14
22	Butchers	18
23	Cable TV operation	14
24	Cane/Reed workers	1
25	Carpentry	5,14
26	Carpet weaving	2,6,9
27	Chikan work	2,6,9
28	Cinema workers	14
29	Coaching Institutions	14
30	Coir industry	19
31	Confectionery workers	9
32	Construction workers	5,10,12,14
33	Courier workers	14
34	Data entry operators	14
35	Domestic workers	9,10,14
36	Dyeing	23
37	Electronic and Electrical goods repairs	14
38	Electroplating	10,20

39	Embroidery work	2,6,9,14
40	Envelope making	6,9
41	Firework/crackers industry	5,9,10
42	Fish processing	5,9,10
43	Fish workers	1
44	Florists and garland makers	6
45	Flour mills	18
46	Footwear industry	6,9,14
47	Forest workers	1,5
48	Foundry	9,20
49	Garment industry	9,10
50	Gem cutting	9,10
51	Ginning workers	23
52	Glassware	9,10
53	Goldsmiths	9,14
54	Handloom weaving	2,6,9
55	Hawkers and vendors	10,11,14
56	Headload workers	3,10,14
57	Health workers	14
58	Honey gatherers (tribes & nomads)	1,8
59	Horticulture and floriculture	1,9,15
60	Hotel work (eateries)	9,10
61	Lock making	9
62	Manual workers for unspecified jobs	5,13,14
63	Masala making	18
64	Match industry workers	5,6,9,10
65	Minor forest produce gatherers	1
66	Minor Minerals mine workers	5,9,10,17
67	Newspaper vendors	10,14
68	NGO workers	14
69	Night-soil carriers	9,14
70	Oil extractors	9
71	Packing workers	9
72	Panwallahs	10,14
73	Pappad making	6
74	Petrol bunk/pump workers	10,14
75	Pickle making	18
76	Pottery	1,9
77	Powerloom weaving	10
78	Printing press work	23
79	Quarry workers	5,10,17
80	Rag pickers	1,10,14
81	Rice milling	18
82	Rickshaw Pullers	3,10,14
83	Sales persons in shops & establishments	14

84	Salt Pan workers	1,10
85	Sand mining	1,17
86	Sawmill workers	19
87	Security workers	5,10,14
88	Sericulture (silk rearing) workers	9,15
89	Service Station workers	14
90	Shepherds	1,8
91	shoeshining workers	9,10,14
92	Small farmers	16
93	Soap manufacturing	22,23
94	Sports goods industry	6,9,10
95	Steel vessels and utensils manufacturing	9,10
96	Stone crushing workers	5,9,10,17
97	Sweepers	5,7,14
98	Telephone booth workers	14
99	Temple workers	7,14
100	Tendu leaves collection	1,9,14
101	Toddy tapping and related work	7
102	Toys making	6,9
103	Transport workers (drivers, conductors, cleaners, etc)	4,10,14
104	Washermen	1,7,14
105	Wayside Mechanics and workshop workers	9,10,14
106	Welding workers	20