

The Bill Proposed by National Advisory Council, 2005

THE UNORGANIZED SECTOR WORKERS' SOCIAL SECURITY BILL, 2005

The National Advisory Council (NAC) of UPA government also worked to propose a law for the unorganised workers and submitted to the government "the Unorganised Sector Workers Social Security Bill, 2005'. This was the non-official bill in the lines of Common Minimum Programme of UPA constituents. The draft Bill of NAC is given below.

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Statement of Objects and Reasons

The National Common Minimum Programme of the Government of India states that "The UPA Government is firmly committed to ensure the Welfare and well-being of all Workers, particularly those in the Unorganized Sector who constitute 93% of our Workforce". Earlier, the Second National Commission on Labour submitted its report to the Government in June 2002, which inter-alia, contained elements of legislation to ensure a minimum level of protection to the Workers in the Unorganized Sector. This Bill draws upon these recommendations and has given Statutory shape to National Common Minimum Programme's commitments.

The Unorganized Sector Workers' Social Security Bill, 2005

To provide for social security and welfare of unorganized sector workers and to provide for other matters connected therewith or incidental thereto.

BE it enacted by Parliament in the fifty-fifth year of the Republic of India as follows: -

CHAPTER I PRELIMINARY

1. Short title, extent and commencement

- (a) This Act may be called "**The Unorganized Sector Workers' Social Security Act, 2005**".
- (b) It extends to the whole of India.
- (c) It shall come into force on the date of publication by Union Government in the Official Gazette.

2. Definitions

In this Act, unless the context otherwise requires: -

- (a) "National Social Security Authority for the Unorganized Sector" means an authority constituted by Union Government for the purpose of this Act under section 3(a).
- (b) "Directors" means the persons appointed by Union Government under Section 8(a).
- (c) "Employer" means a company or a person, for whom any unorganized worker is working or association of employers or traders who engage unorganized workers.
- (d) "Existing Acts" means the Acts enacted by the Central and State Governments, which are for the time being in force.
- (e) "Facilitating agencies" means the agency notified by the Authority to run the worker's facilitation centre under the section 9 of the Act.
- (f) "Family" in relation to that of a worker means and includes the spouse, minor legitimate and adopted children, unmarried daughters and dependent parents.
- (g) "Fund" means the Unorganized Sector Workers' Welfare fund constituted under sub-section (a) of section 19 of the Act.

- (h) "Identity Card" means the identification document containing the unique identification social security number given to a worker on registration as a member under sub-section (a) of section 13 of the Act.
- (i) "Member" in relation to a welfare funds constituted under this Act means an unorganized worker registered as a member under sub section (a) of Section 13.
- (j) "Notification" means notification published in the official Gazette.
- (k) "Prescribed" means prescribed by rule or scheme made under the Act.
- (l) "Scheme" means a scheme made under the Act.
- (m) "Supervisory Board" means a board constituted under section 4.
- (n) "Unique identification Social Security Number" means the number given to a worker on registration as a member under sub-section (a) of Section 13 under the Act.
- (o) "Unorganized Sector Worker" means a person who works for wages or income; directly or through any agency or contractor; or who works on his own or her own account or is self employed; in any place of work including his or her home, field or any public place; and who is not availing of benefits under the ESIC Act and the P.F Act, individual insurance and pension schemes of LIC, private insurance companies, or other benefits as decided by the Authority from time to time.
- (p) "Workers' Facilitation Centre" means Centre constituted under section 10 for registration of workers of unorganized sector implementing social security benefits.

CHAPTER II

National Social Security Authority for the Unorganized Sector, Workers' Facilitation Centres and Facilitating Agencies

3. Constitution of National Social Security Authority for the Unorganized Sector

- (a) With effect from such date as the Union Government may notify, an Authority, to be called as National Social Security Authority for the Unorganized Sector (The Authority), shall be constituted for the purposes of this Act.
- (b) The Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose property, both movable and immovable, and to contract and shall by the said name sue or be sued.
- (c) The Authority shall consist of a Supervisory Board and an Executive Office.
- (d) The Authority shall formulate policy and undertake any and all activities to deliver the intent of this Act all over the nation in coordination with various State Governments, Welfare Boards and other agencies responsible for serving workers in the unorganized sector as required in order to ensure effective implementation of the Act.

4. Appointment of Supervisory Board

The Authority shall have a Supervisory Board to be appointed by the Union Government.

- (a) The Union Government shall appoint a Chairperson of the Supervisory Board, who shall be the non-executive Chairperson of the Authority whose normal term shall be of three years.
- (b) The Supervisory Board shall consist of at least fifty percent of members who are representatives

of workers in the unorganized sector and at least one third women members in addition to professionals with background in areas of expertise such as finance, insurance, and systems-operations and representatives of Central and State Government.

- (c) The normal term of the Supervisory Board shall be three years.

5. Disqualification, removal and resignation of non-official members of Supervisory Board

- (a) No person shall be chosen as or continue to be, a non-official member of the Supervisory Board, who-
 - (i) is or at any time has been adjudged insolvent; or
 - (ii) is found to be a lunatic or of unsound mind, or
 - (iii) is or has been convicted of any offence involving moral turpitude
- (b) Any non-official member of the Supervisory Board may at any time resign, by writing under his hand, addressed to the Chairperson of the Supervisory Board and on acceptance of the resignation by the Chairperson. Such member shall cease to be member of the Supervisory Board.

6. Filling up of vacancies of Supervisory Board

In the event of a vacancy in the office of a non-official member on account of death, resignation, disqualification, removal or otherwise, the Supervisory Board shall forthwith communicate it to the Union Government and a person shall be nominated by the Union Government to fill the vacancy, who shall hold the office for the residuary term of the member on account of whom the vacancy has occurred.

7. Executive Office of the Authority

- (a) The Executive office of the Authority shall have a Managing Director, and two Executive Directors who will be appointed directly by the Union Government.
- (b) The Union Government shall provide for the recurring and non-recurring expenditures to be incurred for the functioning of the Authority on recommendation of the Managing Director in consultation with the Supervisory Board.

8. Functions of the Directors and the Supervisory Board:

- (a) The Directors appointed by the Union Government shall be responsible for framing policies, schemes, and procedures for the functioning of the Authority in consultation with the Supervisory Board.
- (b) The Supervisory Board shall advise the Directors on matters of policy and receive quarterly reports from the Managing Director. The Chairman of the Supervisory Board shall send comments and reports regarding the functioning of the Authority and the Directors to the Union Government.
- (c) In the event of a discord between the Directors and the Supervisory Board, the Union Government shall appoint a Special Committee to recommend resolution of the discord and take appropriate action upon considering the opinions of the Committee. The decision of the Union Government will be final in this regard.

9. The Functioning and the Structure of the Authority:

- (a) The Directors will appoint "Facilitating Agencies" to conduct the activities of the Authority in the

specifically designated geographical areas or a particular industry in a particular region. The Facilitating Agency will in turn set up, administer, and supervise Worker's Facilitation Centres, which will provide direct service to the worker members of the Facilitation Centre.

- (b) The Facilitating Agency, for all practical purposes shall represent the Authority in the designated area, region, or industry and carry out all executive functions on behalf of the Authority under a specific contract with the Authority.
- (c) The Facilitating Agency shall work wherever necessary with other Welfare Boards, and Departments of the Governments, State or Union or Panchayati Raj institutions in a manner that is prescribed by the Directors.
- (d) The following may be appointed as the Facilitating Agencies by the Directors, or officers appointed by them for the purpose, after inviting proposals from organizations and institutions provided they agree to abide by terms of the contract determined by the Authority:
 - (i) Self Help Groups or their Associations
 - (ii) Post offices
 - (iii) All types of Co-operative societies
 - (iv) Micro-Finance Institutions
 - (v) Trade Unions
 - (vi) District Panchayat
 - (vii) Village Panchayat
 - (viii) Existing Welfare Boards
 - (ix) Urban local body
 - (x) Any other organization or agency dealing directly with unorganized workers as may be prescribed by the Authority.

10. Workers' Facilitation Centres

The Worker Facilitation Centres shall be set up by the Facilitating Agency and shall be operated under its control and supervision.

The core functions of the Centres shall be: -

- (a) Registration of workers and giving them unique identification social security numbers and identity cards.
- (b) Mobilization of workers to become members of the Scheme.
- (c) Securing the contribution of members to the funds.
- (d) Assuring delivery of benefits to the members.

In addition, the centres may undertake the following activities.

- (e) Maintaining a database of members in such form as may be prescribed showing the details of employment of members registered with it.
- (f) Skill upgradation training to increase the skill of workers.
- (g) To maintain and provide information related to employment and marketing opportunities workers. Training and assisting workers to form themselves into cooperatives, unions, federations and into any other appropriate form of organization.
- (h) To constitute employment exchanges for unorganized sector.

- (i) To create public awareness about schemes available for workers.
- (j) To collect statistics and information of workers engaged in the employments of the unorganized sector.
- (k) Other activities as may be prescribed by the Authority.

The financing of the Workers Facilitation Centres shall be through implementation of appropriate schemes. The Workers Facilitation Centres may, with the approval of Facilitating Agencies charge user-fees for specific services that the Workers Facilitation Centres may offer to individual workers or groups or organizations of workers, or it may accept donations or grants for purposes of its objects.

11. Criteria for Appointing Facilitating agencies:

The following criteria shall be observed by the Authority during appointment of Facilitating agencies:

- (a) Registration under an Act of the Union of India or any State Government
- (b) Be in existence for more than three years
- (c) Be directly working with unorganized sector workers or their families
- (d) Produce audited accounts
- (e) Have a track record of effective implementation of welfare schemes
- (f) And any other criteria decided by the Authority.

12. Delegation of powers

The Authority may, by general or special order, delegate to any member of the board or any director or any other officer or employee of the Authority, such of its power and duties under this Act as it may deem necessary for the proper administration of this Act, or any scheme made there under.

CHAPTER III REGISTRATION OF WORKERS AS MEMBERS

13. Registration of workers as members and for Unique Identification Social Security Number

- (a) Every unorganized sector worker as defined in 2 (o) who has completed eighteen years of age shall on the payment of prescribed fee become eligible for registration as a member and for the purpose, get a Unique Identification Social Security Number and identity card under this Act. No worker shall be eligible for getting more than one social security number. Worker shall be registered as a member once and this registration shall be periodically renewed and updated as decided by the Authority.
- (b) Registration of workers as members shall be done by Workers' Facilitation Centre following such procedures as may be prescribed.

14. Cessation as a member

- (a) An unorganized sector worker who has been registered as a member for more than ten years under this Act shall not be required to pay any membership dues when he attains the age of sixty years

excepting for old age benefit including pension. The social security number of a retired or deceased worker shall not be given to any new or other member.

- (b) Notwithstanding anything contained in sub-section (a), if a person had been a member for at least three years continuously immediately before attaining the age of sixty years, he shall be eligible to get such benefits as may be specified under the concerned fund.

CHAPTER IV SOCIAL SECURITY SCHEMES

15. Framing of Schemes

The Directors will formulate one or more schemes as may be considered necessary for the welfare, health, safety and social security of the unorganized worker or any class of workers in any employment of unorganized sector and seek advice of the Supervisory Board in formulating the same.

Provided that the Authority, while framing schemes under this sub-section, ensure that they are not in contravention of any of the provision of the existing Acts or schemes.

16. Disputes regarding application of schemes

If any question arises regarding the applicability of any scheme to any class or classes or workers in any employment of unorganized sector, the matter shall be referred by the Authority to the Union Government whose decision shall be final.

17. Social Security benefits and welfare measures

The Authority may notify the schemes as under, subject to sustainability of the Fund :

- (a) Medical Care or sickness benefit scheme
- (b) Employment injury benefit scheme
- (c) Maternity benefit scheme
- (d) Old age benefit including pension
- (e) Survivor's benefit scheme
- (f) Integrated Insurance Scheme
- (g) Schemes for Conservation of natural resources on which workers depend for livelihood,
- (h) Housing schemes
- (i) Educational schemes
- (j) Any other schemes to enhance the quality of life of the unorganized worker or her family.

- 18.** (a) There shall be a floor level scheme to be funded by the Union Government directly or through cess or through contribution or through any other means.
- (b) This floor level scheme shall include (i) health, life and permanent disability insurance; and maternity benefits without contribution from the member, and (ii) a contributory old age benefit scheme including pension.
- (c) In case of industries where separate Welfare Boards have been created and/or a cess is being collected for welfare schemes of the workers, the Authority shall function in collaboration with the existing Welfare Boards in order to ensure that the workers registered at the

Worker Facilitation Centre receive benefits of the schemes created by the Authority or those of the concerned Welfare Boards, whichever may be more beneficial to the worker.

CHAPTER V WELFARE FUNDS

19. Constitution of Welfare Funds

- (a) National Social Security Authority shall constitute one or more Welfare Funds consisting of following sources:
 - (i) Levy and collection of cess, tax or fees as it may be specified from time to time by notification in the official gazette.
 - (ii) Grants and loans made to the Authority by the Union or State government.
 - (iii) All contribution made by the members and employers;
 - (iv) All sums received by the Authority from such other sources as may be decided by Union Government, including donations.
 - (v) Income generated by registration of member.
 - (vi) All other income as may specified time to time
- (b) The resources referred to in sub-section 19(a) shall be applied for meeting the;
 - (i) Expenses on objects and for purposes authorized by this Act.
 - (ii) Expenses of the concerned Authority and/or its agents in the discharge of its function;
- (c) The Authority shall not, in any financial year, incur expenses towards salaries, allowances /and other remuneration to its members, officers and other employees and for meeting other administrative expenses exceeding a limited per cent of its total expenses during that financial year, the limit to be fixed by the Supervisory Board in consultation with the Directors
- (d) All the contributions to the funds shall be exempted from the Income tax.

20. Grants and Loans by the Government

The union or state government may, after due appropriation made by parliament or state legislature, as the case may be, by law in this behalf, make to the Authority or its agents grants and loans of such sum of money, as the appropriate Government may consider fit for being utilized for the purposes of this Act.

21. Contribution to the fund/ schemes

(a) Contribution of workers:

The contributions to the funds shall consist of;

- (i) Registration and renewal fees as decided by the Authority. .
- (ii) Contribution towards schemes as decided by the Authority.
- (iii) Any other contribution as decided by the Authority.

(b) Contribution of employers:

- (i) The Union Government may levy a cess or an appropriate tax, or create an appropriate mechanism for collection of contribution from individual employers (or their contractors wherever applicable) or a class of employers or an industry as a whole in order to partly finance the schemes, programs and projects undertaken by the Authority.

- (ii) The Union or State government may, on the recommendation of the Authority, levy and collect cess, tax or fees, on any goods produced or processed or manufactured or sold or on service rendered, for the purposes of this Act as it may specify from time to time by notification in the official gazette.
- (iii) The Authority, may in specific circumstances levy a contribution on individual employers at a rate decided by it.

22. Effect of non-payment of contribution

(a) Workers' contribution:

When a worker has not paid his/her contribution for a continuous period of not less than one year, he/she shall cease to be eligible for future benefits.

Provided that if the Workers' Facilitation Centres or an authority specified by it is satisfied that the non-payment of contribution was for a reasonable ground and that the worker may be allowed to deposit the contribution in arrears and, on such deposit being made, eligibility for future shall be restored.

(b) Employers' contribution:

An employer or an industry found not to be paying its contribution to the cess or an appropriate tax will be liable for action under the appropriate Act. In case an employer is found defaulting in individual contributions levied by the Authority, the appropriate action will be decided by the Authority in consultation with the Union Government.

23. Budget

The Authority shall prepare, in such form and at such time each financial year as may be prescribed, their budgets for the next financial year showing their estimated receipts and expenditure. The authority shall forward to the Union Government the consolidated budget of itself and the funds constituted by it.

24. Annual Reports and Periodic Reports

- (a) The Directors, Facilitating Agencies, and Workers' Facilitation Centres shall prepare, in such form and at such time each financial year as may be prescribed, their reports, giving an account of their activities during the applicable period.
- (b) The Authority shall submit its periodic reports, within one month of the end of the period to which they pertain, to the Union and the State governments and it shall be mandatory to make all such reports public.
- (c) Each facilitating agency will generate its periodic reports as prescribed by the Authority and it shall be mandatory to make these reports public.

25. Accounts and audit

- (a) The Authority, Facilitating Agency and Workers' Facilitation Centre shall maintain proper accounts and other relevant records and prepare annual statements of accounts in such form as may be prescribed.
- (b) The accounts of each facilitation centre shall be audited separately and the audit of the facilitating agency shall include audit reports of all the facilitating centres it is responsible for in addition to its own accounts pertaining to the activities associated with the Authority.

- (c) The Authority shall furnish to the Union Governments, before such date as may be prescribed, the audited copy of the consolidated account of itself and the Funds together with the auditor's report.

26. Investment of the funds

All moneys belonging to the Funds shall be deposited in a Scheduled Bank or any Government securities, or as may be approved by the Supervisory Board.

27. Existing Welfare Board and Fund

- (a) The Authority shall recognize the fact that various Welfare Boards and such other agencies are in existence for a number of industries, and that there are cess and such other provisions for funding the activities for social security and other services for workers in certain industries and certain states. The Authority may, in consultation with appropriate governments responsible for these Welfare Boards, consider appointing such Welfare Boards as Facilitating Agencies for those particular industries within the limits of the rules and regulations created by the Authority.
- (b) The appropriate governments responsible for the concerned welfare boards, may, with the approval of the Authority, choose to merge or bring under the supervision, direction, and control of the Authority any existing schemes and Welfare Boards and funds that are consistent with the aims and objects of the Authority.

CHAPTER VI

FRAMING OF RULES, DELEGATION OF POWER, EXEMPTIONS, ETC.

28. Power to make Rules

- (a) The Authority may, make rules to carry out the provisions of this Act.
- (b) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely-
- (i) Form of register of members to be maintained.
 - (ii) Rates of registration payable by the members to the Fund.
 - (iii) Forms of accounts and other relevant records to be maintained by the Authority and Fund.
 - (iv) Form for preparation of the annual reports of the concerned Board and Fund and stipulation of dates for submission of the same to the Union government.
 - (v) Form for preparation of annual budgets..
 - (vi) Procedure and power to audit the expenditure incurred by and review the functioning of Workers' Facilitation Centre and Facilitating Agency.
 - (vii) Any other matter, including disqualification of facilitating agencies and centres for non-performance, which has to be, or may be, prescribed by rules under this Act.

29. Exemptions

- (a) The Union government may, in consultation with the Authority, by notification and subject to such condition and for such period as may be specified in the notification, exempt from the operation of all or any of the provisions of this Act or any schemes made there under, all or any class or classes of workers, in any establishment or part of any establishment: -

If in the opinion of the Union government, all the workers or such class or classes of workers, are

in enjoyment of benefits which are on the whole not less favorable to such workers than the benefits provided by or under this Act or any scheme framed there under.

- (b) The Union government may by notification, at any time, cancel the exemption granted under subsection (a), if it feels that the conditions mentioned therein, are not satisfied, after recording reasons and after providing an opportunity of being heard to such establishment.

30. Rights and privileges under other more beneficial laws not affected

Nothing contained in this Act shall affect the operation of any corresponding law, contract, custom, usage, award, settlement or agreement, regulating the employment and conditions of service of the workers and providing for welfare measures or schemes which are more beneficial to the workers than those provided for them by or under this Act.

31. Power to remove difficulties

- (a) If any difficulty arises in giving effect to the provisions of this Act, the Union Government may, by order published in the official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appears to it to be necessary or expedient for removing the difficulty;
Provided that no such order shall be made after the expiry of two years from the date of commencement of this Act.
- (b) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

32. Members of Boards and Officers to be Public Servants

Every Member of the Supervisory Board, the Directors and every officer appointed under this Act shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code (45 of 1860).

33. Protection for action taken in good faith

No suit, prosecution or other legal proceeding lie against Union Government or any Member of the Board or the directors or any officer appointed under this Act for anything, which is in good faith done or intended to be done under this Act or any scheme or rule made thereunder.

34. Bar on civil courts

No civil court shall have jurisdiction in respect of any matter to which any provision of this Act applies and no injunction shall be granted by any civil court in respect of anything, which is done or intended to be done by or under this Act.