

The Bill of National Commission for Enterprises in the Unorganised Sector, 2006

UNORGANISED SECTOR WORKERS (EMPLOYMENT AND WELFARE) BILL

The Bill submitted by NCEUS in the year 2006 for the social security of unorganised sector workers.

The Bill of National Commission for Enterprises in the Unorganised Sector, 2006

Unorganised Workers Social Security Bill, 2006

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Statement of objects and reasons

The unorganised sector of the economy in India is the largest sector in terms of employment of the workforce. It consists of agriculture and such related activities as forestry, livestock and fishing as well as non-agriculture. The workers may be broadly divided into self-employed and wage workers. Wage workers may be sub-divided into those (a) working in the unorganised sector, and (b) working in the organised sector without any social security cover. Around ninety percent of the workers in India are neither covered by any formal system of social security nor regulation of conditions of work. This Bill is intended to provide a measure of social security to the workers in the unorganised sector. This Bill proposes a model that will be inclusive in nature and provide for clearly demarcated division of responsibilities between the Central and State Governments. It mandates the Central and State Governments to implement a National Social Security Scheme.

UNORGANISED WORKERS SOCIAL SECURITY BILL, 2006.

A **BILL** to provide for social security and welfare of unorganized 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, commencement and application

- (1) This Act may be called Unorganised Workers Social security Act, 2006.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

2. Definitions

For the purposes of this Act, unless the context otherwise requires,

- a) **“Agriculture”** would include the following occupations:
 - (i) Farming, including the cultivation and tillage of soil etc;
 - (ii) Dairy farming;
 - (iii) Production, cultivation, growing and harvesting of any horticultural commodity;
 - (iv) Raising of livestock, bee-keeping or poultry;
 - (v) Fishing and/ or fish farming;
 - (vi) Any practice performed on a farm as incidental to, or in conjunction with, the farm operations (including any forestry or timbering operations and the preparation for market and delivery to storage or to market or to carriage for transportation of farm products);
 - (vii) Growing fodder or thatching grass or for grazing cattle.
- b) **“Central Government”** means the Government of India;
- c) **“Employer”** means a natural or juridical person, or an association of such persons, by whom any unorganised worker is engaged or employed either directly or otherwise, for any remuneration;
- d) **“Home based worker”** means a person involved in the production of goods or services for an employer in his / her own home or other premises of his / her choice other than the work place of the employer, for remuneration irrespective of whether or not the employer provides the equipment, materials or other inputs;
- e) **“Identity card”** means a card issued to a worker carrying unique social security number issued by the authorised agency of the State Board;
- f) **“National Board”** means the National Social Security Board for unorganised workers;
- g) **“Registered Worker”** means an unorganised worker registered for social security under this Act;
- h) **“State Government”** means the Government of a State in the Indian Union;
- i) **“State Board”** means the (name of the State) State Social Security Board for unorganised workers;
- j) **“Self employed worker”** means any person who is not employed by an employer, but directly engages

himself/ herself in any occupation in the unorganised sector, subject to a monthly earning of Rs.6,500/- or such limits as may be notified from time to time, or, subject to such ceiling on land cultivated as may be notified from time to time by the State Government;

- k) **“Unorganised Sector”** consists of all unincorporated private enterprises owned by individuals or households engaged in the production and sale of goods and services and operated on a proprietary or a partnership basis and employing less than 10 persons”.
- l) **“Unorganised worker”** means a self employed worker or a wage worker in the unorganised sector and includes wage workers in the organised sector without any social security cover;
- m) **“Wage worker”** means a person employed for a remuneration in the unorganised sector or in the organised sector without any social security cover, directly by an employer or through any agency or contractor, irrespective of place of work, whether exclusively for one employer or for one or more employers, whether simultaneously or otherwise, whether in cash and/ or in kind, whether as a home based worker, or as a temporary or casual worker, or as a migrant worker, or as a outworker, or, workers employed by households including domestic workers, with a monthly wage of not more than Rs 6500/- or such limits as may be notified from time to time, but does not include an unpaid family worker.

3. Rules of evidence

In this Act, notwithstanding anything contained in the Indian Evidence Act, 1872, the burden of proof that compliance with the provisions of the Act and the Scheme has been effected shall be entirely on the employer and the units of the Board wherever applicable.

[Explanatory Note: This section facilitates shifting of the burden of proof from the workers to the employer. This is a departure from the normal practice and ordinary rules of evidence, which places the burden on the plaintiff.]

Chapter II SOCIAL SECURITY BENEFITS

4. Framing of Schemes

- (1) By this Act, the Central Government shall formulate a scheme to be called National Social Security Scheme for the unorganised workers consisting of the following national minimum social security benefits:
 - (i) Health benefits in the form of health insurance for self, spouse and children below the age of 18 years, sickness allowance, and Maternity benefits for women workers or spouse of men workers;
 - (ii) Life Insurance to cover natural and accidental death.
 - (iii) Old age security in the form of Old age pension for BPL workers above the age of 60 years and Provident Fund cum unemployment insurance benefit to all other workers.
- (2) In addition to the national minimum, the Central Government may frame such schemes as it may deem necessary or finance such schemes of the State Governments as it may find appropriate subject to availability of finance by such means as mentioned in Section 5 and may include those listed under (3) below.
- (3) The State Government may formulate such unorganised worker based schemes as it may find appropriate to (a) strengthen the national minimum social security by way of its own contribution, and/or (b) design and implement additional social security benefits through its own schemes. These may include:
 - a) Provident fund schemes;

- b) Employment injury benefit scheme;
- c) Housing schemes;
- d) Educational schemes for children of workers;
- e) Skill up gradation of workers;
- f) Funeral assistance;
- g) Marriage of daughters; and
- h) Any other schemes to enhance the socio economic security of unorganised worker.

Chapter III

NATIONAL SOCIAL SECURITY FUND FOR UNORGANISED WORKERS

5. Constitution of a National Fund

The Central Government shall create a National Social Security Fund to which contributions shall accrue from the following sources:

- a) Grants and loans from the Central Government;
- b) Contributions from workers, employers and Governments for the specified national minimum social security shall be as under:
 - (i) Re. 1/- per day by the worker, provided that for those below the poverty line the contribution shall be made by the Central government;
 - (ii) Re. 1/- per day, per worker, by the employer, provided that where the employer is not identifiable, the contribution shall be shared by the Central Government and the respective State Governments in the ratio of 3:1;
 - (iii) Re. 0.75 per worker, per day, by the Central Government, and Re. 0.25. per worker, per day by the State Government.

[Explanatory note: The contribution of Central and State Governments in (iii) above is in accordance with the practice of Government contribution to social security schemes in the organised sector]

- c) Any tax or cess that the Central Government may impose for the purpose of providing social security for unorganised workers;
- d) Any tax or cess that the Central Government may impose on commodities and/or services in lieu of employers' contributions (which are either difficult to collect or appropriate employers in the unorganised sector are not directly identifiable).

In addition to the above, contributions may also accrue from the following sources:

- e) Contributions from the national financial/developmental institutions; and
- f) Any voluntary contribution from individuals or institutions.

6. Existing Welfare Boards

All eligible unorganised workers shall be entitled to register and obtain benefits under the national minimum social security scheme, which shall be in addition to the social security benefits provided by the existing Welfare Boards created by the Central or State Governments, if any. Schemes which are in existence and operated through the Welfare Boards may be continued by the respective Governments in the existing form or in any other way as they deem fit.

7. Exemption from Income Tax

All financial contributions made by individuals and institutions to the National Social Security Fund will be exempted from the payment of income tax under the Income Tax Act.

8. Utilisation of the National Fund

All contributions accruing to the National Board shall be credited to the Fund, which shall be applied for meeting the following:

- a) Expenses on social security schemes of the Central Government;
- b) Grants to the State Boards, including for the purposes of the functioning of the Workers' Facilitation Centres;
- c) Expenses on the administration of the scheme, subject to a ceiling of 5% of the contribution of the Central and State Governments as specified in section 5;
- d) Investment in permitted schemes;
- e) Any other item in connection with the administration of this Act.

Chapter IV

NATIONAL SOCIAL SECURITY BOARD FOR UNORGANISED WORKERS

9. Establishment and incorporation

With effect from such date as the Central Government may, by notification appoint, there shall be established for the purposes of this Act, a Board to be called the National Social Security Board for unorganised workers.

10. Functions of the Board

The National Board shall provide the following functions:

- a) administration of this Act and formulation of policies at the national level, and shall have such powers as may be laid down to direct, co ordinate, supervise, and monitor the functioning of State Boards and the Central Welfare Boards;
- b) review the working including auditing of the State-level Social Security Boards and the Central Welfare Boards every four years and make suitable recommendations to the Government(s) concerned for further improvement;
- c) manage and maintain the National Social Security Fund and provide financial assistance to State Boards;
- d) advise the Central Government on policy matters relating to social security, health and safety and welfare of unorganised workers;
- e) assist in capacity building of the State Boards, and collect, compile and publish statistics relating to the unorganised sector and undertake such promotional activities as may be decided from time to time.

11. Composition of the Board

- (1) The National Board for unorganised workers shall be constituted by the Central Government consisting of the following member organisations:
 - a) State Boards for unorganised workers;

- b) Central Welfare Boards for unorganised sector workers administered by the Ministry of Labour and Employment;
 - c) national-level unions of unorganised sector workers;
 - d) national-level voluntary associations of unorganised sector workers including self-employed with an explicit social security scheme for its members; and
 - e) national-level organizations of employers in the unorganised sector (such as organizations of tiny and small scale industries, farmers organisations) and government/public institutions with a stake in the welfare of the unorganised sector workers such as the All India Handicrafts Board, All India Handloom Board, Central Social Welfare Board, Department of Women and Child Development, and Department of Small Scale Industries.
- (2) The Central Government shall decide the number and names of such organisations to be represented on the National Board.
- (3) The National Board shall work through a General Council and an Executive Council.

12. General Council

- (1) The Union Minister for Labour and Employment shall be the Chairperson of the General Council.
- (2) The Secretary to the Government of India, Ministry of Labour and Employment, shall be the Member-Secretary of the General Council.
- (3) There shall be a General Council for the Board consisting of one representative from each of the member-organisations.
- (4) The General Council shall meet once a year within six months of the last day of the previous financial year.
- (5) The General Council shall discuss and review the functioning of the National Board in the light of the annual report for the preceding year. It shall also provide a platform for members to articulate their views, ideas and problems with regard to the unorganised sector in general and social security issues in particular and shall give broad policy directions to the Executive Council.

13. Executive Council

- (1) The Board shall have an Executive Council with the Secretary to the Government of India, Ministry of Labour and Employment, as its Chairperson and a full time Chief Executive Officer to be designated by the Central Government as its *ex-officio* Member-Secretary. In addition, the Central Government shall nominate the members to the Executive Council as per the following:
- a) Two representatives of the organisations of waged workers in the unorganised sector, which are members of the National Board;
 - b) Two representatives of organisations of self-employed workers in the unorganised sector, which are members of the National Board;
 - c) Two representatives of organisations of employers in the unorganised sector that are members of the National Board;
 - d) One representative from any one of the Central Welfare Boards;
 - e) One representative each of the Government of India from the Ministry of Agriculture, Finance, Health and Small Scale Industries;
 - f) Six representatives of the State Boards;
 - g) One expert in the management of insurance products and services;

- h) One experts in the area of social security and related issues in the unorganised sector; and
- i) One expert in the management of finances.

(2) The tenure of the members shall be for a period of three years. The Executive Council shall meet as often as required but not less than twice a year.

[a, b, c, and f may be based on the principle of rotation amongst the member-organisations.]

14. Secretariat of the Board

The National Board shall have a secretariat with adequate professional and other staff. The staff of the National Board shall be governed by the Central Government rules and regulations existing from time to time. The annual budget of the National Board shall be prepared by the Secretariat and placed before the Executive Council for approval.

Chapter V STATE SOCIAL SECURITY BOARDS FOR UNORGANISED WORKERS

15. Establishment of State Boards

(1) Each State shall have a State Board to implement the national minimum social security as well as design and implement state level social security and welfare programmes for unorganised workers. The State Governments shall constitute the State Boards within one year of the date of commencement of this Act. The State Boards shall have the following as its members:

- a) Workers Welfare Boards (both existing and newly designed) providing social security and welfare to the unorganised sector workers;
 - b) Organisations which are registered as trade unions/cooperatives/charitable societies, engaged in the provision of social security for unorganised sector workers subject to such qualifying criteria as the State Government may lay down;
 - c) Departments or agencies of the State Government acting as employers of the unorganised sector workers (e.g. Public Works department, forest department, or those employing anganwadi workers, khadi workers, etc.); and
 - d) Representatives of organisations of self employed unorganised sector workers;
 - e) Representatives of employers organisations in the unorganised sector;
- (2) The State Government shall decide the number and names of such organisations to be represented on the State Board.
- (3) The State Board shall work through a General Council and an Executive Council.

16. State Fund

(1) The State Government shall create a State Social Security Fund to which contributions shall accrue from the following sources:

- (i) Grants and loans from National Board and the State Government;
- (ii) Any tax or cess that the State Government may impose on commodities and/or services in lieu of employers' contributions (which are either difficult to collect or appropriate employers in the unorganised sector are not directly identifiable);

- (iii) Contribution toward additional social security scheme (if any) formulated by the State Board;
 - (iv) Contributions from the national financial/developmental institutions; and
 - (v) Any voluntary contribution from individuals or institutions;
- (2) All financial contributions made by individuals and institutions to the State Social Security Fund will be exempted from the payment of income tax under the Income Tax Act.
- (3) All contributions accruing to the State Boards shall be credited to the State Social Security Fund which shall be applied for meeting the following:
- a) Expenses on the implementation of the national minimum social security and additional social security schemes of the State Government;
 - b) Grants to the Welfare Boards and the Workers' Facilitation Centres;
 - c) Expenses on the administration of the State Board as per the annual budget approved by the Executive Council;
 - d) Investment in permitted schemes;
 - e) Any other item in connection with the administration of this Act.

17. Functions

The State Boards will have the following functions:

- a) administration of this Act at the state level including ensuring maintenance of individual accounts of the registered workers and records of receipt of contribution from individual employers;
- b) implement the national minimum social security for unorganised workers through appropriate organisational arrangements, and to stipulate norms for the evaluation of the work done by the Workers' Facilitation Centres;
- c) To collect the contribution from the registered worker and the employer and to credit it to the account(s) as directed by the National Board;
- d) implement social security schemes, in addition to the National Social Security Scheme, that the State Board may design in consultation with the State Government;
- e) provide financial assistance to other member-organisations implementing social security programmes;
- f) advise the State Government on policy matters relating to social security, health and safety and welfare of workers;
- g) create awareness among the unorganised workers about the need for social security registration and the existence of various social security schemes;
- h) collect, compile and publish statistics, with the help of statistical organisations, regarding workers and their conditions of work, and employers who engage these workers at the Panchayat/ Municipal, District, State levels with such details as gender and age, nature of occupation, level of earnings, etc.;
- i) review the working of the Welfare Boards and other implementing agencies on the basis of annual reports and statements of audited accounts or specially commissioned reports and make suitable recommendations to the government(s) concerned for further improvement;
- j) assist in capacity building of Workers Welfare Boards and Workers' Facilitation Centres;

- k) initiate innovative approaches, through interaction across sectors and constituencies, for the enhancement of welfare, working conditions and productivity of unorganised workers; and
- l) Submission of annual report to the National Board within four months from the last day of the previous financial year along with an audited statement of accounts.

18. General Council

- (1) There shall be a General Council for the State Board consisting of one representative from each of the member-organisations. The Minister for Labour in the State concerned shall be the Chairperson of the General Council. The Secretary to the State Government concerned, Department of Labour, shall be the Member-Secretary.
- (2) The General Council shall meet once a year within six months of the last day of the previous financial year.
- (3) The General Council shall discuss and review the functioning of the State Board in the light of the annual report for the preceding year. It will also provide a platform for members to articulate their views, ideas and problems with regard to the unorganised sector in general and social security issues in particular and shall give broad policy directions to the Executive Council.

19. Executive Council

- (1) The State Board shall have an Executive Council with the Secretary of the State Government concerned, Department of Labour, as Chairperson and an official designated by the State Government as Chief Executive Officer, who shall be the ex-officio Member-Secretary, after taking the view of the General Council of the State Board concerned. In addition, the State Government shall nominate the members to the Executive Council as per the following:
 - a) Two representatives of the organisations of wageworkers in the unorganised sector, that are members of the State Board;
 - b) Two representatives of organisations of self-employed workers in the unorganised sector, that are members of the State Board;
 - c) Two representatives of organisations of employers in the unorganised sector that are members of the State Board;
 - d) One representative from the National Board nominated by it;
 - e) One representative each from the Departments of Agriculture, Finance, Health and Small Scale Industries of the State government;
 - f) Not more than six representatives of the State level Workers Welfare Boards or organisations providing social security to the unorganised sector workers that are members of the State Board;
 - g) One expert in the management of insurance products and services;
 - h) One expert in the area of social security and related issues in the unorganised sector; and
 - i) One expert in the management of finances.
- (2) The tenure of the members shall be for a period of three years. The Executive Council shall meet as often as required but not less than twice a year.
[a, b, c, and f may be based on the principle of rotation amongst the member-organisations.]
- (3) Appropriate rules for appointment and removal from office of the chief executive shall be framed by the State Government.

20. Secretariat of the Board

The State Board shall have a secretariat with adequate professional and other staff. The staff of the State Board shall be governed by the State Government rules and regulations existing from time to time.

Chapter VI REGISTRATION OF UNORGANISED WORKERS

21. Eligibility for registration and for social security benefits

- (1) Every unorganised worker shall be eligible for registration subject to the following conditions:
 - a) He/she should have completed 18 years of age; and
 - b) a self declaration confirming that he/she is an unorganised worker.
- (2) Every registered worker shall be eligible for national minimum social security benefits only if payments of regular contributions have been made.

22. Unique Identification Social Security Number

Each registered worker shall be eligible for receiving a Unique Identification Social Security Number in the form of an Identity Card issued in the name of the State Board. With a view to prevent duplication of identity, the Identity Card shall also carry the registration number of the ration card of the worker. In the absence of a ration card, the registration number on the voter's card shall be entered in the Identity Card.

23. District Committee for registration of workers

A district-level committee shall be constituted as the registering authority for the National Social Security Scheme. The District Committee will have the District Collector/Magistrate as the Chairman and the District Labour Officer as its Convenor and Nodal Officer. The District Committee shall include:

- a) Two representatives of workers' organisations such as unions, associations or co-operatives in the unorganised sector;
- b) Two representatives of organisations working among the unorganised sector workers who do not have organisations of their own;
- c) Two representatives of employers' organisations in the unorganised sector;
- d) One representative of the Zillah Parishad and one from amongst the Nagar Palikas; and
- e) A representative of the State Board.

24. Identity card

This Identity Card shall be issued under the authority of the District Committee based on a formal application for registration from workers and forwarded by the Workers' Facilitation Centre with its recommendation. The District Committee shall send the Identity Cards to the Workers' Facilitation Centre for distribution to the workers concerned.

25. Portability of registration

The Identity Card issued by the District Committee to workers shall remain valid even in the case of migration to another district in the country and the new address can be changed on application to the District Committee concerned.

26. Cessation of registration

- (1) The validity of the Identity Card shall be for a period of three years from the date of registration and can be renewed. If it is not renewed within one year of expiry, the worker will cease to be eligible for the benefits of the scheme. Renewals would be allowed on payment of arrears of contribution, if any.
- (2) In the event of death, the Identify Card shall become invalid after the settlement of claims and the name of the worker shall be removed from the list of registered workers.

Chapter VII DELIVERY OF SOCIAL SECURITY BENEFITS

27. Implementation Machinery

- (1) The member-organisations of the State Boards shall be responsible for the delivery of mandatory social security benefits as decided by the State and National Boards. If adequate member-organisations do not exist, the State Boards shall decide the manner in which social security benefits shall have to be delivered to the registered workers.
- (2) The State Boards may decide on such delivery mechanism as may be feasible under local conditions. This may include existing delivery mechanisms as Welfare Boards or through tie-ups with local organisations like banks, post-offices and insurance companies.

28. Workers' Facilitation Centres:

- (1) In order to extend coverage and reach the unorganised workers in remote areas the State Boards may designate any one or more of the following at the local level as Workers' Facilitation Centres (WFC) for purposes of facilitating registration of workers:
 - a) Existing Worker Welfare Boards and their local offices;
 - b) Local Panchayati Raj Institutions (PRI) or urban local bodies;
 - c) Organisations of workers including trade unions, associations and cooperatives in the unorganised sector;
 - d) Self-Help Groups; and
 - e) Non-profit organisations working among the unorganised sector workers.
- (2) Such designated Workers' Facilitation Centres shall perform the following functions:
 - a) Disseminate information on available social security schemes for the workers;
 - b) Facilitate the filling, processing and forwarding of application forms for registration of workers;
 - c) Obtain registration from the District Committee and deliver the Identity Cards to the registered workers;
 - d) Facilitate the registered workers to enrol in social security schemes;
 - e) Act as an authorized intermediary in collecting contributions from the workers and employers to the social security schemes and remit them with the designated institutions;
 - f) Ensure the delivery of social security benefits in cooperation with institutions designated to de-

liver such social security (insurance companies, Post Offices, Departments of the State/Central Government and other institutions concerned).

- (3) The Workers' Facilitation Centres shall be entitled to charge such fees as may be decided by the State Board for the performance of its functions. Wherever required, it may also receive personnel recruited or deputed by the State Board for purposes of administration.

29. Premium and Compensation/Benefits:

- (1) The National Board shall decide the amount and manner of payment of contribution by the workers to the National Social Security Schemes. It shall however be the responsibility of the State Boards to remit the contributions of registered workers and employers to the National Board.
- (2) For schemes initiated by the State Boards, the State Board concerned shall decide the contributions of workers and employers.
- (3) The claim of registered workers for social security benefits shall lie solely against the State Board and it shall be the responsibility of the State Board to settle the dues, if any.

Chapter VIII DISPUTE RESOLUTION BODIES AND THEIR CONSTITUTION

30. Resolution of Disputes

The State Government shall constitute at least one Dispute Resolution Council in each district for resolution of disputes relating to the non observance of provisions of this Act, arising amongst the unorganised workers, employers, Workers' Facilitation Centres and State Boards.

31. Reference of disputes

- (1) Any unorganised worker or employer or organisation representing such worker or Workers' Facilitation Centres or State Boards may raise a dispute relating to the non-observance of provisions of this Act by filing a complaint before the Dispute Resolution Council in the manner prescribed by the State Government.
- (2) Upon reference of such dispute, the Dispute Resolution Council shall at the first instance proceed to arrive at a conciliated settlement to the satisfaction of all parties. Upon failure of such conciliation proceedings, the Dispute Resolution Council shall adjudicate on the matter as expeditiously as possible.
- (3) Where the dispute pertains to any matter covered by any other existing law, the Dispute Resolution Council shall forward the complaint to the appropriate authority created under the relevant Act for adjudication and such reference shall be treated as a valid complaint under such Act.
- (4) The Dispute Resolution Council shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (of 1908).

32. Consequences of contravention of provisions of this Act

Whoever contravenes any provisions of this Act or the rules made there under, other than those made punishable under any other law, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both, and in case of continuing contravention, with additional fine which may extend upto one hundred rupees for every day during which such contravention continues. The Dispute Resolution Council shall be authorised to give the fine so collected either in whole or in part to the aggrieved party.