

## **The Bill Proposed by National Centre for Labour, 2005**

### **The Unorganised Sector Workers (Regulation of Employment, Conditions of Service, Social Security and Welfare) Bill 2005**

The National Centre for Labour (NCL) , an apex body of independent labour organisations in the unorganised sector workers in the country, has also drafted the bill namely 'the Unorganised Sector Workers (Regulation of Employment, Conditions of Service, Social Security and Welfare)Bill 2005 and submitted to the Ministry of Labour. The National Advisory Council had series of consultations with trade unions, ILO, government functionaries, academic institutions and other experts before finalising the draft Bill.

## **The Bill Proposed by National Centre for Labour, 2005**

### **UNORGANISED SECTOR WORKERS (REGULATION OF EMPLOYMENT, CONDITIONS OF SERVICE, SOCIAL SECURITY AND WELFARE) BILL 2005**

A Bill to provide for regulation of employment, conditions of service, social security and welfare of unorganized workers and for other matters connected therewith or incidental thereto

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### **STATEMENT OF OBJECTS AND REASONS**

Unorganized workers number nearly 37 crores in India, of which substantial numbers are women. This sector contributes 65% of the GDP and covers wide range of occupations such as agriculture, construction, handlooms & powerlooms, dyeing, fisheries, poultry & animal husbandry, tea, coffee, rubber, cashew, plantation, processing, horticulture, sericulture, forests and allied activities, tree climbing, coir, home based work, vendors, handicrafts, services, shops & establishment, transport & allied, leather, tanning products, salt pans, small scale & cottage industries, domestic work, production & distribution of culture, art & media,

loading & unloading, minor mining, oil industry etc. The unorganized sector is neglected and unprotected thus bonded labour, child labour, exploitation of women labour, poverty and deprivation are widely prevalent. Also the process of Globalization, Liberalization and Mechanization has led to invisible retrenchments, under employment, poverty and mal nutrition levels. Hence there is an urgent need for ensuring the measures of regulation of employment, conditions service, social security and welfare for this segment of work force in the country.

Contrary to the organized sector, there is no fixed employment relationship in unorganized sector employments. The peculiar nature of this sector is uncertain employer - employee relationship and existence of hierarchy of relationships. In majority of cases the employment is contractual through the intermediary, including sub contracting, which ultimately resulted in an unregulated system. A sizable section of workers are women, hence gender discrimination must be prevented by ensuring maternity entitlements and child care apart from preventing sexual harassment at workplaces, which is rampant in this sector. Also, there are a large number of self-employed workers depending on the mercy of traders and even authorities, and being further pushed into starvation under the present regime of political economy.

The scanty welfare legal regime pertaining precisely to the unorganized sector workers such as the Minimum Wages Act of 1948 and the Contract Labour (Regulation and Abolition) Act, 1970 have proved to be inadequate in meeting the needs of this vast segment of work force that involved in diversity of employments.

Though social security laws such as the Employees State Insurance Act, 1948, Employees Provident Fund Act, 1952, Payment of Gratuity Act, 1971 etc., have been sought to be extended to the unorganized sector, constraints in their application have been experienced due to lack of continuity of employment, the changing employer - employee relationship and the total lack of records pertaining to details of the employment of these workers made totally inapplicable these laws to them.

Thus the major contributing cause to this state of affairs is the difficulty in the application of these laws to the unorganized sector workers. The beneficiaries of the labour of these workers thus have a collective obligation to meet the human needs of these, the fruits of whose labour benefit the people at large. If the benefits of labour legislation are to reach this large section of workers, it is then necessary that the law should take note of the unique features of the unorganized sector and should provide not merely for welfare of the workers, but also for the regulation of employment itself in the unorganized sector. Such regulation could not be left to be taken care of by the employers or by the administrative hierarchy, but must be entrusted to an autonomous body statutorily set up and consisting of representatives of the workers, government and employers.

### **The proposed Law intends to incorporate the following features for the workers based on above stated nature of employment in unorganized sector.**

- (i) Ensuring the Minimum Labour Standards in order to attain the concept of Decent Conditions of Work as evolved by ILO a reality.
- (ii) Emphasizing the right to livelihood including the right over common properties and natural resources.
- (ii) Recognition of the right of workers in the formulation and implementation of various Schemes thereunder through Tripartite Bodies at various levels by workers decisive voice.
- (iv) Compulsory registration of employers and workers in respect of the specified employments as identified by registered trade unions and the employers;
- (v) Provision of maternity entitlement, housing crèches etc and steps for prevention of sexual harassment of women at work place.

- (vi) Restriction of mechanization that results in labour displacement strategies and promotion of labour intensive methods in the unorganized sector.
- (vii) Special protection of migrant workers and their families.
- (viii) No work, process, avocation shall be carried on by the employer without registering himself with the respective Boards.
- (ix) Elimination of bonded and child labour and ensuring compulsory education of children in the unorganized sector.
- (x) The right to Health and Medical Care, employment injury benefit, maternity benefit, group insurance, housing safety measures, Gratuity and Pension benefits.

## **Preamble**

Social and economic justice are the promise of our Constitution. Justice to the unorganized workers who are long neglected victims of very exploitative conditions is therefore an urgent imperative of our Socialist Republic.

The experience of implementation failure, legal and litigation hurdles of existing labour legislations have made it necessary to make creative changes in the structure, schemes and operation of any labour legislation designed to liberate the workers in this sector from the unjust practices prevalent in the field.

The participation of workers as envisaged by the Constitution under Article 43 A in the working of the legislation and enforcement of remedies there under is essential if credibility and confidence are to be commanded by the law.

Now, therefore; be it enacted the Unorganized Sector Workers (Regulation of employment, conditions of service, social security and welfare) Act, 2005.

## **CHAPTER I Preliminary**

### **1. Short title, Extent, Commencement and Application**

The Act may be called Unorganized Sector Workers (Regulation of employment, Conditions of Service, Social Security and Welfare) Act, 2005.

It extends to the whole of India

Chapter I shall come into force at once. The rest of the Act shall come into force on such date or dates as the appropriate Government may, by notification in the official Gazette, appoint. However it shall not be later than 2 years from the passing of this Act. In cases where such notification is not issued within the said period, it is deemed that the Act shall come into operation immediately after the lapse of such period.

### **2. Declaration as to Expediency of the Legislation**

It is hereby declared that it is expedient in the public interest that the unorganized sector, employing, as it does, a very large number of workers, both women and men and whose conditions of work and living need amelioration and to whom regularity of employment must be assured, must be regulated so that the Directive Principles of the Constitution more particularly the relevant provisions Article 39, 41, 42, 43, and 43-A of the Constitution are given effect to by a law made by Parliament with reference to entries 22, 23 and 24 of List III in the 7<sup>th</sup> Schedule in the Constitution.

### 3. Definitions

In this Act, unless the context otherwise requires;

- (a) **“Adolescent”** means a person who has completed 15 years of age but has not completed 18 years of age.
- (b) **“Appropriate Government”** means:
  - (i) In respect of the establishments falling under List I of the VII Schedule of the Indian Constitution, the appropriate Government shall be the Central Government;
  - (ii) In respect of other establishments the appropriate Government shall be the State Government
- (c) **“Board”** means one of the Unorganised Sector Workers Boards established under section 13 of this Act.
- (d) **“Central Advisory Committee”** means an Advisory Committee constituted by the Central Government under section 11;
- (e) **“Employer”** means an Individual or an Association of persons by whom a worker is employed/engaged either directly or otherwise, whether for any remuneration or otherwise including an out worker.
- (f) **“Establishment”** means any place or premises belonging to, or under the control of Government, any Corporation or Firm, an Individual or Association or other body of individuals where or by whom workers are employed in any work; and includes an establishment belonging to a contractor
- (g) **“Fund”** means social security fund created under this Act.
- (h) **“Home based worker”** means a person involved in the production of goods or services for an employer in his/her place 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.
- (i) **“Schedule Employment”** means any employment specified in Schedule under each grouping or any other employment added to the Schedule by notification by the appropriate Government from time to time under Sec. 12.
- (j) **“Scheme”** means a Scheme as notified by the appropriate Government from time to time under this Act.
- (k) **“Self-Employed Person”** means any worker who is not employed by an employer, but directly engages himself/herself in any employment or avocation for his/her own livelihood under Schedule Employments.
- (l) **“State Advisory Committee”** means an Advisory Committee constituted by State Government under Section 12;
- (m) **“Wages”** means the term ‘wages’ as defined under the Payment of Wages Act, 1936.
- (n) **“Worker”** means any person employed in the Schedule Employments including home based and out worker who is duly registered under this Act but does not include:
  - (i) Agricultural, Plantation, Sericulture, horticulture, poultry farming, animal husbandry workers and other allied workers.
  - (ii) The persons employed in Factories, Mines and Plantations.

### 4. Effect of Laws and Agreements inconsistent with this Act;

- (i) The provisions of this Act shall have effect notwithstanding anything inconsistent therein con-

tained an any other law for the time being in force or in any contract or instrument having effect by virtue of any law other than this Act or any other decree or order or award of any Court, Tribunal or under any Settlement.

- (ii) The appropriate Government may, by notification in the official Gazette and subject to such conditions as may be specified in such notification, exempt any employer in the Schedule Employments from the operation of this Act, if the workers under such employment are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act.

## **5. Application of Various Laws to Unorganized Sector Workers**

Notwithstanding anything contained in the laws, provision of Workmen's Compensation Act 1926, Inter State Migrant Workers Act 1976, Payment of Wages 1936, Maternity Benefit Act 1961, Minimum Wages Act 1948, Equal Remuneration Act 1976, will apply to all Unorganized Sector Workers covered by the Act.

## **6. Interpretations**

- (1) For the purposes of the Act the following terms shall mean as stated under : -
  - (a) 'may' means 'shall' wherever it refers to some obligation to be discharged or power to be exercised.
  - (b) 'he' includes 'she'

## **7. 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 have been effected will be entirely on the employer and the units of the Board wherever applicable.

## **8. Values to be adopted in the application of the Act**

The Unorganised Sector Workers Boards, their units, the Dispute Resolution Council and any other authority which is constituted under this Act and the Scheme framed thereunder shall strive to apply as the situation may require the principles contained in Articles 41, 42, 43, 43-A and 46 of Part IV and clauses (h) and (j) of Article 51-A of part IV A of the Constitution.

## **CHAPTER II**

### **Minimum Labour Standards to be Ensured for the Workers**

#### **9. The appropriate Government shall ensure to every worker employed in the Schedule Employments the following Rights and Entitlements:**

- (i) The right to livelihood including the right over common properties and natural resources in the following manner:
  - (a) Ensuring the traditional rights of all types of Forest Workers, Fish Workers, Potters, Sand Miners, Quarry and other Miners and other groups of workers having traditional access to common property resources for their livelihood.

- (b) Ensuring the right of workers to share the public space to engage in economic activities.
- (c) Ensuring the right to inhabitation in places where the workers are usually residing.
- (ii) Not to be employed in employments such as forced/bonded labour, child labour, manual scavenging and the employment of labour through the intermediary/contractor.
- (iii) Prohibition of discrimination in employment on grounds of religion, race, caste, creed, sex, place of birth or any other reason;
- (iv) Minimum age of employment not to be below 15 years of age;
- (v) The age of superannuation not exceeding 60 years.
- (vi) The right for written contract with regard to terms and conditions of employment;
- (vii) The right to have a uniform social security card;
- (viii) The duty of the appropriate Government to prescribe a model set of standing orders on matters such as hours of work, weekly rest, annual leave with wages, suspension, disciplinary proceedings, discharge, termination and welfare measures within the scope of employment, with a condition that every employer must frame the standing order in conformity with these standing orders. In cases where an employer fails to frame the same the model standing order shall be applicable.
- (ix) The right to minimum wages in accordance with norms evolved at the 15<sup>th</sup> Session of Indian Labour Conference, 1957.
- (x) The right to form the Unions and for collective bargaining through the tripartite mechanism or otherwise.
  - (xi) The right to collective action by the Unions and the Workers.
  - (xii) The employers' duty to provide occupational and other safety measures;
  - (xiii) The right to the entitlement for vocational training and guidance through the State, Employers Organizations or otherwise.
  - (xiv) Ensuring special protection for migrant workers and their families in providing the ration cards, housing and education to their children.
  - (xv) Providing the protection for the women workers against the verbal, sexual and other types of harassment at work place.
  - (xvi) Restricting the mechanization, which involve in labour displacement and other labour displacement method in unorganized sector.
  - (xvii) Ensuring the health and medical care, employment injury benefit, maternity benefit, group insurance, housing, gratuity and pension benefits.
  - (xvi) Providing Credit and creating Marketing facilities for the Employments specified in Schedule in respect of home-based Self employed employments.

### CHAPTER III

#### **10. With a view to ensure the minimum standards, the appropriate Government may in consultation with the appropriate Board constituted under this Act, frame Schemes for ensuring regular employment and welfare measures in respect of workers employed in certain employments specified in the Schedule.**

- (1) Provision shall be made by a Scheme for the registration of workers employed/engaged in Scheduled Employments and employers with a view to ensuring greater regularity of employment and

for regulating the employment, provision of welfare measures including the wage rates.

- (2) In particular, the Scheme shall provide-
- (a) (i) for the application of the Scheme to the registered workers employed/engaged in Scheduled Employments and the employers;
  - (ii) for defining the obligations of the said workers and employers subject to the fulfillment of which the Scheme shall apply to them and the circumstances in which the Scheme shall cease to apply to any worker or employer.
  - (iii) for regulating the recruitment and entry into the Scheme of said workers, and registering the said workers and employers;
  - (iv) for regulating the employment of the said workers;
- (b) the terms and conditions of such employment, including rates of remuneration, hours of work and conditions as to holidays and pay in respect thereof in the following manner:
- (i) No adult worker shall be required or allowed to work in a scheduled employment-
    - a. for more than forty-eight hours in a week.
    - b. On the first day of the week.
    - c. For more than eight-hours in a day including rest intervals
  - (ii) No adolescent person shall be employed or permitted to work in any Scheduled Employments-
    - a. for more than four and a half hours in any day and
    - b. during the night.
    - c. On the first day of the week.
- (iii) No female adolescent worker shall be required or allowed to work in any Scheduled Employments except between 8 a.m. and 6 p.m.
- (iv) Every worker who has worked for a period of 240 days or more in a Scheduled Employment during a calendar year shall be allowed during the subsequent calendar year, a leave with wages for a number of days calculated in the following manner:
- (a) if an adult, one day for every twelve days of work performed by him during the previous calendar year;
  - (b) if an adolescent, one day for every twelve days of work performed by him during the previous calendar year.
- (v) In every Employment adequate and suitable facilities for washing, urinals, laterine and rest rooms shall be provided and maintained for the use of the workers therein.
- (vi) In every Employment suitable arrangements for sitting shall be provided and maintained for all workers obliged to work in a standing position, in order that they may take advantage of any opportunities for rest which may occur in the course of their work.
- (vii) There shall in every Employment be provided and maintained, so as to be readily accessible during all working hours first-aid boxes equipped with the prescribed contents sufficiently for the workers.
- (viii) In every Employment wherein more than thirty women workers are ordinarily employed there shall be provided and maintain suitable rooms for the use of children under the age of six years of such women with minimum standards.

- (ix) Provision for the payment of minimum wages in every Employment as determined under the Minimum Wages Act, 1948.
- (x) Regulation of payment of wages in every employment.
- (xi) In respect of over time work carried out by the workers, Sec. 59 of the Indian Factories Act, 1948 shall be made applicable.
- (xii) Responsibilities of the employer in preventing the occupational and health hazards of the workers in employment.
- (xiii) for securing that, in respect, of periods during which employment or full employment, is not available for the registered workers to whom the scheme applies and who are available for work, such workers will subject to the conditions of the scheme receive a minimum pay from the Board.
- (xiv) For providing the Housing Facilities to the workers.
  - (c) For such incidental and supplementary matters as may be necessary or expedient for the purposes of the scheme.
  - (d) Ensuring the social security and welfare measures in the manner provided in this Act including the Bonus.
  - (e) The Scheme may further provide that a contravention of any provision thereof shall be punishable with imprisonment for such term as may be specified but in no case below 6 months with fine.

**11. With a view to ensure the minimum standards, the appropriate Government may frame different Schemes ensuring the livelihood and to regulate the avocation of the workers engaged in other employments specified in Schedule. In particular the Scheme shall provide for the following:**

- (a) For ensuring the registration of the workers under the respective Boards constituted thereunder.
- (b) Ensuring the collection of contributions from the workers by the respective Boards created thereunder.
- (c) For ensuring regular employment/avocation to such classes of the workers.
- (d) Devising steps to ensure the workers depending on common properties and natural resources, to enjoy their rights freely with out any hindrance.
- (e) Devising steps to ensure the workers traditionally depending on fishing, potting, sand and other mining and quarry workers and other groups of workers having traditional access to common and natural resources for their livelihood.
- (f) Devising steps to ensure the workers the right to share the public space to engage in economic activities.
- (g) Ensuring the social security and various other measures to the workers in the manner provided under this Act.
- (h) Providing a credit and creating marketing facilities.
- (i) Providing the Housing Facilities for the workers.

**12. Variation and revocation of Schemes:-**

1. The appropriate Government may, by notification in the official gazette, may add any employments to the schedules, after consultation in the State Advisory Committee under this Act. In such cases it is deemed that the Schedule is amended accordingly.
2. The appropriate Government may, by notification in the official gazette, amend, alter or vary any scheme made by it for the purpose of more effective implementation of the Scheme having regard to any special condition obtaining in the State and / or for conferring additional benefits to the workers.
3. Such amendments, alterations or variations of the Scheme made may be effected in consultation with the State Advisory Committee and the State Unorganized Sector Workers Boards constituted for the Scheduled Employments.
4. Pending the formulation and final publication of the scheme made by the State Government, the provisions of the model scheme evolved by the Central Advisory Committees shall be applicable in that State.

## **CHAPTER IV**

### **Constitution of Central, State Boards, Framing of Schemes**

#### **13. Unorganized Sector Workers Boards:**

1. The appropriate Government in Central, States and Union Territories shall, by notification in the official Gazette, establish Unorganized Sector Workers Boards for each grouping of scheduled employments at the central and for each State. Apart from the representatives of workers and employers, each Board shall also consist of representatives of the Government, one representative of the Central Government (in respect of State and Union Territories only) and such number of experts as are considered necessary. The number of workers representatives shall be equal to the number representing employers, Government and Experts.
2. In case of Central Boards, the representation of the central Government, and such number of experts and the representatives of workers and employers. However, the number of workers representatives shall be equal to the number representing employers, Government and Experts.
3. Every such Board shall be a body corporate with the name of aforesaid having perpetual succession and common seal with power to acquire, hold and dispose off property and to contract and may by that name sue and be sued.
4. The appropriate Government shall after consulting the Central/State Advisory Committee, by notification in the official Gazette and subject to the condition of prior publication set up tripartite bodies at the district level and below on the same pattern as each of the State Unorganized Sector Workers Board constituted for each grouping of scheduled employments.
4. The representatives of workers on each of the Board shall be elected by registered Workers every three years. Rules shall be framed for conduct of elections, subsequent to the completion of the registration process. Until that time, representatives of the workers shall be the representatives of Trade Unions of the Workers in the corresponding grouping of scheduled employments with such substantial membership as may be prescribed.
5. Proportion of women workers representatives out of workers representatives in each Board shall be proportionate to the number of women workers registered in that Board.
6. The term of the members of the Boards and the District and local area bodies shall be for a period of three years.

7. The meeting of the Boards shall take place every two months and the meeting of the District / Taluk / Local Boards shall take place every month.

#### **14. Functions of the Boards**

- (1) The Unorganized Sector Workers Boards set up in a Central, State or in a Union Territory shall be responsible for administering the schemes and shall exercise such powers and perform such functions as may be conferred on them by the scheme.
- (2) (i) The tripartite bodies set up under Section 14 of the Act shall likewise be responsible for administering the Schemes in their respective areas, under the over all supervision and guidance of the Board.  
(ii) To conduct Taluk / Local wise meeting of registered workers in each Scheduled Employments every year.  
(iii) There shall be grievance day every fortnight in the units of the Boards, Local / Taluk / District and the state level when the registered worker can get the redressal of grievance relating to the functioning of the scheme.
- (3) No decision of a Boards which is adverse to the interests of unorganized workers shall generally be implemented except with the concurrence of the representatives of the workers on the concerned Board.
- (4) The Boards shall recruit necessary staff from the employment exchange. The service rules of such staff of the Boards shall be formulated by the Board in meeting and published in the gazette.
- (5) Notwithstanding anything contained in any other law, the Board may nominate persons or officers who would be competent to act on behalf of any unorganized sector workers to initiate action for making any claim under any law or rules made thereunder or award or settlement made under any such law and appear on behalf of the unorganized sector workers in such proceedings.
- (6) The Board shall submit to the Government as soon as may be, after the first day of April every year, the annual report on the working of the scheme during the preceding year ending on thirty-first March of that year. Every report so received shall be laid as soon as may be after it is received before each House of the State Legislature if it is in session, or in the session immediately following the receipt of the report.
- (7) The Board shall constitute a vigilance committee comprising of the representatives of workers, employers, government and experts to check corruption, monitor the functioning of the board and evolve strategies to eradicate corruption and to promote accountability and transparency.
- (8) Accounts and Audit:
  - (i) The Board shall maintain proper accounts and other relevant records and prepare Annual Statements of Accounts, including the Balance-Sheet in such form as may be prescribed.
  - (ii) The accounts of the Board shall be audited annually by such qualified persons as the appropriate Government may appoint in this behalf.
  - (iii) The auditor shall at all reasonable time have access to the books of accounts and other documents of the Board, and may for the purposes of the audit, call for such explanation and information as he may require or examine any member or officer of the Boards.
  - (iv) The accounts of the Board certified by the auditor, together with the audited report thereon shall be forwarded annually to the Government after it being is approved by the corresponding Board.
  - (v) The Board shall comply with such directions as the appropriate Government may after perusal of the report of the auditor issues from time to time.

(vi) The cost of audit, as determined by the Government, shall be paid out of the funds of the Board.

(9) Recovery of dues to the Board:

(a) On an application made by the Board for the recovery of arrears of any sum payable to it under this Act or any Schemes and on its furnishing a statement of accounts in respect of such arrears, the Collector may, after making such inquiries as he deems fit, grant a certificate for the recovery of the amount stated therein to be due as arrears.

(b) A certificate issued by the Collector shall be final and conclusive as to the arrears due. The arrears stated to be due therein shall then be recovered as arrears of land revenue by the Collector and shall be remitted to the Board.

## 15. Central Advisory Committee

(i) The Central Government may constitute an Advisory Committee to:

(a) Evolve model Schemes for the scheduled groupings of employments under the Act;

(b) Advise upon such matters arising out of the administration of this Act or any Scheme made under this Act or relating to the application of the provisions of this Act to any particular class of unorganized sector workers and employers;

(c) Co-ordinate and monitor the work of various Boards and;

(d) To apportion the Central Government grants to the various Unorganized Sector Workers Boards constituted under the Act in States and Union Territories.

(i) The members of the Advisory Committee shall be appointed by the Central Government and shall be of such number and chosen in such manner as may be prescribed:

Provided that the Advisory Committee shall include equal number of members representing the workers of the Schedule Employments from different parts of the country while the other half would comprise 5 representatives of employers, 2 members of Parliament and 10 State Government and 2 Union Territories and 5 representing Government of India.

## 16. State Advisory Committee

(i) The State Advisory Committee shall be constituted by every State Government or as the case may be, in order to evolve appropriate Schemes for the Schedule Employments on the basis of a survey in the State/Union Territory and the model Schemes evolved by the Central Advisory Committee.

(ii) The Advisory Committee shall monitor the functioning of the schemes and Boards in the State and make suggestions for suitable amendments to the schemes in conformity with the provisions of this Act.

(iii) The members of the Advisory Committee shall be appointed by the State Government so that the number of members representing the workers shall equal the numbers representing employers, Government.

## 17. The Workers Trade Unions

The Act shall encourage to form and register the trade unions of the workers employed/engaged in the Schedule Employments under the Indian Trade Unions Act, 1926. The unions existing and so formed for these workers are entitled to the following privileges:

- (i) The right to participate in the Tripartite Bodies created under this Act and
- (ii) To participate in the formulation and implementation of Schemes through Tripartite Mechanism at various levels through their decisive voice.
- (ii) The right to participate in the regulation of employment in cases of employments specified in Schedule.
- (iii) The right to collective bargaining.
- (iv) The right enter into settlements in the course of Tripartite Consultations.
- (v) The right to involve in the registration of workers.
- (vi) The right to facilitate the social security and other measures for the workers and
- (vii) To create awareness of the schemes and providing training facilities to the workers.
- (viii) Such other functions assigned to it under this Act.

## CHAPTER IV

### CONSTITUTION OF CENTRAL, STATE BOARDS, FRAMING OF SCHEMES

#### 14. Unorganized Sector Workers Boards

1. The appropriate Government in Central, States and Union Territories shall, by notification in the official Gazette, establish Unorganized Sector Workers Boards for each grouping of scheduled employments at the central and for each State. Apart from the representatives of workers and employers, each Board shall also consist of representatives of the Government, one representative of the Central Government (in respect of State and Union Territories only) and such number of experts as are considered necessary. The number of workers representatives shall be equal to the number representing employers, Government and Experts.
2. In case of Central Boards, the representation of the central Government, and such number of experts and the representatives of workers and employers. However, the number of workers representatives shall be equal to the number representing employers, Government and Experts.
3. Every such Board shall be a body corporate with the name of aforesaid having perpetual succession and common seal with power to acquire, hold and dispose off property and to contract and may by that name sue and be sued.
4. The appropriate Government shall after consulting the Central/State Advisory Committee, by notification in the official Gazette and subject to the condition of prior publication set up tripartite bodies at the district level and below on the same pattern as each of the State Unorganized Sector Workers Board constituted for each grouping of scheduled employments.
5. The representatives of workers on each of the Board shall be elected by registered Workers every three years. Rules shall be framed for conduct of elections, subsequent to the completion of the registration process. Until that time, representatives of the workers shall be the representatives of Trade Unions of the Workers in the corresponding grouping of scheduled employments with such substantial membership as may be prescribed.
6. Proportion of women workers representatives out of workers representatives in each Board shall be proportionate to the number of women workers registered in that Board.
7. The term of the members of the Boards and the District and local area bodies shall be for a period of three years.

8. The meeting of the Boards shall take place every two months and the meeting of the District / Taluk / Local Boards shall take place every month.

### **15. Functions of the Boards**

- (1) The Unorganized Sector Workers Boards set up in a Central, State or in a Union Territory shall be responsible for administering the schemes and shall exercise such powers and perform such functions as may be conferred on them by the scheme.
- (2) (i) The tripartite bodies set up under Section 14 of the Act shall likewise be responsible for administering the Schemes in their respective areas, under the over all supervision and guidance of the Board.  
(ii) To conduct Taluk / Local wise meeting of registered workers in each Scheduled Employments every year.  
(iii) There shall be grievance day every fortnight in the units of the Boards, Local / Taluk / District and the state level when the registered worker can get the redressal of grievance relating to the functioning of the scheme.
- (3) No decision of a Boards which is adverse to the interests of unorganized workers shall generally be implemented except with the concurrence of the representatives of the workers on the concerned Board.
- (4) The Boards shall recruit necessary staff from the employment exchange. The service rules of such staff of the Boards shall be formulated by the Board in meeting and published in the gazette.
- (5) Notwithstanding anything contained in any other law, the Board may nominate persons or officers who would be competent to act on behalf of any unorganized sector workers to initiate action for making any claim under any law or rules made thereunder or award or settlement made under any such law and appear on behalf of the unorganized sector workers in such proceedings.
- (6) The Board shall submit to the Government as soon as may be, after the first day of April every year, the annual report on the working of the scheme during the preceding year ending on thirty-first March of that year. Every report so received shall be laid as soon as may be after it is received before each House of the State Legislature if it is in session, or in the session immediately following the receipt of the report.
- (7) The Board shall constitute a vigilance committee comprising of the representatives of workers, employers, government and experts to check corruption, monitor the functioning of the board and evolve strategies to eradicate corruption and to promote accountability and transparency.

### **(8) Accounts and Audit**

- (i) The Board shall maintain proper accounts and other relevant records and prepare Annual Statements of Accounts, including the Balance-Sheet in such form as may be prescribed.
- (ii) The accounts of the Board shall be audited annually by such qualified persons as the appropriate Government may appoint in this behalf.
- (iii) The auditor shall at all reasonable time have access to the books of accounts and other documents of the Board, and may for the purposes of the audit, call for such explanation and information as he may require or examine any member or officer of the Boards.
- (iv) The accounts of the Board certified by the auditor, together with the audited report thereon shall be forwarded annually to the Government after it being is approved by the corresponding Board.
- (v) The Board shall comply with such directions as the appropriate Government may after perusal of the report of the auditor issues from time to time.

- (vi) The cost of audit, as determined by the Government, shall be paid out of the funds of the Board.

### **(9) Recovery of dues to the Board**

- (a) On an application made by the Board for the recovery of arrears of any sum payable to it under this Act or any Schemes and on its furnishing a statement of accounts in respect of such arrears, the Collector may, after making such inquiries as he deems fit, grant a certificate for the recovery of the amount stated therein to be due as arrears.
- (b) A certificate issued by the Collector shall be final and conclusive as to the arrears due. The arrears stated to be due therein shall then be recovered as arrears of land revenue by the Collector and shall be remitted to the Board.

### **16. Central Advisory Committee**

- (i) The Central Government may constitute an Advisory Committee to:
- (a) Evolve model Schemes for the scheduled groupings of employments under the Act;
- (b) Advise upon such matters arising out of the administration of this Act or any Scheme made under this Act or relating to the application of the provisions of this Act to any particular class of unorganized sector workers and employers;
- (c) Co-ordinate and monitor the work of various Boards and;
- (d) To apportion the Central Government grants to the various Unorganized Sector Workers Boards constituted under the Act in States and Union Territories.
- (ii) The members of the Advisory Committee shall be appointed by the Central Government and shall be of such number and chosen in such manner as may be prescribed:

Provided that the Advisory Committee shall include equal number of members representing the workers of the Schedule Employments from different parts of the country while the other half would comprise 5 representatives of employers, 2 members of Parliament and 10 State Government and 2 Union Territories and 5 representing Government of India.

### **17. State Advisory Committee**

- (i) **The State Advisory Committee shall be constituted by every State Government or as the case may be, in order to evolve appropriate Schemes for the Schedule Employments on the basis of a survey in the State/Union Territory and the model Schemes evolved by the Central Advisory Committee.**
- (ii) The Advisory Committee shall monitor the functioning of the schemes and Boards in the State and make suggestions for suitable amendments to the schemes in conformity with the provisions of this Act.
- (iii) The members of the Advisory Committee shall be appointed by the State Government so that the number of members representing the workers shall equal the numbers representing employers, Government.

### **18. The Workers Trade Unions**

The Act shall encourage to form and register the trade unions of the workers employed/engaged in the Schedule Employments under the Indian Trade Unions Act, 1926. The unions existing and so formed for these workers are entitled to the following privileges:

- (i) The right to participate in the Tripartite Bodies created under this Act and
- (ii) To participate in the formulation and implementation of Schemes through Tripartite Mechanism at various levels through their decisive voice.
- (ii) The right to participate in the regulation of employment in cases of employments specified in Schedule.
- (iii) The right to collective bargaining.
- (iv) The right enter into settlements in the course of Tripartite Consultations.
- (v) The right to involve in the registration of workers.
- (vi) The right to facilitate the social security and other measures for the workers and
- (vii) To create awareness of the schemes and providing training facilities to the workers.
- (viii) Such other functions assigned to it under this Act.

## **CHAPTER V**

### **Social Security and other Measures for the Workers**

#### **19. The Workers under this Act shall be entitled to the following social security and other measures from the Social Security Fund under the various Schemes framed thereunder from time to time:**

- (a) Health Measures under ESI Act, 1948 or Equalent thereunder.
  - (b) Invalidity Benefit, which includes both out of and course of employment and outside the scope of employment in the manner provided under ESI Act, 1948.
  - (c) Sickness Benefit for the first 20 days the employer shall provide thereafter if it extends under the ESI or Equalent.
  - (d) Maternity Benefit as per the provisions of Maternity Benefit Act, 1962, but the liability to pay the benefit rests on the Board.
  - (e) Survivor Benefit for a period of 6 months under the Insurance Scheme.
  - (f) Old Age Benefit of flat rate system with a provision of linking it to consumer price index annually.
  - (g) Unemployment Benefit in the manner provided under the Scheme.
  - (h) Other benefits as determined from time to time under the Scheme.
  - (i) Gratuity benefit for the after reaching the age of superannuation.
- (2) The Workers are entitled to all benefits from the date of registration.
- (3) If a worker fails to contribute his contribution within 6 months from the date of falling due of the same, he shall cease to be the worker under this Act.

However, if a worker is willing to pay the arrears within a period of 6 months from the date the contribution falls due, his registration can be restored after collecting the same within the said period.

Provided the appropriate Board on sufficient reason can allow a worker to pay his contribution even after the said period, within a period of 6 months.

## 20. Social Security Fund

- (1) There shall be a Social Security Fund constituted under this Act from the contributions provided in the following manner:
  - (a) Contributions from:
    - (i) Grants by the Central and State Government annually in this regard.
    - (ii) Employers' levy by way of general tax/production tax in respect of employments specified under Schedule.
    - (ii) Bi-Annual Workers contributions of not less than Rs. 10 per month and Registration fee of Rs. 25.
- (2) The cost of administration of the Schemes framed under this Act and the deficit there if to administer the Schemes framed thereunder shall be borne by appropriate Governments.

## 21. Inspectors

- (i) Any registered trade union may have the power to inspect work premises and prosecute the erring employer for violations under this Act.

The Board may appoint such persons as it thinks fit to be Inspectors possessing the prescribed qualifications for the purpose of this Act or of any scheme and may define the limits of their jurisdiction.

- (ii) Subject to any rules made by the appropriate Government in this behalf, an Inspector may -
  - (a) Enter and search at all reasonable hours, with such assistants as he thinks fit, any premises or place, where unorganized sector workers are employed, or work is given out to unorganized sector workers in any scheduled employment, for the purpose of examining any register, record of wages or notice required to be kept or exhibited under any scheme, and require the production thereof, for inspection;
  - (b) Examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is a manual worker employed therein or a unorganized sector workers to whom work is given out therein;
  - (c) Require any person giving any work to unorganized sector workers or to a group of unorganized sector workers to give any information, which is in his power to give, in respect of the names and addresses of the persons to whom the work is given, and in respect of payments made, or to be made, for the said work;
  - (d) Seize or take copies of such registers, records of wages or notices or portions thereof as he may consider relevant, in respect of an offence under this Act or scheme, which he has reason to believe has been committed by an employer; and
  - (e) Exercise such other powers as may be prescribed:

Provided that no one shall be required under the provisions of this section to answer any question or make any statement tending to incriminate himself.

- (iii) Every Inspector appointed under this section shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Central Act XLV of 1860).

## 22. Obstructions

- (i) Whoever obstructs an Inspector or a person appointed under this Act or Scheme (hereinafter referred to as the authorized person) in the discharge of his duties under this Act or refuses or willfully neglects to afford the Inspector or authorized person any reasonable facility for making any inspection, examination, inquiry or investigation authorized by or under this Act in relation to an establishment to which, or a

contractor to whom, this Act applies, shall be punishable with imprisonment for a term which may extend to two years, or with a fine which may extend to two thousand rupees, or with both.

- (ii) Whoever willfully refuses to produce on the demand of any Inspector or authorized person any register or other document kept in pursuance of this Act or prevents or attempts to prevent or does anything which he has reason to believe is likely to prevent any person from appearing before or being examined by any Inspector or authorized person acting in pursuance of his duties under this Act, shall be punishable with imprisonment for a term which may extend to two years, or with a fine which may extend to two thousand rupees or with both.
- (iii) Such obstruction or willful refusal shall at once be reported to the respective unit of the Board within whose jurisdiction such obstruction / willful refusal takes place, as well as to the Board which may also take appropriate action in accordance with the scheme.

## **CHAPTER VII**

### **Dispute Resolution Bodies and Appellate Authority**

#### **23. Resolution of Disputes**

All disputes arising out of the enforcement of the provisions under this Act shall be resolved only by Dispute Resolution Councils and Appellate authority duly constituted under this Act.

#### **24. Constitution of Dispute Resolution Councils and Appellate Authority:**

- (i) The Dispute Resolution Council in every district unit or local area unit shall comprise of three members, representing the Government, the unorganized workers and the employers in each of the Unorganized Workers Board.
- (ii) The term of office of the members of the council shall be three years and the members may be nominated by each Board for such term.
- (iii) The Appellate authority shall likewise be a tripartite body, representative in composition and constituted in the same manner by each Board.

#### **25. Reference of disputes**

- (1) Where the appropriate unit of the Board is of the opinion that dispute exists or is apprehended it may at any time, by order in writing -
  - (i) refer the dispute to the Board for promoting a settlement there of; or
  - (ii) refer any matter appearing to be connected with or relevant to the dispute to a Council for inquiry; or for resolution of the dispute as provided in the Scheme.
- (2) No proceeding pending before a Dispute Resolution Council or the appellate authority in relation to a dispute shall lapse merely by reason of the death of any of the parties to the dispute being a workman, and such council or appellate authority shall complete such proceedings and submit its award to the appropriate unit of the Board.

#### **26. Procedures and powers of Boards, Councils and appellate authorities**

- (1) Subject to any rules that may be made in this behalf by the Board, the Dispute Resolution Council or appellate authority shall follow such procedure as may be deemed fit and conforming to principles of natural justice.

- (2) Every unit of the Board, Dispute Resolution Council or the appellate authority shall have the same powers as are vested in civil court under the Code of Civil Procedure, 1908 (5 of 1908), when adjudicating a dispute in respect of the following matters, namely -
- (a) enforcing the attendance of any person and examining him on oath;
  - (b) compelling the production of documents and material objects;
  - (c) issuing commissions for the examination of witnesses;
  - (d) in respect of such other matters as may be prescribed;

and every enquiry or investigation by a Board or Dispute Resolution Council shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the India Penal Code (45 of 1860).

- (3) Every document in relation to a dispute as above said, will be a public document within the meaning of Section 76 of the India Evidence Act, 1972. Any person interested in the dispute or his authorized representatives shall have a right to obtain copies of such documents.
- (4) The Dispute Resolution Council may enforce the attendance of any person for the purpose of examination of such person or call for and inspect any document which it has ground for considering to be relevant to the implementation of any Award or to carrying out any other duty imposed on it under this Act. For the aforesaid purposes, the Dispute Resolution Council shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) (in respect of enforcing the attendance of any person and examining him or of compelling the production of documents).
- (5) All members of the Council and the presiding officers of a Council or Appellate Authority shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code. Subject to any rules made under this Act, the costs of, and incidental to any proceedings before a Council shall be in the discretion of that Council, which shall have full power to determine by whom, to whom and to what extent and subject to what conditions, if any, such costs are to be paid, and to give all necessary directions for the purposes aforesaid and such costs may on application made to the appropriate Board, by the person entitled, be recovered by the appropriate government in such manner as it deems appropriate.
- (6) Every Council shall be deemed to be civil court for the purposes of (Sections 345, 346 and 348 of the Code of Criminal Procedure, 1973 (2 of 1974).

## **27. Bar of jurisdiction of civil and labour courts:**

No civil or labour court shall entertain the suit or application in respect of any matters arising under this Act or the Scheme.

## **CHAPTER VIII Miscellaneous**

## **28. Contravention of provisions regarding employment of Workers ect.**

- (1) Whoever contravenes any provisions of this Act or of any rules made thereunder regarding the employment of workers, or contravenes any other provision under this Act or this Scheme, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both, and in the case of continuing contravention, with an additional fine which may extend up to one hundred rupees for every day during which such contravention continues.
- (2) Where an employer fails to register himself or his establishment with the respective Board created there under shall be punishable with imprisonment for a term which may extend to one year with fine which may extend to Five thousand rupees.

## **29. Violation of the Standards pertaining to Decent Conditions of Work**

If any person contravenes any norms pertaining to the Decent Conditions of Work as recognized under this Law, he shall be punishable with imprisonment for a term which may extend to one year and with fine which may extend to five thousand rupees.

## **30. Other Offences**

If any person contravenes any of the provisions of this Act or of any rules made thereunder for which no other penalty is elsewhere provided, he shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to thousand rupees, or with both.

## **31. Continuing and Repeation of the Offences**

- (1) Any employer who was convicted for any offence under this Act and continues the same offence, shall be liable for an imprisonment for a term which may extend to one year and with a fine of one thousand rupees.
- (2) Any employer who was convicted of any offence under this Act, repeats the same offence subsequently, shall be liable for an imprisonment of one year with a fine of two thousand rupees.

## **31. Offences by Companies**

- (1) Where an offence under this Act or Scheme has been committed or the provisions thereof have been violated by a company, it shall be presumed that appropriate instruction has not been issued by the Company for wholesome compliance with the Act and Scheme unless it is otherwise proved.
- (2) Where it is not so proved, every person who, at the time the offence was committed, was in charge of and was responsible, to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.
- (3) Where it is so proved the person who is responsible for such violation shall be proceeded against and punished accordingly.
- (4) Notwithstanding anything contained in sub-section (i), if the commission of the offence under this Act is attributable to any omission or negligence on the part of the director, manager, secretary, or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation:

For the purposes of this Section

‘Company’ means any body corporate and includes a partnership firm or other association of individuals; and

‘Director’, in relation to a firm, means a partner in the firm

## **32. Cognizance of offences**

- (1) Every offence punishable under this Act and the scheme shall be cognizable only by a Judicial Magistrate not lower in rank than a First Class Magistrate of the area concerned.
- (2) Whenever any contravention of the provisions of the Act and Scheme takes place, the Inspector of the Board or the Trade Union of Workers or any person aggrieved by such contravention may in writing complain to the Magistrate for taking cognizance of the offence.

- (3) Whenever an Inspector without sufficient reason refuses or fails to make a complaint of such a contravention, the Board, may suo moto or on a report from the person aggrieved, make a report to the Magistrate in writing to take cognizance of the offence. This will be without prejudice to such disciplinary action that the Board may cause to be initiated against the Inspector for his lapse.

### **33. Power to make Rules**

The Central Government shall have the power to make rules for the purposes of carrying out the objects of the Act.

### **34. Power to make Regulations**

Without prejudice to the power of the Central Government to make rules under Section 31, the appropriate Government and its Unorganised sector workers boards together shall have the power make regulations for the purposes of effective functioning of the Scheme.

1. In particular the appropriate Government and its Unorganised sector workers boards shall have the power to make regulation in respect of the following:
  - a. The election of representatives of unorganized workers in the Unorganised sector workers boards.
  - b. Health, safety and medical facilities, social security and maternity benefits, and unorganized workers welfare funds.
  - c. Enforcement of Provisions of the Act and Scheme, including machinery for such enforcement.
  - d. Provisions in regard to welfare crèches, education and such other social welfare benefits for the children of unorganized workers.
  - e. The conditions of service including recruitment, pay, allowance, tenure, discipline and appeal, retirement benefits of various categories of employees of the Board and their welfare.
  - f. The remuneration of honorarium payable to the Presidents and other Office bearers of the Boards.
  - g. Provisions for leisure time activities, recreation, library any literacy measures including legal literacy among unorganized workers.
  - h. Restriction of mechanization and other labour displacing methods in the unorganized sector

### **35. Social Security Fund shall not be liable for Income Tax**

Social Security Fund created and accumulated under this Act shall not be liable for income tax under the Income Tax Act, 1963.