

The Tragic Status Quo of Unorganised Sector in India

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“They always say time changes things,
but you actually have to change them yourself.”¹

INTRODUCTION & IMPORTANCE : Unorganised or Informal Sector

According to the *International Conference of Labour Statisticians*, the terms unorganised and informal sectors are generally used as synonyms. The informal sector may be broadly characterised as consisting of units engaged in the production of goods or services with the primary objective of generating employment and incomes to the persons concerned.² Furthermore, the unorganised sector consists of all unincorporated private enterprises owned by individuals or households engaged in the sale and production of goods and services operated on a proprietary or partnership basis with less than ten total workers.³ From the Indian legal point of view, the term “*unorganised sector*”⁴ means an enterprise owned by individuals or self employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten. Generally the term “unorganised or informal sector” may be defined by indicating the absence of characteristics that belonging to the organised sector. The unorganised sector is termed as residual sector also but, it has its own merits as there is a regular growth rate in employment. The unorganised sector is known by different names such as informal sector, unregulated sector, etc.

It is believed that each and every person plays a vital role in nation building, irrespective of his or her financial as well as social position in the society. The same view highlights the role played by the unorganised sector too, as the official statistics shows that half of our country’s GDP comes from as many as 420 million workers in the unorganised or informal sector including street vendors, rickshaw pullers, construction workers, rag pickers, agricultural workers and alike. It is also pertinent to mention that over 90% of the workforce and about 50% of the national product are

¹ Andy Warhol, The Philosophy of Andy Warhol

² International Conference of Labour Statisticians, Resolution Concerning Statistics of Employment in the Informal Sector, 15 (Geneva: ILO), 1993.

³ National Commission for Enterprises in the Unorganised Sector, Report on Condition of Work and Promotion of Livelihoods in the Unorganised Sector, 2007.

⁴ Section 2 (l) of The Unorganised Workers’ Social Security Act, 2008.

accounted by the informal economy only. A high proportion of socially and economically underprivileged sections of society are concentrated in the informal economic activities.⁵ The major issue for the time being in force with regard to the unorganised sector appears to be, that a vast workforce remains outside the purview of the formal banking and insurance industries. Social security arising out of employment status and provided by employers is largely confined to workforce who are identified as organised workers. It is shocking that below 1% of the unorganised workers in unorganised sector were receiving benefits like provident fund, and this proportion has not changed since the year 2000.⁶ In addition, the concerned class working under the following sector also suffers a lot during their hard times as they do not have any backup with respect to sudden inevitable happenings such as accidents and alike. As far as the importance of the unorganised or informal sector is concerned, then it must be treated as a well established fact that our nation stands nothing without the respectable serious efforts and hard work of the bonafide working class belonging to the concerned sector. Generally, this sector is covering each and every kind of labourers or workers under its ambit. The bonafide efforts of the Government is well appreciated but it must be noted that still the lacunas or loopholes that are faced by the concerned sector are not getting resolved adequately. Moreover, as far as the legal scenario of the unorganised or informal sector is concerned, then there is an *Unorganised Sectors' Social Security Act (2008)* which does not contain any provision for an unorganised worker other than some guidelines about the available social security schemes in the country. As per the Act, nothing is mentioned about what constitutes appropriate and adequate social security for the vast mass of unorganised workers and their dependents, what eligibility criteria, if any, ought to be prescribed, what will be the funding arrangements that must be put in positions to meet the cost of social security, what will be the scale of benefits that the workers and their families are entitled to receive and under what conditions and so on.

In the landmark judgement of *Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers*,⁷ the Hon'ble Apex Court highlight the fact that, "neither the law-makers nor those entrusted with the duty of implementing laws enacted for welfare of unorganised workers have put in place adequate mechanism for the protection of persons employed by or

⁵ Government of India, Report on Employment-Unemployment survey, Vol.I, Ministry of Labour and Employment, (2013-14).

⁶ National Commission for Enterprises in the Unorganised Sector, Report on Condition of Work and Promotion of Livelihoods in the Unorganised Sector, 2007.

⁷ (2011) 8 SCC 568.

through contractors to whom services meant to benefit public at large are outsourced by State and/or its Agencies/Instrumentalities for doing workers, which are inherently hazardous and dangerous to life nor have they made provision for payment or reasonable, compensation in the event of death". Furthermore, the concern of the Hon'ble judiciary shall be taken into the consideration by referring to one more important judicial pronouncement in the case of *N Krishna Devi v. Vishnu Mitra*,⁸ it was held that, "the concern of Judiciary for protection of labour rights and to enforce the socio-economic justice is well expressed in different cases relating to unorganised sector. From the above it is clear that the judiciary exists for the people and not vice versa". In addition, in the landmark case of *Bandhua Mukti Morcha vs Union of India*,⁹ the Hon'ble Supreme Court held that, "both the Central Government and State Governments are, therefore bound to ensure observance of social welfare and labour laws enacted by parliament for the purpose of securing to the workmen a life of basic human dignity in compliance with the Directive Principles of State policy".

ISSUES : With respect to Formal Banking, Insurance Industries and backup plans for sudden inevitable happenings or accidents faced by the Unorganised or Informal Sector.

The major issues that are faced by the workers or labourers of the concerned sector that leads to problems with regard to formal banking, Insurance Industries and backup plans for inevitable happenings, are as follows:

- **Lack of Legal Documentation and Agreements**

Generally, the major issues arises primarily due to lack of proper legal documentation and agreements between the employer and employee(s) of the unorganised sector. Majorly, the workforce is hired or recruited via implied terms by the employer of an unorganised sector undertaking and during the time of formal banking operations, the banking institutions generally do not rely solely on the basis of implied terms of a contract or agreement between the employer and employee of unorganised sector.

It is pertinent to mention that the lack of proper legal documentation and agreements leads to another major issues of job as well as social security. As a matter of fact, generally any authority cannot trust blindly upon an individual that the concerned person was working in a specific

⁸ AIR 1982 Raj 281.

⁹ AIR 1984 SC 802.

unorganised sector undertaking from a definite time period and under a particular role by relying solely on some implied terms. In addition, the social security measures such as old age pensions, gratuity, employees' state insurance and other insurance schemes are non-accessible to workers of the unorganised sector. A large number of statutes and schemes addressed to different categories of workers are found neither feasible nor practicable. This is because labour relations in the unorganised sector are chaotic and there is no formal employer-employee relationship. But, even if it exists, it is of casual nature.

• **Receiving of Salary via Cash Payments**

It is a matter of usage in India that the majority of the population is interested to distribute and receive salaries via cash payments only. It shall be viewed as a well settled principle that the salary of the majority of persons working in the unorganised sector is not that much handsome as compared to the ones working in the organised sector. Therefore, it shall be treated as highly probable that the receiving of the salaries via cash payments is having various demerits as it would be difficult for an individual working in the unorganised sector to think for savings for hard times and less banking operations would lead to low credit score.

Credit Score plays a very important role with regard to clearance or eligibility of a bank loan and if the salaries were received via cash then generally it would lead to less banking operations and the same would lead to less chances to work towards the subject matter of credit score. Most of the times, the persons belonging to the unorganised sector suffers from the cause of low credit scores and that leads to loan denials. After that, they do not have any other choice left with them other than opting for loans from the private financial institutions at a very high rate of interest and that makes their survival more hard.

• **Lower Wages and Poor Working Conditions**

It is prima facie that comparatively the wages of the persons working in the unorganised sector is much lower as compared to the ones working in the organised sector and the similar things goes with respect to the inferiority of working conditions as well. The wages and working conditions are much inferior because the regulatory mechanism of the unorganised or informal sector is inadequate. In *Daily Rated Casual Labour V. Union of India*,¹⁰ it was held that classification of

¹⁰ (1988) 1 SCC 122.

employees into regular employees and casual employees for the purpose of payment of less than minimum pay is violation of *Article 14*¹¹ and *Article 16*¹² of the constitution of India, 1950 and it is also opposed to the spirit of *Article 7*¹³ of the *International Covenant of Economic, social and Cultural Rights, 1966*. Denial of minimum pay amounts to exploitation of labour. The court further held that the Government cannot take advantage of its dominant position and should be a model employer.

Generally, poverty is considered to be the biggest loophole or lacuna in the way of our country's substantial development and at the same time, the authorities are getting failed to deal with the inadequate wages and poor working conditions prevalent in the unorganised or informal sector. Furthermore, all the employees that are working under the unorganised sector are entitled for the minimum wages but many-a-times it has been witnessed that they are failing to receive that as well. In *Peoples' Union for Democratic Rights v. Union of India*,¹⁴ it was held that taking of labour or service of any person for payment less than the prescribed minimum wages is violation of the

¹¹ 14. Equality before law.—The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

¹² 16. Equality of opportunity in matters of public employment.—(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. 26 (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State. (3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment. (4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State. (4A) Nothing in this article shall prevent the State from making any provision for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State. (4B) Nothing in this article shall prevent the State from considering any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year. (5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

¹³ Article 7 The States Parties to the present Covenant recognise the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular: (a) Remuneration which provides all workers, as a minimum, with: (i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work; (ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant; (b) Safe and healthy working conditions; (c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence; (d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

¹⁴ AIR 1982 SC 1473.

fundamental right to such labourer while excising the scope and ambit of Article 23¹⁵ of the Constitution of India. The court further held that begar is a form of forced labour, in whatever form it may manifest itself because it is violative of human dignity and contrary to basic human rights. In *Neeraja Chaudhary V. State of Madhya Pradesh*,¹⁶ the court observed that any failure of action on the part of the State Government in Implementing the provisions of the Minimum wages Act was violative of *Article 21*¹⁷ as also *Article 23*¹⁸ of the Constitution. It shall be taken seriously that majority of the nation is still working under the ambit of unorganised sector and if serious measures with regard to issues pertaining to lower wages and poor working conditions would not be taken at this hour then it might become more difficult to combat with the major evil of poverty.

BONAFIDE REMEDIES : Steps to combat with the core issues of Unorganised Sector with respect to Formal Banking, Insurance Industries and backup plans for sudden inevitable happenings or accidents.

- **Mandatory Legal Documentation and Agreement Procedure**

It is pertinent to propose that the legal documentation and agreement procedure between the employer and employee(s) of an unorganised sector shall be made mandatory. The mandatory and proper documentation work would be creating more legal bindingness and validity in the eyes of law. It is highly probable that at the initial phase of such a bonafide process would be considered as a burden from the point of view of an owner of an unorganised sector undertaking but later on it would be treated as a win-win step for the concerned undertaking only.

Moreover, proper recognition of positions shall be mentioned in the contract or agreements between the subjects of the undertaking. For example, the owner of the enterprise shall be mentioned as service consumer and the employee(s) shall be mentioned as service provider in the contract or

¹⁵ 23. Prohibition of traffic in human beings and forced labour.—(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law. (2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.

¹⁶ AIR 1984 SC 1099.

¹⁷ 21. Protection of life and personal liberty.—No person shall be deprived of his life or personal liberty except according to procedure established by law.

¹⁸ Supra note 14.

agreement. Such small steps would be adding enormous value to the profile of workforce also, in the eyes of law. It is a matter of strong ethical principle that every person irrespective of his position, race, caste, etc. deserves a necessary level of respect and the same thing goes with the position recognitions of workforce too.

Furthermore, proper and legal documentation would serve as a very precious asset as it would be favourable for both the subjects to the agreement. On employer's end, they would be providing legal sanctity to his or her amid powers with respect to dispute resolution procedure, limitation and ambit of the working of workers, etc. and from employee's end it would be providing legal recognition to his job and after that may be the banks would not be denying them the asked loans on the failure to publish proper legal documentation and agreements.

• **Receiving of Salary directly into the Bank Accounts**

It shall be appreciated that the step took by the Central Government in the landmark year of 2014 with the help of their Scheme named as *Pradhan Mantri Jan-Dhan Yojna*,¹⁹ the government emerged as satisfactorily successful, as *34.87 crores*²⁰ individuals have banked so far under the concerned scheme. But it shall be important to note that simply just by getting a bank account opened would not be serving the core purpose alone. Generally, the banking institutions grants loans to individual by reviewing an individual's credit score. As a matter of fact, if the salary would not be reaching the bank account in anyway then how the banking operations and the concept of credit score would stand in the favour of the workforce working in the unorganised or informal sector.

If the government comes up with a bonafide strict mechanism that all the salaries of the workforce would be distributed in the respective bank accounts of the workforce only then their concerned accounts would show comparatively more transactions as well as better banking operations and it would be leading to a better credit score. More the credit score would lead to more chances of securing a loan from the banking institutions.

¹⁹ **PMJDY** is a National Mission on Financial Inclusion encompassing an integrated approach to bring about comprehensive financial inclusion of all the households in the country. The plan envisages universal access to banking facilities with at least one basic banking account for every household, financial literacy, access to credit, insurance and pension facility.

²⁰ Progress-Report, PMJDY 2019

Furthermore, the distribution of salaries directly in the bank accounts of the workforce would be seen as their establishment of legitimate employment. The regular transactions of the workforce salaries in their bank account would also be viewed as the conclusive proof of their employment.

- **Promotion of Mandatory Health Insurance of the Workforce**

The working conditions in the unorganised or informal sector is comparatively worse than the one in organised sector or formal sector. Many-a-times, it has been witnessed that the poor working conditions either affects the health of a person working under such premises either immediately or after several years. The general principle suggests that prevention is always better than cure but in case if it is getting really hard at this moment to execute the concerned principle then at least there shall be a mandatory direction to get the health insurance of the entire workforce necessarily.

Health insurance may not be a major thing for the middle or upper class but it plays a very crucial role for the working class. It shall be a mandatory duty of the Government or the owner of the Unorganised or Informal undertaking to get the concerned work done on urgent basis and the status of the concerned work shall be checked by an authoritative person also. A mandatory health insurance would help the workforce and their respective families during tough times.

Contemporary bonafide measure took by the Central Government for the sake of individuals working under the unorganised or informal sector.

Recently, the Central Government proposed to launch a mega pension scheme²¹ for the unorganised sector workers with monthly income upto Rs. 15,000. Under the above-mentioned bonafide scheme it is stated that, the Scheme shall provide workers an assured monthly pension of Rs. 3,000 from the age of 60 years on a monthly contribution of a small affordable amount during their working age. An unorganised sector worker joining pension yojana at the age of 29 years will have to contribute only Rs. 100 per month till the age of 60 years, while a worker joining the pension yojana at 18 years, will have to contribute Rs. 55 per month. The government will deposit an equal matching share in the pension account of the worker every month. Rs. 500 crore has been allocated for this. Additional funds will be provided as needed. The scheme will also be implemented from the current year itself.

²¹ Pradhan Mantri Shram-Yogi Maandhan.

The intent of the Central Government is clear via its actions but still the actions are considered to be inadequate to deal with the on ground realities of the unorganised sector. For example, there exists a very strong presumption that there are very less number of worker that are receiving a monthly income of Rs.15,000 or above and those who are receiving this or beyond this amount may be receiving in cash without their salary slips or proper documentation. It shall be taken into the consideration that it is the need of the hour to work on the ground realities of the unorganised sector labourers or working class, so that they may secure maximum benefits in coming years.

CONCLUSION

The unorganised or informal sector plays a very significant role in nation building. The concerned sector contributes more than 50% to our total GDP. It is unfortunate to witness that instead of playing such an important role in our country's economy, every time it is the workforce working under the unorganised sector only that suffers the most. Due to absence of stringent laws and strict execution mechanisms, the concerned workforce has suffered a lot from several past decades. The major factors such as lack of legal documentations and agreements between the employer and employee(s), receiving of salary via cash payments, lower wages and poor working conditions leads to the issue with respect to formal banking operations, insurance industries and backup plans for sudden inevitable happenings or accidents faced by the unorganised or informal Sector. The best remedial steps in order to curb out such issues could be making the legal documentations and agreements procedure mandatory, distribution and receiving of salaries directly into the bank accounts of the workforce, promotion of mandatory health insurance of the workers, execution of minimum wages scale system on strict basis in unorganised sector too. Furthermore, the role of the governments and other authorities is also appreciated towards the conditions of the employees working under the unorganised sector but on the other it is pertinent to mention that the efforts of the above-mentioned bodies are not fully successful and adequate. From time to time, the government have came up with its certain bonafide schemes or yojnas but the concerned steps have not been either properly adequate or complete in the nature of actual operations. In addition, the Hon'ble Judiciary has also played a very favourable and important role for the sake of individuals working in the unorganised or informal sector as the same can be viewed in various landmark pronouncements. Its shall be taken as the need of the hour, to call for some sincere and substantial positive actions for the betterment and welfare of the workforce working under the residual sector as due to their bonafide contributions, India is growing at a very fast and desired pace.

