Women Workers in the Unorganised Sector: A Human Right Perspective

The National Commission for Women estimates that 94 percent of the total female workforce is to be found in the unorganised sector\(^1\). The presence of a vast multitude of women as workers and producers in the unorganized sector, where earnings are low, employment seasonal and insecure, supportive services woefully inadequate or even nonexistent, growth opportunities few and collective organization weak, has brought into sharp focus the failure of the mainstream to alleviate their predicament. While it is true that workers, irrespective of sex, are exploited in the unorganized sector, women suffer more by the fact of their gender. Critical questions have been raised concerning the life-styles of labouring women, their state of consciousness and, even more importantly, the impact of attempts at motivating them in self-help\(^2\).

Recent attempts at national and international levels to bring to light the nature of their work and the relations of production that influence it have set a debate in motion.

The changing patterns of economic development in the liberalization era have put a heavy burden on women, which is reflected in their health status. The small farmers, landlessness, forced migration both temporary and permanent, have undoubtedly affected women’s health, nutritional and emotional status. The growth of small and cottage industries has depend heavily on female labor. These industries do not come under the purview of any kind of safety legislation. Women work in industries like tanning, tobacco, cashew, coir, textiles, garment, fish processing and canning, construction and domestic work, etc. In all these industries, they toil long hours at low paid, skilled or unskilled workers. As a result they face serious health problems related to work place, hazards of pollutants on women who work during

adolescence, and pregnancy have serious consequences on women. There is very little information about the safety-levels of these harmful substances and more often the damage done includes T.B., allergies, abortions, bronchial disorders, death of unborn child, anemia, toxicity, disfiguration etc. Therefore, women have in the last decade become exposed to new kinds of health hazards.

Human rights are recognized as inalienable rights to be realized by all human beings. Therefore it is necessary to understand how the unorganized workers generally, and women workers in particular, who are regarded as most vulnerable section of India's human resources, realize their human rights. The ILO report on "More and Better Job for Women – An Action Guide" states that more than 45% women all over the world in the age group of 15 to 64 are contributing to the economy in a significant way. In South Asia about 40% of women work outside home compared to the figure 20 years ago. In Asia and Africa most women workers are found in the agricultural sector – where wages are the lowest and 1/3 of the women in the non-agricultural activities are in the formal sector. In this paper an attempt has been made to study the human rights of women workers of the unorganized sector.

The unorganized sector is too vast to remain within the confines of any conceptual definition. Hence, descriptive means are used to identify the unorganized sector. Its main feature can be identified through the sector and process where unorganized labour is used. Despite existence of labour laws, the workers in this sector do not get social security and other benefits for various reasons and there is hardly any trade union or constitutional mechanism to fight for them.

The Indian Constitution, the ILO Conventions that we have ratified and the existing laws together guarantee some rights to the workers. The Universal Declaration of Human Rights, proclaimed by the General Assembly of the United Nations on 10 December, 1948, is an assertion of the universal right to freedom and life with dignity. The declaration proclaims that all human

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beings are born free and equal in dignity and are entitled to all rights and freedoms set forth therein without any discrimination as to sex. Article 7 of the International Covenant of Economic and Cultural Rights, 1966 provides interalia that there shall be 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. To implement the provisions of Article 39 of the Constitution of India and also to provide social justice, the National Committee on the Status of Women published its report entitled, “Towards Equality” in 1975. To remove the anomalies of wage rates between men and women as pointed out in the said report the Equal Remuneration Act 1976 was passed. Article 23(1) of the Universal Declaration of Human Rights states that ‘everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment’. This Declaration has become a standard setter for peoples, communities and nations.

The preamble of Charter of United Nations 1945, expressly declare its determination “to reaffirm faith in fundamental rights, in the dignity and worth of the human person, in equal right of man and women”. One of the objectives of the U.N. Charter is to achieve international co-operation in promoting and encouraging respect for human rights and the fundamental freedom for all without distinction as to race, sex, language or religion. Article 55 envisages U.N. to promote “higher standard of living, employment and development”. The Universal Declaration of Human Rights, adopted by the United Nations has set in motion the universal thinking that human rights are supreme and ought to be preserved at all costs. This was followed by a series of Conventions. On 18th of December, 1979, the United Nations adopted the “Convention on the Elimination of All Forms of Discrimination Against Women”. Article 11 of the Convention provides as under:

1. States parties shall take all appropriate measures to eliminate discrimination against women in the field of employment on a basis of equality of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular;

4. Supra n.1. at p.29.
(a) The right to work as an inalienable right of all human beings;

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and re-training, including apprenticeships, advanced vocational training and recurrent training;

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value; as well as equality of treatment in the evaluation of the quality of work;

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave; and

(f) The right to protection of health and to satisfy in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measure such as:

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities; and
(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary."

Fundamental Rights under the Constitution of India include the right to equality\(^5\), the protection against discrimination\(^6\), the right to freedom of speech and expression\(^7\), protection against traffic in human beings and protection from forced labour\(^8\). These are constitutionally binding. Besides, we have a very large number of Directive Principles of State Policy in Part-IV of the Constitution. These principles are not enforceable by courts but are nevertheless fundamental in the governance of the country, and it is the duty of the state to apply these principles in law making\(^9\). Directive Principles of State Policy also spell out the concept of social security. Article 38 of the Constitution, requires the state to strive to promote the welfare of the people by securing justice—social, economic and political, and minimize inequalities in income land status between individuals, groups and regions. Article 39(a), (b) and (c) of the Constitution requires that the citizens have the right to adequate means of livelihood, that the material sources are so distributed as best to serve the common good, that the health and strength of workers and the tender age of children are not abused, and that citizens are not forced by economic necessity to enter avocation unsuited to their age or strength. Article 41 requires that within the limits of its economic capacity and development, the state shall make effective provision for securing the right to work, to education and to public assistance in case of unemployment, old age, sickness and disablement, and in other cases of undeserved want. Article 42 requires that the state

6. Id., Arts. 15 and 16.
8. Id., Art. 23.
9. The relevant Articles are 38, 39, 39A, 41, 42, 43 and 43A.
should make provision for securing just and humane conditions of work and maternity relief. Article 43 requires that the state shall endeavor to secure work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. Article 47 requires that the state should regard the raising of the level of nutrition and the standard of living of its people, and improvement of public health, as among its primary duties.

The Protection of Human Rights Act, 1993 defines human rights as the right relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution. This Act also justifies the need for legislation in favor of workers who are not yet covered by existing legislation.

The ILO Declaration on Fundamental Principles and Rights at Work, adopted by the International Labour Conference in June, 1998, declares *interalia* that all member states whether they have ratified the relevant conventions or not have an obligation to respect, to promote and to realize the principles concerning the fundamental rights which are the subject of those conventions, namely,

(a) freedom of association and the effective recognition of the right to collective bargaining,

(b) the elimination of all forms of forced or compulsory labour,

(c) the effective abolition of child labour, and

(d) the elimination of discrimination in respect of employment and occupation.

The primary goal of the ILO today is to promote opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity. The goal is not just the creation of jobs but the creation of jobs of acceptable quality. Government of India has ratified the Convention 122 on Employment and Social Policy, in 1998. Article 1 of the Convention lays down:
“(1) With a view to stimulating economic growth and development, raising levels of living, meeting manpower requirements, and overcoming unemployment and under employment, each Member shall declare and pursue, as a major goal an active policy designed to promote full, productive and freely chosen employment.

(2) The said policy shall aim at ensuring that -

(a) there is work for all who are available for and seeking work,
(b) such work is as productive as possible, and
(c) there is freedom of choice of the employment and the fullest possible opportunity for each worker to qualify for, and to use skill and the endowments in a job for which he is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin.

(3) The said policy shall take due account of the state and the level of economic development and mutual relationships between employment objectives and other economic and social objectives and shall be pursued by methods that are appropriate to national conditions and practices.”

This Convention was ratified by India at a time when unemployment levels are high. One, therefore, has to presume that the Government is now committed to pursue an active policy designed to promote full, productive and freely chosen employment. From the commitments of the Government of India, it can be deduced that the following rights of workers have been recognized as inalienable and must, therefore, accrue to every worker under any system of labour laws and labour policy. These are:

(a) Right to work of one’s choice, (b) right against discrimination, (c) prohibition of child labour, (d) just and humane conditions of work, (e) right to social security, (f) protection of wages including right to guaranteed wages, (g) right to redress of grievances, (h) right to organize and form trade unions and right to collective bargaining, and (i) right to participation in management.
Keeping all these in view it would appear that perhaps the safest approach, in the context of coverage under labour laws, would be to define the organized sector as consisting of establishments which have a minimum employment limit. Whatever be the employment limit, there are certain provisions like maternity benefit, child care, workmen’s compensation, medical benefits and other elements of social security and safety which must be applicable to all workers, irrespective of the employment size of that establishment, or the nature of its activity.

ILO Conventions are codifications of universally applicable labour standards and have led many countries to accept labour rights as basic rights. The Conventions protect children from labour, women from night shifts, and all workers from forced labour. In 1998, the ILO adopted the ‘Declaration on the Fundamental Principles and Right at Work’.

These fundamental principles lay down: (1) right to organize and collective bargaining, (2) elimination of discrimination, and (3) prohibition of forced labour. The follow-up mechanism envisaged in the Declaration makes it binding on member states, irrespective of the fact whether the concerned state has ratified the Conventions or not and to submit annual reports to the ILO on the observance of the respective Conventions.

Labour laws do not offer protection and welfare to workers in the unorganized sector. Whatever exist is inadequate. Our Constitution and the international agreements we have entered into give us the mandate to secure their protection. The unorganized sector which includes the agricultural sector account for more than 92 per cent of the total workforce, i.e., around one-third of India’s population.

Much of the work that women perform as part of family labour or as self-employed and home based producers is either not recognized as work

10. Convention No.87 and 98.
11. Convention No.100 and 111.
or is dubbed a subsistence and, therefore, a subsidiary activity. The all round neglect of women’s labour finds reflection in various poverty alleviation programmes and social legislation. The majority of labour laws are unmindful such as the Plantations Labour Act of 1951 and the Mines Act of 1952, which incorporate special provisions relating to hours of work for women. The Equal Remuneration Act of 1976 and the Maternity Benefit Act of 1961 are among the few laws enacted specifically to protect the interest of women.

It is pertinent to comment in this context on the Bidi and Cigar Workers Act, 1966, the only piece of legislation which is applicable to home-based workers. This legislation enjoins upon the principal employer to pay minimum wages, register women workers in his books and issue them an identity card and a logbook. The Bidi Workers’ Welfare Cess Act, 1976, and the Bidi Workers’ Welfare Fund Act, 1976 further aim at promoting the welfare of the workforce. Despite this, employers have quickly learnt to circumvent the law by adopting a contract system. Between the principal employer and the workers is a long chain of contractors, adept at manipulation.

The Mines Act, the Factories Act, 1948 and the Plantation Labour Act make it obligatory for employers to open crèches if the number of women in their employment exceeds a certain number.

An important aspect of encouragement of women’s employment is their treatment and welfare in the labour market while they are employed. Here the government in consonance with its legislative approach has adopted the methodology of regulation as well as adoption of the International Labour Organization’s Conventions for giving women legal safeguards at the place of work.

The Employees State Insurance Act, 1948 provides equal benefits for sickness and medical disability to male and female workers as well as maternity benefits to women. The Factories Act, 1948, the Mines Act, 1952, and the Plantation Labour Act, 1951 prohibit the employment of women, between 7.00 p.m. and 6.00 a.m. in factories, mines and plantations. These enactments also authorize the government to fix the maximum load to be carried by women workers. The employers are also made responsible for giving women labour crèche facilities for their children.
Besides ensuring women's welfare at the workplace, an equal treatment in earning income from the same type of work was ensured through the passing of the Equal Remuneration Act, 1976. The state and central machineries of labour departments undertake inspections in this regard.

The Contract Labour Act, 1978 was passed to regulate the working conditions of contract labour, which includes a very large number of women workers. The law has provisions for payment of wages, provision of welfare facilities and looking after their role as mothers, by insisting employers to provide crèches for the children.

Women engaged in construction work, are mostly exploited. They are employed on casual basis. Unstable employment/earnings and shifting of work places are the basic characteristics of construction workers. In most cases safety norms are violated. They are often not given maternity benefits, though obligatory.

Though 51 per cent of the working women are engaged in farm labour, their contribution is not recognized. Women involved in seasonal agriculture, should be helped to diversify into horticulture, fruit processing, vegetable growing, animal husbandry and dairying. As per available estimates there are about 50 lakhs scrap collectors in the country. Illiterate, unskilled persons and poorest of poor persons are pushed into this occupation. A study shows that about 92 per cent of scrap collectors are women in the age group of 19 – 50 with the minimum age of entry between 9-10 years. The total working population in fisheries (marine and inland) is estimated around 6 million. Women dominate the handling and processing activity accounting for about 70 per cent of the work-force. According to one estimate, women constitute 50 percent of the total work force in brass-ware industry. Home based workers fall within a gray area between the employed and unorganised workers. Home based workers are those who are otherwise unemployed, intending to but not absorbed by the organized sector, with skills limited to certain job which have

economic value. Article 4 of the ILO Convention No.177 of 1996 on home-based workers calls for promotion of equality of treatment for home workers including right to organize, to protection against discriminations, to occupational safety and health, remuneration and social security, access to training etc. There is no reliable estimate of number of persons engaged as domestic works. Though somewhat visible in urban areas, they are also engaged in house holds all over the country even in most distant and intractable areas. As estimate made by College of Social Work in Mumbai claims that 80 percent of domestic workers are women. The work does not require any special skill. The persons employed, as domestic workers are extremely poor, illiterate and come mostly from rural areas. There is no system of social security on which the domestic workers can fall back. They work for long hours and do variety or workers, but do not get minimum humane treatment and acceptable level of social security.\footnote{Id., p. 106.}

They also run the risk of sexual harassment and exploitation in many houses. The Apex Court ruling in *Asiad case*\footnote{Peoples' Union for Democratic Rights v. Union of India, A.I.R. 1982 S.C. 1472.} had added an important dimension to the definition of forced labour when the court ruled that the force arising out of the economic compulsions to make one volunteer to work below minimum wages, is a forced labour.

The Court held that where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words “forced labour” under Article23. Such a person would be entitled to come to the court for enforcement of his fundamental right under Article 23 by asking the court to direct payment of the minimum wage to him so that the labour or service provided by him ceases to be “forced labour” and the breach of Article 23 is remedied.

What Article 23 prohibits is “forced labour” that is labour or service which a person is forced to provide and ‘force’ which would make such
labour or service “forced labour” may arise in several ways. It may be physical force which may compel a person to provide the force exerted through a legal provision such as a provision for imprisonment or fine in case the employee fails to provide labour or service or it may even be compulsion arising from hunger and poverty, want and destitution. Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as “force” and if labour or service is compelled as a result of such “force”, it would be “forced labour”. There is no reason why the word “forced” should be read in a narrow and restricted manner so as to be confined only to physical or legal “force”. The word “force” must therefore be construed to include not only physical or legal force but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage.

In absolute terms, this sector contributes more to the economy and employment in India. National Accounts Statistics Report of 1995 confirms that nearly the unorganized sector contributes 65 per cent of the national income. These workers, particularly women, have not been able to organize themselves and are further discriminated against. The existing labour laws do not define most of them as workers because a principal employer is not easy to identify in these kinds of work. If properly conceived and effectively implemented, a law for unorganized sector workers will make a definite contribution to the eradication of poverty. The unorganized sector cannot be wished away. The national ‘divide’ between the organized sector (formal) and the unorganized sector (informal) of the country’s economy, and the workers/labour engaged in them, is unreal because these sectors are interdependent. Legislation cannot be effective unless it integrates their needs for protection and welfare with those of the rest of our society and economy.

Workers in this sector are entitled to protection and welfare not only because they are citizens, but also because they are the main contributors to the wealth of the nation. Today, even without these entitlements they contribute their labour, skill and entrepreneurship to the economy. When provided with
entitlements, their productivity as well as their purchasing power will grow. They will add to the country’s gross national product, strengthen the economy and help fight economic crisis. If their economic contribution is not recognized and enhanced, they will continue to be poor beneficiaries, living constantly on welfare schemes and subsidies.

Workers in the unorganized sector are not recognized as workers. The first measure should be the recognition of these workers by including them in official list. To achieve recognition as a worker each person who is actually working should be given an official identity card. The identity card gives the worker a definite legal identity and recognition.

This also means that the right to work would have to be viewed as necessary concomitant of the right to social security. Social security must contain at least healthcare (including maternity, injury), childcare, shelter and old age support that strengthens productivity.

The Commission on Self-Employment for Women (Shram Shakti) enlarged its scope to include women workers in the unorganized sector and looked into the status of self-employed women with special reference to their employment, health, education and social status, and constraints that affect productivity, the impact of various labour laws, especially those on maternity benefits and health insurance, on self-employed women, gaps in training, credit, upgradation of skills and marketing, employment patterns including production relations and their impact on wages, and the effect of micro level policies on the health, and productive and reproductive role of self/employed women.

The Second National Commission on Labour has noted the flagrant violation of statutory provisions regarding payment of wages, safety regulations, provisions of housing and medical facilities, accident compensation, etc. In the context of non observance of these laws, the Commission recommended simplification of judicial procedures, particularly to enable unorganized workers to obtain legal redress.

The main international convention covering maternity benefits is the ILO’s Maternity Entitlement Convention, 2000. It is universally acknowledged that
there are inadequacies in both the ESI and Maternity Benefits Acts at the national level. These Acts only cover workers in the organized sector. There is a need to extend maternity benefit measures to women workers in the unorganized sector. Just social order can be achieved only when inequalities are obliterated and everyone is provided what is legally due. When almost half of the segment of our society have to work to earn their livelihood whatever be the nature of their duties, their vocation and the place where they work, they must be provided all the facilities to which they are entitled. To become a mother is the most natural phenomena in the life of a woman. Whatever is needed to facilities the birth of child to a woman who is in service, the employer has to be considerate and sympathetic towards her and must realize the physical difficulties which a working woman would face in performing her duties at the work place while carrying a baby in the womb or while rearing up the child after birth. The Maternity Benefit Act, 1961 aims to provide all these facilities to a working woman in a dignified manner so that she may overcome the state of motherhood honorably, peaceably, undeterred by the fear of being victimized for forced absence during the pre or post-natal period.

The provisions of the Act which have been set out above would indicate that they are wholly in consensus with the Directive Principles of State Policy, as set out in Articles 39 and 42. A women employee, at the time of advanced stage of pregnancy cannot be compelled to undertake hard labour as it would be detrimental to her health and also to the health of the foetus. It is for this reason that it is provided in the Act that she would be entitled to maternity leave for certain periods prior to and after delivery. We have scanned the different provisions of the Act, but we do not find any thing in the Act which entitles only regular women employees to the benefit of maternity leave and not to those who are engaged on casual basis or on muster roll on daily wage basis.

Since Article 42 specifically speaks of “just and humane conditions of work” and “maternity relief”, the validity of an executive or administrative action in denying maternity benefit has to be examined on the anvil of Article 42 which, though not enforceable at law, is nevertheless available for determining the legal efficacy of the action complained of. In Municipal
Corporation of Delhi v. Female Workers (Muster Roll) and another, the Supreme Court has held that though these Acts provide no work protection for women, there is no justification for denying the benefit of this Act to casual workers or workers employed on daily wage basis.

The existing laws do not cover or adequately cover the workers in the unorganized sector generally and women workers in the unorganized sector particularly. As women workers in the unorganized sector include a significant percent of work force the only alternative is to extend the minimum protection and security by amending the existing laws or by providing an umbrella legislation that provides minimum protection, access to social security, and redressal of grievances while retaining the existing sub-sectoral laws and sub-sectoral system. It is, therefore, necessary to ensure that the proposed umbrella legislation for workers in the unorganized sector incorporates the core rights that have been enshrined in the Constitution of India, UN Covenants and ILO Conventions.

The umbrella legislation for unorganized sector would guarantee a minimum of protection and welfare to all workers in the unorganized sector, leaving it open to the government to bring in special law for different employments or sub sectors if experience indicate the need for it. A draft Bill in this respect has been prepared – the Unorganized Sector Workers' Bill under which each worker and five members of his family will get medical cover up to Rs.30,000 a year through a Universal Health Insurance Scheme. It will also give him a life insurance cover for rupees one lakh and an old age pension of Rs.500 per month on attaining the age of 60 years. The scheme will not suffer from paucity of funds because the Central Government has agreed to bear the expenses. While a worker below the age of 35 years will pay Rs.2 per day to become a member, his employer can also volunteer to participate in the scheme by contributing Rs.200 per employee per month for which he will get income tax rebate. For those more than 35 years of age the amount will be slightly higher. In the case of self-employed persons, the

employer's share will also be paid by the government. There is provision in the draft Bill for establishing workers facilitation centers for registering workers. The Employees Provident Fund Organization will provide each registered worker with a unique social security number free of cost. The scheme is financed by the contributions from employees, employers and the government at the rates of Rs.50, Rs.100 and 1.16 per cent of the national floor wage which is Rs.1,800 per month per workers currently. Workers drawing more than Rs.6,500 a month at entry point were not eligible to become members. Also, workers in the 36 – 50 age group are not eligible to become members after initial five years.

The Central Cabinet gave approval on 7th January 2004, to the long pending issue of social security to the unorganized sector. The Government of India announced a pilot project to cover one million workers in the unorganized sector for providing them with insurance, hospitalization benefits and pension. The Government will give it a statutory shape after experiencing the pilot project functions. The scheme covered a medical plan, Rs.30,000 per annum would be given for a family of five in case of any hospitalization. In the event of death or total disability of a worker, Rs.1 lakh would be given as insurance. Apart from this, the spouse would be entitled for a life-long pension of Rs.500. On retirement, a worker would be entitled to Rs.500 as monthly pension.

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