CHAPTER – II

UNORGANIZED WORKERS: MEANING, HISTORICAL BACKGROUND AND CLASSIFICATION

2.1 Introductory

Chapter II of the thesis is devoted to the meaning attached to the unorganized workers from time to time. In this chapter the researcher has also made an attempt to discuss various classifications of unorganized workers as well as the historical background of the unorganized workers. In this way the present chapter contains a comprehensive discussion regarding the meaning, classification, and historical background of unorganized workers. All these aspects have been discussed in the following pages.

2.2 Meaning of the Unorganized Worker

The unorganized sector has been criticized as low productivity areas where earnings are meager. In India more than ninety percent employment and about fifty percent of the National Product are accounted for by this sector\(^1\). In spite of its considerable contribution to Indian economy, the unorganized sector workers are deprived of adequate protection through labour legislations. Workers in this sector don’t get social security and other benefits as their counterparts in the organized sector do. Before the beginning of industrialization all workers were unorganized, and they were living a miserable life. No engels had written on the

conditions of the working class in India. In India before Independence (during colonial period) the State had operated laissez faire policy in the matters of labour. However the then Government appointed the Royal Commission to enquire into and report on the existing conditions of labour in industrial undertakings and plantations in British India, on the health, efficiency, standard of living of the workers and on the relations between employers and employed, and to make recommendations. Unfortunately this Commission covered the labors only who were working in the Factories or Industries. In 1946 a Labour Investigation Committee was constituted for the same purpose, but both, in Commissions and Committee’s reports, the unorganized workers of this country could not find any place. No words could be written for the welfare of the unorganized workers. After Independence in India, the First

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3 The Royal Commission on Labour was constituted in 1929 by the then Government. The Viceroy of India, announced on January 28 at the opening of the Legislative Assembly that the King had approved of the establishment of a Royal Commission under the chairmanship of Mr. J.H. Whitley to enquire into the conditions of labor in India.
5 The Tripartite Labour Conference passed unanimously the following resolution in September 1943; “This tripartite labour conference recommends that with a view to provide adequate materials on which to plan a policy of social security for labour, the Central Government in co-operation with the Government of Provinces of British India, Indian States and Chamber of Princes should immediately set up machinery to investigate questions of wages and earnings, employment and housing and social conditions generally, and that as soon as possible after receipt of required statistics and other data the Central Government should appoint a mixed committee to formulate plans of social security.” In pursuance of this resolution the Labour Investigation Committee was appointed by Government of India in 1946.
National Commission on Labour\textsuperscript{6} has tried to define the term ‘unorganized worker’ or ‘informal worker’ to some extent for the purpose of its report. According to the First National Commission on Labour, the unorganized workers are “the group of workers who cannot be defined by definition but could be described as those who have not been able to organize in pursuit of a common objective because of constraints such as (a) casual nature of employment, (b) ignorance and illiteracy, (c) small size of established with low capital investment per person employed, (d) scattered nature of establishments, and (e) superior strength of employer operating singly or in combination\textsuperscript{7}. However the Commission doesn’t propose to cover every sector of such employment but take up categories where the number of workers is large and where information about them is available in some form. These categories are

\textsuperscript{6} \textit{National Commission on Labour} was appointed by Govt. of India vide resolution no. 36/14/66-I&E dated 24th December, 1966 issued by Ministry of Labour, Employment and Rehabilitation. Terms of reference were (i) to review the changes in condition of labour since independence and to report on existing condition of labour (ii) to review the existing legislative and other provisions intended to protect the interest of labour (iii) to assess their working and to advise how far these provisions serve to implement the Directive Principles of State Policy in the constitution on labour matters and national objectives of establishing a socialist society and achieving planned economic development (iv) to study and report in particular on (a) the levels of worker earning, provision relating to wages, the need for fixation of minimum wages including a national minimum wages, including the provision of incentives to workers (b) the standard of living and health, efficiency, safety, welfare, housing, training and education of workers and the existing arrangement for administration of labour- both at the Center and in the State. (c) the existing arrangement for social security (d) the State relation between employers and workers and role of trade unions and employer’s organization in promoting healthy industrial relations in the interest of Nation. (e) measures for improving condition of rural labour and other category of unorganized labour, and to make recommendation on the above matter.

illustrative rather than exhaustive. These are: (i) contract labour including construction workers, (ii) casual labour, (iii) labour employed in small scale industries, (iv) handloom / power loom workers, (v) beedi and cigar workers, (vi) employees in shops and commercial establishments, (vii) sweeper and scavenger, (viii) workers in tanneries, (ix) tribal labour, and (x) other unprotected labour. There will be a certain measure of overlap between them. For instance, beedi and cigar establishments can fall under the categories (iii), (v) and (vi), contract labour will be found in category (iii) and so will casual labour and so on. These categories will include workers who are protected by some labour legislation and others who are not.\(^8\)

The National Commission on Self-Employed Women\(^9\) in its report characterized the unorganized sector as one in which women do arduous work as wage earners, piece-rated workers, casual labour and paid and unpaid family labour. The economic and social conditions of these women are dismal. The report also observed that ‘the unorganised sector is characterized by a high incidence of casual labour mostly doing intermittent jobs at extremely low wages or doing their own account work at very uneconomical returns. There is a total lack of job security and social security benefits. The areas of exploitation are high, resulting in long working hours,

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9 This Commission was set up in 1987 by the Government of India under the Chairpersonship of Smt. Ela R. Bhatt. The terms of reference is, the women workers in the unorganized sector.
unsatisfactory work conditions, and occupational health hazards.

The National Commission on Rural labour\textsuperscript{10} defined rural labour as ‘a person who is living and working in rural area and engaged in agricultural or non agricultural activities requiring manual labour, getting wage or remuneration partially or wholly, in cash or in kind or both during the year, or such own account workers who are not usually hiring labourers but are a part of the petty production system in rural areas’. The Commission pointed out that (a) the number of rural labour both in agricultural and non-agricultural operations was increasing at a faster rate than the rate of growth of the rural population, and (b) a number of factors like the uneven and declining labour absorption in agriculture, declining land base, and scarcity of non-farm employment opportunities had led to large scale migration and casualisation of rural labour.

An Expert Group of the Central Statistical Organization, formed in 1997 on the informal sector popularly known as Delhi Group suggested the definition of the informal sector. According to this Group, the informal sector includes all workers in informal enterprises, some workers in formal enterprises, self-employed workers, and those doing contract work for informal or formal sector enterprises and contractors. However The National Council for Applied Economic Research-Self-Employed Women’s Association workshop\textsuperscript{11} raised doubts on the enterprise-based definition of the informal sector. It is

\textsuperscript{10}This Commission was set up in 1987 by the Government of India.

\textsuperscript{11}The National Council for Applied Economic Research (NCAER) and Self-Employed Women’s Association (SEWA) conducted a joint workshop on the subject of defining the informal sector in March-April 1997.
pointed out that such a definition would leave out workers who were working on contract basis. According to this workshop the definition should be based on activities and ranks of the self-employed producing non-tradable services and items for the local markets. It is further said that the National Accounting must cover the informal sector which included home-based workers, artisan groups and contract workers, besides workers in the unorganised sector of services, manufacturing and agriculture.

The Second National Commission on Labour constituted by Government of India does not provide any concise definition of unorganized worker. Its emphasis is only to define the unorganized sector or informal sector. To understand the definition of unorganized worker this Commission suggests only the identifiable characteristics of unorganized worker. It defines the unorganized worker in these words “unlike the organized sector, in this sector the workers do not acquire a high profile, tasted benefits that can be gained from organization, or derive the advantages flowing from high visibility. In the unorganized sector, this Commission has to deal with workers who are engaged in a variety of occupations or employments, ranging from those like forest workers, tribals trying to follow traditional vocations within their traditional habitats, and fishermen who venture out to sea in vulnerable canoes, to those who are working in

12 The Government of India in 2002 announced the appointment of this Commission. The Terms of References were as: (i) to suggest rationalization of existing laws relating to labour in the organized sector; and (ii) to suggest an umbrella legislation for ensuring a minimum level of protection to the workers in the unorganized sector.
their homes with software, or assembling parts for a highly sophisticated product. Many of them are victims of invisibility. The laws or welfare systems that the Commission propose for them cannot be effective unless they themselves are conscious of the laws, and acquire the strength to ensure that laws are brought into force; unless there are effective means to implement, monitor and provide quick redress; unless breaches of the law are punished with deterrent penalties, and unless the organs of public opinion and movements and organisations mount vigil, and intercede to ensure that the provisions of the laws and welfare systems are acted upon"\textsuperscript{13}. The Commission itself admits the difficulty in defining the unorganized workers and says that the first difficulty that came before the commission was in identifying or defining the unorganized sector. Saying that the unorganized sector covers the area that falls outside the purview of the organized sector, is not saying much. The Commission looked for a single or primary criterion or characteristic by which the sector could be defined. According to this Commission the unorganized sector is very diverse. Many efforts have been made by the Commission to identify the characteristics of employments or undertakings in the sector. But none of the characteristics can be termed as crucial in defining the sector. However, it will be useful to list some of these characteristics: (a) low scale of organization (b) operation of labour relations on a casual basis, or on the basis of kinship or personal relations (c) small own account (household) or family-owned enterprises or micro

\textsuperscript{13} Government of India, Report: \textit{The National Commission on labour} Ch.7.2 (Ministry of Labour & Employment, 2002).
enterprises (d) ownership of fixed and other assets by self (e) risking of finance capital by self (f) involvement of family laborers (g) production expenditure indistinguishable from house-hold expenditures and use of capital goods (h) easy entry and exit (i) free mobility within the sector (j) use of indigenous resources and technology (k) unregulated or unprotected nature of employment (l) absence of fixed working hours (m) lack of security of employment and other social security benefits (n) less use of labour intensive technology (o) lack of support from Government (p) workers living in slums and squatter areas (q) lack of housing and access to urban services (r) high percentage of migrant labour.

The Commission found that it could not be defined or described on the basis of the nature of the work that workers or employees in the sector are engaged in, because, as the sector has tribal forest workers as well as home-based, info-tech and software workers. It cannot be based on the number of employees in undertakings because it covers agricultural workers, craftsmen, home-based workers, self-employed workers, workers in weavers’ cooperatives as well as workers in small scale industries, where the workforce can be counted on one’s fingers. It cannot be based on the level of organization because some of the enterprises may have very few workers, and even these may be working in a dispersed manner with hardly any organizational link or interaction with each other, sometimes because of the nature of the work, and sometimes because of the geographical or location dispersal of the workers pursuing the same vocation. How then the Commission can define the sector. It would seem that the
vocations, employments and conditions of work are so varied and disparate that it is impossible to provide protection and welfare to all workers in all these sub-sectors, with one uniform law or one uniform system for welfare and social security\textsuperscript{14}. On the matter of the definition of unorganised workers the Second National Commission on Labour, has adopted the same approach\textsuperscript{15} as the First National Commission on Labour had. It has also highlighted in its report that there are areas in the unorganised sector where it is difficult to identify an ‘employer’ and hence, an employer-employee relationship, which the law can attempt to channelise or influence by defining rights and responsibilities, and building up a system of social security on a contributory basis. The employer of the construction worker or the brick kiln worker can perhaps be identified as a direct employer or a contractor. An employer can perhaps be identified even in the case of a worker who collects minor forest produce, as one, who works for a contractor or in the forest department. But no employer can be identified for a fisherman who casts his net into a pond or stream, or for a woman who spins or weaves, or tends livestock at home, to sell surplus milk to a co-operative or to a consumer who is her neighbor. This difficulty in identifying an employer-employee relationship has its corollaries, which the Commission has to take into account when it comes to the

\textsuperscript{14} Government of India, Report: The National Commission on labour Ch.7.5 (Ministry of Labour & Employment, 2002).
\textsuperscript{15} Government of India, Report: The National Commission on labour Ch.7.11 (Ministry of Labour & Employment, 2002).
formulation of proposals for legislation and social security. The Second National Commission on Labour which was constituted by the Union Government, suggested and recommended the rationalization of existing laws relating to labour in the unorganized sector, and umbrella legislation for ensuring minimum level of protection to the workers in the unorganized sector. However it is very unfortunate that this Commission likes other Commissions and Committees neither defined the term ‘unorganized worker’ nor defined the ‘social security’. It only suggested and recommended for floor protection to this vulnerable and deprived class of workers.

The National Commission for Enterprises in Unorganized Sector in its report defines the unorganized workers in these words; “unorganized workers consist of those working in

20 The Common Minimum Programme of the then Government, inter alia, has recognized as one of its basic principles of governance as the need to “enhance the welfare and well-being of farmers, farm labour and workers, particularly those in the unorganized sector and assure a secure future for their families in every respect.” It further states that “The Government is firmly committed to ensure the welfare and well-being of all workers, particularly those in the unorganized sector who constitute 93% of our workforce. Social security, health insurance and other schemes for such workers like weavers, handloom workers, fishermen and fisherwomen, toddy tappers, leather workers, plantation labour, beedi workers, etc will be expanded.” In order to implement the above commitment, the Government of India, among other measures, constituted the National Commission for Enterprises in the Unorganised Sector (NCEUS) vide Ministry of Small Scale Industries Resolution No. S(2)/2004-ICC dated 20th September, 2004 under the Chairmanship of Professor Arjun Sengupta. This commission submitted its reports to the Government in 2007.
the unorganized enterprises or households, excluding regular workers with social security benefits, and the workers in the formal sector without any employment or social security benefits provided by the employers.”22 The employees with informal jobs generally do not enjoy employment security (no protection against arbitrary dismissal) work security (no protection against accidents and illness at the work place) and social security (maternity and health care benefits, pension, etc.) and therefore any one or more of these characteristics can be used for identifying informal employment.

The Central Statistical Office23 defines the work and workers in the following ways, ‘work is defined as participation in any economically productive activity with or without compensation, wages or profit. Such participation may be physical and/ or mental in nature. Work involves not only actual work but also includes effective supervision and direction of work. It even includes part time help or unpaid work on farm, family enterprise or in any other economic activity. All persons engaged in work as defined above, are workers. Persons who are engaged in cultivation or milk production even solely for domestic consumption are also treated as workers’24.

In the 1981 and 1991 Censuses, the whole population was divided into three categories, viz, ‘main workers’, ‘marginal workers’ and ‘non workers’.

22 Ibid. para 1.13.
24 Government of India, Manual on Labour Statistics (I), Ch.3.3.6 (Ministry of Statistics and Programme Implementation, Central Statistics Office, 2012).
(i) The main worker was defined as a person whose main activity was participation in any economically productive work by involving physical or mental activities and who had worked for 183 days or more. Work involved not only actual work but also effective supervision and direction of work.

(ii) A marginal worker was defined as a person whose main activity was participation in any economically productive work by his physical or mental activity for less than 183 days.

(iii) A non-worker was defined as a person who had not done any work at any time. The reference period for determining a person as worker or non-worker is one year preceding the date of enumeration. Certain types of work such as agricultural activity, household industry, are carried on either throughout the year or only during certain seasons or during part of the year, and depend on local conditions. In such cases, the broad time span of the agricultural season preceding the date of enumeration was taken in categorizing a person as a main worker.

The definitions of main workers, marginal workers and non-workers for the 1991, 2001 and 2011 censuses are the same as were adopted in the 1981 census. In the Census of 1991, to enumerate the workers more completely, particularly those working as unpaid workers on farm or family

\[\text{\textsuperscript{25}} \text{Ibid, Ch.3.3.7.}\]

\[\text{\textsuperscript{26}} \text{Ibid, Ch. 3.2.6.}\]
enterprises, the words “including unpaid work on farm or in family enterprise” were added in the questionnaire itself.27

Main Workers

Those workers who had worked for the major part of the reference period (i.e. 6 months or 180 days) or more are termed ‘main workers’28.

Marginal Workers

Those workers who had not worked for the major part of the reference period (i.e. less than 6 months) are termed ‘marginal workers’29.

Cultivators

A person is classified as cultivator for purposes of census, if he or she is engaged in the cultivation of land owned or held from Government or held from private persons or institutions for payment in money, kind or share. Cultivation includes effective supervision or direction in cultivation. A person who has given out her/his land to another person or persons or institution(s) for cultivation for money, kind or share of crop and who does not even supervise or direct cultivation of land, is not treated as cultivator. Similarly, a person working on another person’s land for wages in cash or kind or a combination of both (agricultural labourer) is not treated as cultivator30.

27 Government of India, Manual on Labour Statistics (I), Ch.3.2.7 (Ministry of Statistics and Programme Implementation, Central Statistics Office, 2012).
28 Ibid, Ch. 3.3.8.
29 Ibid, Ch. 3.3.9.
30 Ibid, Ch. 3.3.10.
Agricultural Labourers

A person who works on another person’s land for wages in money or kind or share is regarded as an agricultural labourer. She or he has no risk in the cultivation, but merely works on another person’s land for wages. An agricultural labourer has no right of lease or contract on the land on which she/he works.\textsuperscript{31}

Household Industry Workers

‘Household industry’ is defined as an industry conducted by one or more members of a household at home or within a village in a rural area and only within the precincts of the house.

Other Workers

All workers, i.e. those who have been engaged in some economic activity during the last one year, who are not cultivators or agricultural labourers or in the household industry, are ‘other workers’. The type of workers that come under this category of include all government servants, municipal employees, teachers, factory workers, plantation workers, those engaged in trade, commerce, business, transport, banking, mining, construction, political or social work, priests, entertainment artists, etc. In effect, all workers other than cultivators or agricultural labourers or household industry workers fall under the category of ‘other workers’.\textsuperscript{32}

\textsuperscript{31} Government of India, \textit{Manual on Labour Statistics (I)\textsuperscript{1}}, Ch.3.3.11 (Ministry of Statistics and Programme Implementation, Central Statistics Office, 2012).

\textsuperscript{32} \textit{Ibid.} Ch.3.3.14.
**Non-Workers**

A person who did not work at all during the reference period is treated as a non-worker. Non-workers broadly constitute as follows:

(i) **Students** - who do not participate in any economic activity paid or unpaid, in household duties attending to daily household chores like cooking, cleaning utensils, looking after children, fetching water etc. and are not helping in the unpaid work on the family farm or in cultivation.

(ii) **Dependants** - such as infants or very elderly people are not included in the category of worker, nor are pensioners i.e., those who are drawing pension after retirement and are not engaged in any economic activity.

(iii) **Beggars, vagrants, prostitutes and persons with an illegal or unidentified source of income and with unspecified sources of subsistence, not engaged in any economically productive work during the reference period.**

(iv) **Others**, including non-workers who may not come under the above categories such as rentiers, persons living on remittances, agricultural or non-agricultural royalty, convicts in jails or inmates of penal, mental or charitable institutions doing no paid or unpaid work and persons who are seeking/available for work\(^\text{33}\).

The Unorganised Workers’ Social Security Act,\textsuperscript{34} (hereinafter to be referred as UWSSA,2008) defines the unorganized sector/informal sector as, 'an enterprise owned by individuals or self employed workers engaged in the production of 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\textsuperscript{35}.

According to the Act\textsuperscript{36} ‘unorganized worker’ means a home based workers, self employed worker or a wage worker in the unorganized sector and includes a worker in the organized sector who is not covered by any of the Acts mentioned in Schedule II to this Act\textsuperscript{37}. The Acts in Schedule II are; The Employee’s Compensation Act, 1923\textsuperscript{38}, Industrial Disputes Act, 1947, The Employees’ State Insurance Act, 1948, The Employees’ Provident Funds and Miscellaneous Provisions Act, 1952, The Maternity Benefit Act, 1961 and, The Payment of Gratuity Act, 1972. One thing that is very clear in this definition is that, if any worker, who is covered by any of these Acts, whether he is working in organized sector or in unorganized sector, will not be considered as unorganized worker. This condition limits the scope of the definition as well as the scope of the Act.

\textsuperscript{34} Act No. 33of 2008. The aim of the Act is ‘to provide social security and welfare of the unorganized workers and for other matters connected there with or incidental thereto.

\textsuperscript{35} Section 2(l), The Unorganised Workers’ Social Security Act, 2008.

\textsuperscript{36} UWSSA, 2008.

\textsuperscript{37} Section 2(m), UWSSA, 2008.

\textsuperscript{38} Earlier this Act was known as the Workmen’s Compensation Act, 1923. In 2010 title of this Act has been amended and now this Act is known as The Employee’s Compensation Act, 1923.
2.3 Unorganised Workers: Historical Background

The unorganized labour has a long history of its existence. Unorganized labour system is a universal concept which has got its origin in socio-economic structure of all ancient civilization. Unorganized labour system is not new for India. In India its origin can be traced in ancient customs, traditional value of historical past. In the Hindu caste structure, out of four main caste or Varna’s (Brahaman, Kshtriya, Vaishya and Sudra) the sudras were always treated as lowest and were subjected to the atrocities by the higher caste. All the mineral jobs were done by them and the slaves also belonged to this category and they were hated and discarded by the higher caste persons. It is obvious that the caste structure is one of the main causes of unorganized labour in India39. In addition to this fact, the industrial revolution in 18th century had changed the demographic feature of urbanization process namely; natural increase of population, rural- urban migration, resulted in a substantial increase in urban labour force. However a large part of rapidly growing urban labour force remained unemployed and underemployed due to the excessive growth rate of urbanization, due to this rapid growth the Capital Intensive Structure failed to generate adequate and equitable employment and income opportunities in the modern formal sector. As a result, the surplus labour which was unable to get

absorbed in the formal sector, has been forced to find its own source of employment and livelihood in a variety of productive activities in society. This process of change constituted a new component of employment and livelihood that is known as informal sector. According to the International definition accepted by United Nation Economic and Social Council, the term ‘informal sector’ denotes (a) all private unincorporated enterprises (informal enterprises) owned by individuals or households engaged in the production and sale of the goods or service and (b) with employment size below a predetermined threshold. Informal workers or employment is defined to include persons whose employment relationship is, in law or practice, not subject to labour legislation, social protection and certain employment benefits. Combining the two the International Labour Organization has coined the term ‘informal economy’.\(^{40}\) The term generally used in India to denote the informal sector is ‘unorganized sector’ and informal workers are referred to as ‘unorganized workers’. The terms unorganized sector and informal sector are often used interchangeable. The informal sector may be broadly categorized as consisting of units engaged in the production of goods or services with the primary objective of generating employment and income to the person concerned\(^ {41}\). These units typically operate at a low level of organization with little or no division between labour and capital as factors of

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productions and on small scale. These units are small in size and not distinguishable from the household managing activity. Labour relations, where they exist, are based mostly on casual employment, kinship or personal and social relations rather than contractual agreements with formal guarantees. The unorganized sector workers are found everywhere, in field, in home, in small workshops, and in forest etc. The Unorganized or informal sector constitutes a pivotal part of Indian economy, more than 90% of work force and about 50% of National Product are accounted for by informal economy. A high proportion of socially and economically underprivileged sections of the society are concentrated in the informal economic activities. The concept of the unorganized sector began to receive worldwide attention in the early 1970s, when the International Labour Organization initiated serious efforts to identify and study the area, through its World Employment Programme Missions in Africa. Since then, the informal sector has been the subject of several studies and seminars covering various aspects like its size, employment potentials, its relationship with the formal sector and technology etc. In 1987 the Director General of the International Labour Organisation submitted a report to the International Labour Conference on the “Dilemma of the Informal Sector.” In it he referred to the

role of this sector in promoting employment, the absence of
adequate laws for providing protection to workers in this
sector, and the scope for application of the international
labour standard in this area.\textsuperscript{45}

\subsection*{2.4 Classification of Unorganized Workers}

In India Labour force is not homogeneous. It is classified
into many segments like wage earners, employed, skilled,
semi-skilled and unskilled etc. Every regulation relating to
social security arrangement and working condition has
different meaning and implication for every segment, but many
segments still have not been defined. The National Commission
for Enterprises in Unorganised Sector\textsuperscript{46} in its report defines
the informal sector as “all unincorporated private enterprises
owned by individuals or households engaged in the production
and sale of goods and services and operated on a proprietary,
or a partnership basis and employing less than 10 persons”.\textsuperscript{47}
The National Commission for Enterprises in Unorganised
Sector in its another report \textsuperscript{48} defines the informal sector with
a slight difference as “the unorganized 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 and

\begin{thebibliography}{99}
\bibitem{46} National Commission for Enterprises in the Unorganized Sector was
constituted by the Government of India, vide resolution No.5 (2)2004/ICC
\bibitem{47} Government of India, Report: \textit{National Commission for Enterprises in the
Unorganized Sector} para 2.3 (Ministry of Labour & Employment 2006).
\bibitem{48} Government of India, Report: \textit{Conditions of Work and Promotion of Livelihoods
in the Unorganized Sector}, (National Commission for Enterprises in the
Unorganized Sector, 2007).
\end{thebibliography}
with less than ten total workers”. But these definitions given by the Commissions are not exclusive. In case of unorganized or informal sector definition lacuna is that, it doesn’t make any distinction between agriculture and non-agriculture workers. However it is unfortunate that the concept of enterprise is generally being used in India, in the context of non-agriculture sector, thus the unorganized sector is an enterprise based concept and it does not reflect the characteristics of the job or employment relationship. It is possible that some workers in the organized sector don’t enjoy any job security, work security and social security, so all casual workers and unpaid family workers in all enterprises irrespective of the sector, should be considered as unorganized workers. The unorganized workers have been classified in the following categories:

2.4.1 Mines and Quarry Workers

According to The Mines Act, 1952 “any person who works in a mine as manager or who works under appointment by the owner, agent or manager of the mine or with knowledge of the manager whether for wages or not, is considered as employed in a mine”. The Act therefore covers persons employed in mining operations including the concomitant operations of handling and transporting minerals, up to the point of dispatch or within the mining area or in operation relating to development of mine or in any operation of servicing,

49 Id.at. para 1.10.
50 Section 2(h), The Mines Act, 1952.
51 Section 2(h) (i), The Mines Act, 1952.
52 Section 2(h) (ii), The Mines Act, 1952.
maintenance or repair of any machinery used in the mine\textsuperscript{53} or in any office of the mine or in any welfare health or conservancy services required to be provided under the Mines Act, or any watch and ward staff with in the premises of the mine excluding residential\textsuperscript{54} or in any kind of work whatsoever which is preparatory or incidental to or connected with mining operations.\textsuperscript{55} For the purpose of classification of workers mines can be divided in three categories: 1. Public Sector Mines, such as Coal India Ltd. Steel Authority of India Limited, Oil India Limited etc. 2. Large- Private Sector Metalliferous and Non-Metalliferous Mines, 3. Small Mines and Quarries.\textsuperscript{56} The workers in the first category of mines are mostly employed by enterprises directly. The second and third categories of mine’s workers are employed through contractor. The workers of first and second category of mines are organized and have a capacity to bargain their demands. The workers in the third category are mostly unorganized and the working conditions of the workers in underground mines are full of hazardous. Unorganized workers in mines do not have the benefits of any welfare measures. The employers avoid the implementation of labour welfare laws and schemes in these mines by circumventing laws in various ways.\textsuperscript{57} Though the Minimum Wages Act, 1948, Equal Remunerations Act, 1976, The Contract Labour (Regulation and Abolition) Act, 1970, The

\begin{itemize}
\item \textsuperscript{53} Section 2(h) (iii), The Mines Act, 1952.
\item \textsuperscript{54} Section 2(h) (vi), The Mines Act, 1952.
\item \textsuperscript{55} Meenakshi Gupta, \textit{Labour Welfare and Social Security in Unorganized Sector}, p 12, (ed.2007).
\end{itemize}
Maternity Benefit Act, 1961, is applicable to the workers yet these laws are not implemented in their true letter and spirit. Working conditions in mines are pathetic. Workers are exposed to serious health hazards, which affect their longevity.  

2.4.2 Plantation Workers

Plantation Labour Act defines the plantation worker. According to the Act, plantation worker means a person employed in a plantation for hire or reward, whether directly or through any agency, to do any work skilled, unskilled, manual or clerical and includes a person employed on contract for more than sixty days in a year, but does not include- (i) a medical officer employed in the plantation (ii) any person employed in the plantation (including any member of the medical staff) whose monthly wages exceed rupees ten thousand, (iii) any person employed in the plantation primarily in a managerial capacity, notwithstanding that his monthly wages do not exceed rupees ten thousand, (iv) any person temporarily employed in the plantation in any work relating to the construction, development or maintenance of

59 The Plantations Labour Act was enacted in 1951 to provide for the welfare of plantation labour and to regulate the conditions of work in plantations. The Act covers the entire country except the State of Jammu & Kashmir.
60 In the opening portion, after the words “manual or clerical”, the words “and includes a person employed on contract for more than sixty days in a year” were inserted by Amendment Act 2010.
61 In sub-clause (i), for the words “rupees seven hundred and fifty”, the words “rupees ten thousand” were substituted by Amendment Act 2010.
62 For the words “managerial capacity, notwithstanding that his monthly wages do not exceed rupees seven hundred and fifty”, the words “managerial or administrative capacity, notwithstanding that his monthly wages do not exceed rupees ten thousand” shall be substituted (Amendment Act 2010).
buildings, roads, bridges, or canals.\textsuperscript{63} It applies to all Tea, Coffee, Rubber, Cinchona, Cocoa, Oil Palm and Cardamom plantations, which measures five hectares or more and in which fifteen or more persons is employed or were employed on any day of the preceding twelve months. The Act also covers workers employed in offices, hospitals, dispensaries, schools / balwadis and creches, etc. in the plantations, but it does not apply to those factory premises to which the provisions of the Factories Act, 1948 apply. The State Governments are, however, empowered to extend all or any of the provisions of the Act to any plantation notwithstanding that it is measured less than five hectares or the number of persons employed therein is less than fifteen provided that no such declaration shall be made in respect of such land which measured less than five hectares or in which less than 15 persons were employed, immediately before the commencement of the Act. Every plantation has a certain number of employees in its regular workforce. Casual workers are employed for harvesting activity for a certain number of months depending upon the nature of the crop/plantation and the time of harvest. These are mostly brought through middlemen. In the Southern plantations these middlemen are known as Kanganis. A similar system of engaging casual workers through middlemen exists in Assam. \textsuperscript{64} The plantation operations have to be carried out in open fields. The workers are, therefore, exposed to all the vagaries of climate and weather, such as scorching sun, heavy

\begin{itemize}
\item Section 2(k), The Plantation Labour Act 1951.
\end{itemize}
rain, and chilly winter, while at work. The Act stipulates that plantations employing 300 or more workers should provide the prescribed number of umbrellas, blankets, raincoats etc. for the protection of workers. These amenities have to be provided even in smaller plantations where 50 or fewer workers are employed. To protect workers from insect bites, snakebites, etc., it should be made mandatory for all employers to provide gumboots. It is also necessary to lay down safety norms in respect of the work of handling fertilizers and spraying pesticides.\textsuperscript{65} Labour Investigation Committee, 1946 also revealed the miserable conditions of the workers in plantation in its report. According to the report sanitary arrangements were very poor for labour, no latrine or urinal were provided in the field, for the use of workers during the working hours. No arrangements were made for the supply of drinking water to the workers in the field.\textsuperscript{66} The agony of the plantation workers was remedied in 1951 when the Plantation Labour Act, was passed by Indian Parliament. For the first time an attempt was made to provide certain minimum standards in respect of health and welfare of plantation labour through the legislation. The Act provides for certain statutory service conditions including housing, hours of work, weekly holiday, leave including annual leave, maternity leave. Despite these safeguards, wages payable to workmen were largely left to the collective bargaining, failing which the notified minimum wages is to be paid to these workmen. Judicial intervention

\textsuperscript{65} Id.at. para 7.61
also protected the interest of workers. In the matter of a plantation worker claiming maternity benefits it was held by the Supreme Court that payment for 12 weeks did not mean 72 days (i.e. paid working days) but it should be paid for a total of 84 days.\textsuperscript{67} National Commission on labour (2002) recommended that State Governments and the employers should ensure that workers are paid proper wages as decided by settlement or notified under The Minimum Wages Act.\textsuperscript{68}

\textbf{2.4.3 Home Based Workers/ Home Workers}

Home-based worker refers to the general category of workers within the informal or unorganized sector, those carry out remunerative work within his/her homes or in the surrounding grounds. However, the term ‘home-based work’ encompasses a wide diversity. Home-based workers do piecework for an employer, who can be a subcontractor, agent or a middleman, or they can be self-employed on their own or in family enterprises. They can work in the new economy (assembling micro-electronics) or the old (weaving carpets). The home based workers or home workers fall within the gray area, in a category between employed workers and self employed workers. There is no system to enforce minimum wages because of the informal contractual relationship between the worker and employer, the employer’s agent or contractor. Usually the home worker is looked upon as a self employed person and not a ‘worker’ but these are self employed worker as well as workers employed by others among home based

\textsuperscript{67} B. Shah vs. Presiding Officer, (1977) 4 SCC 384.

workers. The ‘home based workers’ refers to two types of workers who carry out remunerative work within their home (a) independent own account producers and (b) dependent sub-contract workers. Whereas the term home worker refers only to the second category. Under this usage home workers are a sub set of home based workers.\textsuperscript{69} International Labour Organization defines\textsuperscript{70} the term ‘home work’ and ‘an employer’ in following words

(a) The term ‘home work’ means work carried out by a person, to be referred to as a home worker,(i) in his or her home or in other premises of his or her choice other than the work place of employer,(ii) for remuneration, (iii) that results in a product or service as specified by the employer, irrespective of who provides the equipments, materials or other inputs used unless this person has the degree of autonomy and of economic independence necessary to be considered an in dependant workers under national laws, regulations or court decisions.\textsuperscript{71}

(b) Persons with employee status do not become home workers within the meaning of this convention simply by occasionally performing their work as employees at home, rather than at their usual work places.\textsuperscript{72}

(c) The term employer means a person natural or legal, who either directly or through an intermediary whether or not intermediaries are provided for in national legislation,

\textsuperscript{70} ILO.Convention No.177, (Convention Concerning Home Work, 1996).
\textsuperscript{71} Article1 (a), ILO. Convention No.177.
\textsuperscript{72} Article1 (b), ILO Convention No.177.
gives out homework in pursuance of his or her business activity\(^{73}\).

Thus according to the International Labour Organization “the person, who carries out home work within the meaning of Article 1 of this convention, is home worker” \(^{74}\). It also clarifies that International Labour Conventions and Recommendations laying down standards of general application concerning working condition are applicable to the home workers. It further says that it is desirable to improve the application of those conventions and recommendations to home workers and to supplement them by standards which take into account the special characteristics of the home work. This convention promotes the equality of treatment particularly in relation to(a) the home workers’ right to establish or to join organizations of their own choosing and to participate in the activities of such organizations, (b) protection against discrimination in employment and occupation, (c) protection in the field of occupational safety and health, (d) remuneration, (e) statutory social security protection, (f) access to training, (g) minimum age for admission to employment or work and (h) maternity protection.\(^{75}\) Indian Parliament has adopted the same definition as International Labour Organization has. The Unorganized Workers’ Social Security Act, 2008, that is exclusively enacted for unorganized workers defines ‘home based worker’ as “a person engaged in the production of goods or service for an employer in his or her home or other premises

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\(^{73}\) Ibid. Article 1 (c).

\(^{74}\) ILO Convention No. 177.

\(^{75}\) Article 4(2), ILO Convention No. 177.
of his or her choice, other than the workplace of the employer, for remuneration, irrespective of whether or not the employer provides the equipments, materials, or other input.\textsuperscript{76} Thus the definition does not attach any importance as to who provides the raw materials and inputs, it only refers to such factors as the dependency of the workers, his or her involvement in producing the product /rendering the services, specified by the employer for remuneration, and the work being carried out at home or place of worker's choice. The absence of specific data pertaining to home workers in official statistics in India is a reflection of the lack of recognition or their legitimacy as workers and also of a refusal to acknowledge their economic contribution.\textsuperscript{77}

2.4.4 Domestic Workers

The presence of domestic workers is everywhere in the urban as well as rural area. A domestic help, domestic worker or servant, is one who helps and often also lives within the employer's household. Helps are distinguishable from serfs or slaves in that they are compensated, that is, they must receive payment for their work. They are also free to leave their employment at any time, although socio-economic conditions and law relating to working in a foreign country may make that difficult. Domestic helps perform typical domestics chores such as cooking, ironing, washing, cleaning the house, buying food and drinks, accompanying the head of household for grocery shopping, taking the family dog for a walk, and taking

\textsuperscript{76} Section 2 (b), UWSSA, 2008.
care of the children.\textsuperscript{78} International Labour Organisation Convention defines domestic worker is “a person engaged in domestic work with in an employment relationship.” Domestic work is defines as ‘work performed in a household or households.” The work may includes tasks such as cleaning the house, cooking, washing and ironing clothes, taking care of children or elderly sick members of a family, gardening, guarding the house, driving for the family, and even taking care of the household pets.\textsuperscript{79} As per an estimate at least 53 million people, the vast majority women and girls, are employed in private homes as domestic workers.\textsuperscript{80} Domestic workers contribute substantially to the global economy, constituting 7.5 percent of women’s total wage employment worldwide. Domestic work is not only an important livelihood for workers, but also enables employers to better their standard of living by maintaining employment outside the home. Since the Domestic Workers Convention was adopted in 2011, countries around the world have taken action to rectify the convention and to strengthen national laws and regulations to protect the domestic workers.

The definitions of Domestic Worker in Indian context are given below: According to The Maharashtra Domestic Workers Welfare Board Act, ‘Domestic Worker’\textsuperscript{81} means a worker who is engaged for doing domestic work, and ‘domestic work’ has

\textsuperscript{79} ILO. Convention No. 189, \textit{(Domestic Worker, 2011)}.
\textsuperscript{81} Section 2(e), \textit{The Maharashtra Domestic Workers Welfare Board Act}, 2008(MAH.1of 2009).
been defined as “the household work like sweeping, cleaning utensils, washing clothes, cooking and such other manual work as is mutually agreed between the employer and domestic worker carried out at the work place”\(^{82}\). It is well known that many person who are employed in domestic work, are people who have migrated to the urban area in search of employment. But there is no reliable estimate of the number of persons, who are engaged in domestic services.\(^{83}\) It is believed that domestic service does not need special skills.\(^{84}\) The system of domestic labour shows a prevalence of low wages, long hours, and different working condition for servants, throughout the period.\(^{85}\)

The Ministry of Labour And Employment in its report\(^{86}\) defines “domestic worker” as, a person who is employed for remuneration whether in cash or kind, in any household through any agency or directly, either on a temporary basis or permanent, part time or full time to do the house hold work or allied work, but does not include any member of the family of an employer. This report classified the domestic workers, in to these sub categories based on the hours of work and nature of employment relationship. The domestic workers can be

\(^{82}\) Section 2(d), The Maharashtra Domestic Workers Welfare Board Act, 2008(MAH.1of 2009).
\(^{84}\) Ibid. para, 7.48.
\(^{85}\) Abdul Majid, Legal Protection to Unorganized Labour, p.57, (ed. 2000).
\(^{86}\) Government of India: Final report of the task force on Domestic Workers; Realizing Decent work, p.32, (Ministry of Labour and Employment, September 2011).
(a) Part-time worker i.e. worker who works for one or more employers for a specified number of hours per day or performs specific tasks for each of the multiple employers every day.

(b) Full-time worker i.e. worker who works for a single employer every day for a specified number of hours (normal full day work) and who returns back to her/his home every day after work.

(c) Live-in worker i.e. worker who works full time for a single employer and also stays on the premises of the employer or in a dwelling provided by the employer (which is close or next to the house of the employer) and does not return back to her/his home every day after work.87

According to this report the “employer” means, a person or a household who employs or benefits from the employment of domestic workers, irrespective of the number or type of domestic workers employed, or the nature of the employment or the time period for which such employment exists or the nature of activities performed by the domestic workers.88

The Unorganized Workers’ Social Security Act89 includes the domestic workers in the category of wage workers and defines that the “wage worker” is a person employed for remuneration in the unorganized sector, directly by an employer or through any contractor, irrespective of place of

87 Government of India: Final report of the task force on Domestic Workers; Realizing Decent work, p.12, (Ministry of Labour and Employment, September 2011).
88 Government of India: Final report of the task force on Domestic Workers; Realizing Decent work, p.12, (Ministry of Labour and Employment, September 2011).
89 Act No. 33 of 2008.
work, whether exclusively for one employer or for one or more employers, whether in cash or in kind, whether as a home-based worker, or as a temporary or casual worker, or as a migrant worker, or workers employed by households including domestic workers, with a monthly wage of an amount as may be notified by the Central Government and State Government, as the case may be\textsuperscript{90}.

The International Labour Organisation estimates that at least 52.6 million men and women were employed as domestic workers across the World in 2010. Domestic work is therefore an important source of employment. It accounts for 1.7 per cent of total employment worldwide and some 3.6 per cent of all wage employment\textsuperscript{91}. According to the National Sample Survey Organization data 4.75 million workers were employed in private household in India\textsuperscript{92} or about 1 per cent of total employment of the country. However, unofficial estimates range widely (from some 2.5 million up to 100 million) and even official statistics based on surveys conducted in 2009-10 produce somewhat contradictory results. According to the 66th round of the National Sample Survey (2009-10), only 0.8 per cent of all employed persons fell under this employment.\textsuperscript{93} By comparison, the Employment and Unemployment Survey (which was based on a smaller sample) found that 2.7 per cent of all employed persons were employed by private households

\textsuperscript{90} Section 2(n), UWSSA, 2008.
\textsuperscript{91} ILO Document; Domestic Workers Across The World: Global and Regional Statistics and the Extent of Legal Protection p.30 (2013).
as maids, watchmen or cooks\textsuperscript{94}. Domestic worker have been always been an invisible workforce. A Bill to regulate the conditions of service and for the welfare of house maid and domestic servants having a title ‘The House Maids and Domestic Servants (Condition of Service And Welfare) Bill,’ 2004, is pending in Parliament. The Second National Commission on Labour also endorsed its opinion in favour of domestic workers and suggested that there should be adequate protection to ensure satisfactory condition of work, and acceptable level of social security for domestic workers.

The provisions regarding the social security for domestic workers in different countries are as below

**United States:** The State of Hawaii adopted a Domestic Worker Bill of Rights in April 2013, providing domestic worker with minimum wage, overtime, and other protections. Similar Bills are pending in other States\textsuperscript{95}.

**Brazil:** Brazil adopted a constitutional amendment in March 2013 that entitles domestic workers to overtime pay, unemployment insurance, pension, a maximum eight-hour work in a day and forty-four hour work in a week and other benefits. In Brazil domestic help are hired under a registered contract and have most of the rights which include a minimum wage, remunerated vacancies and a remunerated day off per week. \textsuperscript{96}

\textsuperscript{94} ILO Document; *Domestic Workers Across The World: Global and Regional Statistics and the Extent of Legal Protection* p.30 (2013).

\textsuperscript{95} ILO. Convention No.189, *(Domestic Workers, 2011).*

**Germany**: The German Bundestag\(^{97}\) and Budesrat each have approved a draft law adopting the Convention in 2013.

**Spain**: A Royal decree issued in November 2011, ensures domestic workers the minimum wages; maximum working week of forty hour, and minimum daily rest period.

**Thailand**: In October 2012 ministerial regulations entitles domestic workers to at least one day off each week, paid sick leave, paid overtime for work on holiday.

**Phillipines**: In January 2013, a Domestic Workers’ Act was signed into law, mandating contracts, a minimum wage, social protection and other benefits for domestic workers.

**India**: In May, 2012, the Government extended the Rashtriya Swasthya Bima Yojana, health insurance scheme, to domestic worker and in 2013 included domestic workers in new law prohibiting sexual harassment in the work place.

**Namibia**: The first Wages Commission for Domestic Workers was established in May 2012 to recommend a new minimum wages for domestic workers.

### 2.4.5 Sex Workers

The National Commission on Labour (2002), first time considered sex workers as ‘worker’ and included in its report\(^{98}\). However the Immoral Traffic (Prevention) Act, 1956 does not prohibit sex work per se but sex workers can be booked by invoking its provisions which ban brothel keeping, living on earnings of sex work and soliciting in public places. The Act

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\(^{97}\) Means ‘the Lower House of the Legislature’ of Germany.

says that an individual over 18 years of age, dependent on the income of a sex worker shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to rupees one thousand⁹⁹. This means children of all sex workers can be punished, because by the time they are 18, they are barely out of school and unlikely to be financially independent. This also comes in the way of children aspiring for higher education, since after turning 18 they can no longer depend on the earnings of their mothers. But the Commission¹⁰⁰ is of the opinion that sex workers should be covered under unorganized workers concept. Sex workers should not be ignored to respect the norms of prudery.¹⁰¹ Sex workers and activists also have been demanding amendments to the Immoral Traffic (Prevention) Act, which they allege has been disproportionately used against sex workers¹⁰². In the interest of public health, sex workers need to be subjected to periodic health checks. In terms of protection and welfare as workers they have to be considered as self employed workers. They should therefore have the facility to be registered as self employed workers with access to health policies, insurances and other benefits.¹⁰³ There is a need to ensure safe and humane working conditions and protection from occupational hazards for these workers. The Commission recommended that the Government should undertakes consultations with social

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scientists, non-governmental organizations, trade unions, human rights organizations, and vigilance authorities, and formulate policies and measures that will ensure protection, public health and public safety, including the protection of public morality. A panel\textsuperscript{104} set up by the Supreme Court, which is looking for measures to ensure better work conditions for prostitutes and protect their rights said that the Police must not interfere or take criminal action against adult sex workers participating with consent. Prostitution per se is legal in India but it is caught in a web of laws that makes sex workers vulnerable to police action in red-light districts, where they ply their trade on streets or in dingy brothels. The panel proposes an elaborate mechanism, including rehabilitation and providing alternative livelihood to prevent re-trafficking of former prostitutes. The panel also has the mandate to suggest measures for rehabilitation of sex workers who wish to leave prostitution so that they can live with dignity. The panel also suggests amendment to the law that says any person above 18 living on the earnings of prostitution faces imprisonment of up to 10 years. No action should be taken against a prostitute’s parent, partner or children living on her earnings, unless it is proved that they forced her into the trade, the panel says. The panel further recommends that to stop victimization of trafficked woman, sending sex workers caught plying their trade near a public place to a correctional home, instead of putting them in jail. The duration of the stay should be reduced from five years. The majority of India’s estimated 1.2

\textsuperscript{104} The panel set up by Supreme Court of India in 2011 and it was headed by Senior Advocate Pradip Ghosh.
million prostitutes are forced into the trade by crushing poverty.\textsuperscript{105} However the Commission had not any reliable estimates of the members of women who fall into the category of sex workers or the number of those who work in brothels, with their own special problems of unlawful confinement, exploitation, torture, buying and selling of these “workers” and so on. The number of sex workers may run into many lakhs or millions.\textsuperscript{106} In India’s Southern States, thousands of Dalit girls are forced into prostitution before reaching the age of puberty.\textsuperscript{107} The Commission makes special mention of the children of these women workers. They should not be denied opportunities for education etc. open to other children. Mothers should, therefore, have access to the children’s allowances that we have recommended elsewhere.\textsuperscript{108}

\textbf{2.4.6 Contract Labour}

Contract labour is one of the acute form of the unorganized labour under the system of contract labour, workers may be employed through contractor on the contract basis, workman shall be deemed to be employed as contract labour or in connection with the work of an establishment when he is hired or in connection with such work by or through a contractor, with or without the knowledge of the Principal Employer.\textsuperscript{109} In this class of labour, the contractors

\begin{itemize}
\item \textsuperscript{105} Article: Consenting adult sex workers should not be arrested: SC Panel, Hindustan Times, Feb.14, 2016.
\item \textsuperscript{106} Government of India, Report: \textit{The National Commission on labour}, para 7.57 (Ministry of Labour & Employment 2002).
\item \textsuperscript{107} \textit{Id.at.} para 7.78.
\item \textsuperscript{108} Government of India, Report: \textit{The National Commission on labour}, para 7.59 (Ministry of Labour & Employment 2002).
\item \textsuperscript{109} Section 2 (b), The Contract Labour (Regulation and Abolition) Act, 1971.
\end{itemize}
hire persons (labour), who do the work on the premises of the employer known as the principal employer, but they are not deemed to be the employees of principal employer. The range of task performed by such contract workers varies from security to sweeping and catering etc. Contract labour can be distinguished from ‘direct labour’ in term of employment relationship with the principal establishment and method of wage payment. Unlike direct labour which is borne on pay or muster roll of the establishment and entitled to be paid wages directly, contract labour, by and large, is neither borne on payroll nor is paid directly. The establishment (which farms out work to contractors) does not owe any direct responsibility in regard to his/their labour. In several contracts the wages rates to be paid labour are stipulated, but whether payment is made on that basis or not are hardly the concern of contractor himself or of the person/organization for whom the contractors works\textsuperscript{110}. Contract labour can broadly be divided into two set of categories, those employed on job contracts, and other on labour contract\textsuperscript{111}. However the J.H.Whitley Commission, nearly ninety years ago in its report had recommended for the abolition of contract labour, yet this practice is running non-stop in current scenario of employment. Such types of employment are based on the principle of the hire and fire or use and throw, and a sharp weapon to exploit the poor labour. However judicial approach towards unorganized labour has

\textsuperscript{111} Meenakshi Gupta, Labour Welfare and Social Security in Unorganized Sector, p.20, (ed.2007).
\textsuperscript{112} The J.H.Whitley Commission is also known as the Royal Commission on Labour in India (1929).
also shown some positive sign in its decisions. In *National Federation of Railway Porters, vendors and bearers vs. Union of India*\(^{113}\), the Supreme Court on the basis of report of the Labour Commission to the effect that petitioners have been working as parcel porters and all of them have completed more than 240 days of continuous service, directed the petitioners to be absorbed permanently as regular Railways Parcel Porters of the Stations, where they were working as such. Similarly in *T.N. electricity Employees and Contact Labors Union vs. T.N. Electricity Board*,\(^{114}\) the Supreme Court directed the absorption of all remaining workers and refused to give any further extension of time. In *Air India Statutory Corporation vs. United Labour Union and others*\(^{115}\) it was held by the Supreme Court that though there is no provision in the Contract Labour (Regulation & Abolition) Act, 1970 for absorption of the employee whose contract stood abolished under the Act, but the Act does not prohibits the corporation to absorb them in regular service and that is the mandate of Constitution of India. The Constitution Bench of Supreme Court in *Steel Authority of India Ltd vs. National Union Water Front Workers*\(^{116}\) ruled that no provision of the Contract Labour (Regulation and Abolition) Act provides for automatic absorption of contract labour on issuing a notification by appropriate Government under sub section (1) of section 10. Consequently the principal employer cannot be required to order, for absorption of the contract labour working in the concerned establishment. Thus

115 AIR 1997 SC 645.
the Constitutional Bench overruled the judgment of Air India’s117 case. In a recent judgment in O.N.G.C. Ltd. vs Petroleum Coal Labour Union and Other,118 the Apex Court held that when workman appointed by issuing memorandum of appointment to work in corporation providing monthly salaries, it cannot arbitrarily stated that certified standing orders of corporation not applicable to work man. Workman cannot be denied legitimate, statutory and fundamental rights to be regularized provided under certified standing orders, even though the due process not followed by corporation for appointment of workman, same does not disentitle right to seek regularization after completing more than 240 days. Alleged policy decision taken by corporation to employee CISF in place of workman cannot said to be taken by Central Government. Since it is not issued by following due procedure under Business Transactions Rule. Contract labour is generally low paid worker and they only get minimum remuneration, conditions of work are also for far from satisfactory, working hours are irregular and longer. There is no security of employment, as the job ends with the end of contract. With a view to removing the disabilities of contract labour, the Contract Labour (Regulation & Abolition) Act 1970 have been passed which regulates the employment of contract labour in certain establishments and provides for its abolition in certain circumstances. The Act is applicable if the principal employer engages twenty or more contract workers in an establishment. The contractor who employs twenty or more

117 AIR 1997 SC 645.
118 2015 II LLJ 257 SC.
workers in his contract work will be covered under the Contract Labour (Regulation & Abolition) Act 1970. The Act provides for the registration of all establishments of principal employers and licensing of all contractors. There is a special provision (Section 10) for the abolition of the contract system if certain conditions are met, like the nature of jobs being of a perennial nature and connected with the core business of the principal employer. The Act also provides for the welfare and safety of contract labour. For regulating its implementation, certain registers, records, returns etc. are to be maintained by the principal employers and contractors. Penalties have been prescribed for those who violate the law. This Act is meant for unorganized labour. But its scope is very limited. The limitations in the law are such that the contractor stands to gain, if he engages less than twenty workers. This provision provides a loophole for all manner of manipulations by employers and contractors.

2.4.7 Construction or Building Workers

More than eight million workers are engaged in building and other construction works throughout the India. These workers are one of the most vulnerable segments of the unorganised labour in India. Their work is of temporary nature, the relationship between employer and the employee is temporary, working hours are uncertain. Basic amenities and welfare facilities provided to these workers are inadequate.

120 Statistics taken from the official site of Chief Labour Commission (Central) Government of India.
Risk to life and limb is also inherent. In the absence of adequate statutory provisions to get the requisite information regarding the number and nature of accidents was quite difficult and due to this to fix responsibility or to take corrective measures was not an easy job. For construction workers a need was felt for a comprehensive Central Legislation for regulating the safety, welfare and other conditions of service of these workers. In pursuant to the decision of the 41st Labour Ministers Conference held on 18th May, 1995, the Committee of State Labour Ministers had expressed its consensus for the Central Legislation on this subject. In order to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare measures, The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 was passed by the Parliament. This Act defines the building worker in these words 'a person who is employed to do any skilled, semiskilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, in connection with any building or other construction work but does not include any such person-(i) who is employed mainly in a managerial or administrative capacity, or (ii) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers
vested in him, functions mainly of a managerial nature." This Act also defines the term ‘building or other construction work’ as the construction, alteration, repairs, maintenance or demolition of or, in relation to, buildings, streets, roads, railways, tramways, airfields, irrigation, drainage, embankment and navigation works, flood control works (including storm water drainage works), generation, transmission and distribution of power, water works (including channels for distribution of water), oil and gas installations, electric lines, wireless, radio; television, telephone, telegraph and overseas communication dams, canals, reservoirs, watercourses, tunnels, bridges, pipelines, towers, cooling towers, transmission towers and such other work as may be specified in this behalf by the appropriate Government, by notification but does not include any building or other construction work to which the provisions of the Factories Act, 1948, or the Mines Act, 1952, apply. The person who is registered under section 12 of the Act is considered as beneficiary under this Act. Construction workers may be broadly classified as skilled and unskilled workers. Most of the workers in this sector are employed on a casual basis. Unstable employment or earning and shifting of work place are the basic characteristics of work for construction workers. Employment in construction is usually interspersed with period of unemployment of varying duration, mainly due to

121 Section 2 (e), The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.
122 Section 2(d), The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.
123 Section 2(b) The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.
fluctuating requirements of labour force on each worksite. Though skilled workers have a secured jobs directly from employers, unskilled workers, by and large, are engaged through intermediaries who introduce the workers to contractors on a commission basis. Since workers are generally recruited on contract basis, failing to achieve the required quantum of work, results in either deductions or uncompensated overtime work. In return for providing jobs, the intermediaries often collect commission from each worker at a fixed rate for each working day. Women engaged in construction work, are the most exploited. Frequent changes in their work and instability deprive them and their children of primary facilities like health, water, sanitary facilities, education and ration cards. In most cases, safety norms are violated. In fact, safety provisions hardly find place in building construction activity. Surveys on construction disclose the skepticism of workers about the effectiveness of the first aid assistance provided at sites. What is worse, the contractors remove sick and injured workers from sites and cut their name from pay rolls, without giving them adequate compensation.

2.4.8 Beedi and Cigar Workers

Beedi making is an agro-forest based Cottage Industry solely dependent on tendu leaves and tobacco. Plucking of tendu leaves, their collection, storage and distribution amongst the beedi manufacturers are handled by the State Department

of Forests. The industry is highly labour intensive as entire manufacturing process is done manually requiring special skills. It falls both in the organised as well as in the unorganized sector. A large number of workers in the organized sector engaged in beedi rolling, sorting, checking, baking, labeling, wrapping and packing are covered under the Beedi and Cigar Workers (Conditions of Employment) Act, 1966. Employment in tobacco processing, including beedi manufactories is included in Schedule to the Minimum Wage Act, 1948. According to 1961 Census there were nine lakhs of workers engaged in the industry, of which about 5.5 lakhs were in the household sector. According to an latest estimate in Andhra Pradesh, Assam, Bihar, Jharkhand, Gujarat, Karnataka, Kerala, Madhya Pradesh, Chhattisgarh, Orissa, Rajasthan, Tripura, Tamil Nadu, Uttar Pradesh and West Bengal there are approximately forty-nine lakhs workers in the tobacco industry. This Act contains the term ‘Employee’ rather than the term ‘worker’ and defines in the following word, ‘Employee’ means a person employed directly or through any agency, whether for wages or not, in any establishment to do any work, skilled, unskilled, manual or clerical and include (i) any labour who is given raw materials by an employer or a contractor for being made into beedi or cigar or both at home (hereinafter referred to in this Act as home worker), and (ii) Any person not employed by an employer or a contractor but working with the permission of or under agreement with, the

employer or contractor\textsuperscript{127}. According to the Act ‘Employer’ means, (a) In relation to contract labour, the principal employer, and (b) In relation to other labour, the person who has the ultimate control over the affairs of any establishment or who has, by reason of his advancing money, supplying goods or otherwise, a substantial interest in the control of the affairs of any establishment, and includes any other person to whom the affairs of the establishment are entrusted, whether such other person is called the managing agent, manager, superintendent or by any other name\textsuperscript{128}; Under the Minimum Wages Act, 1948, the term 'employee' includes an out worker to whom any material or articles are given by another person to be made up, for sale in the house of the out worker or any other premises not under the control of that other person. Thus, the Beedi Rollers, whether home workers, or premises workers as well as skilled, un-skilled, manual or clerical workers employed directly or through a Contractor are employees. These employees have been classified into two broad categories as beedi rollers and the beedi workers. The term ‘beedi worker’ includes all workers other than the Beedi Rollers. The nature and conditions of work of these categories of workers are more or less similar in all types of establishments under these two groupings. In beedi industry the workers other than Beedi Rollers are usually known as Factory Workers. Beedi Rollers are responsible for rolling beedis according to the specifications of the person who supplies the raw material mainly comprising tendu leaf,

\textsuperscript{127} Section 2(f), Beedi and Cigar Workers (Conditions of Employment) Act, 1966.  
\textsuperscript{128} Section 2(g), Beedi and Cigar Workers (Conditions of Employment) Act, 1966.
tobacco and thread. The Beedi Rollers who works with or without the help of their family members, in their private dwellings are known as the home workers. There are many sub categories of workers in tobacco industry. These are as following: (a) Wrappers and Labellers- wrappers and labellers are engaged in wrapping beedis into bundles of different types and sizes and pasting labels. They are mostly piece rate workers, (b) Beedi Checkers- beedi checkers do checking and sorting of the green beedis (i.e. unbaked beedis) delivered by the contractors or by the beedi rollers. They also test check the bundles as well as the quality and quantity of the tobacco used by the Beedi Rollers,(c) Furnace-man (Sekaiwala)- furnace-man is engaged for baking the beedis in a furnace to remove the moisture and dampness. He is also called as Bhattiwala or Sekaiwala,(d) Clerical Staff; These include Cashiers, Accountants and Clerks etc. In small and medium establishments, this category of employees is also discharging most of the managerial functions (e) Raw Material Distributors- these workers are engaged in distributing of raw material to the contractors/sattedars and beedi rollers for rolling the beedis. The requisite quantity of tobacco and tendu leaves is distributed by weight. These workers are covered by various labour laws and are entitled to benefits, like provident fund, bonus, gratuity, over time etc. But apathy is that the workings conditions prevailing in the beedi and cigar establishment are unsatisfactory. Most of these units are ill ventilated and workers are crowded in dark and dingy rooms. There are also no fixed hours of work of any permanency benefits for workers; victimization in small unit is common.
The system of payment in beedi industry is mainly on piece-rate basis, except in the case of workers like wrappers, labelers, and sorters who are normally employed on a monthly basis. However the Act provides for cleanliness and ventilation and prohibits overcrowding of the premises. The welfare measures that it provides for include arrangements for drinking water, latrines and urinals, washing facilities, crèches, first aid and canteens. Working conditions prescribe working hours, wages for overtime, interval for rest, spread over\textsuperscript{129}, weekly holidays, annual leave with wages, and a ban on child labour, and night shift for women and adolescents\textsuperscript{130}.

2.4.9 Casual labour

Casual labour is synonymous of irregular employment or part-time labour, including the labour of workers whose normal employment consists of a series of short-term jobs. Casual labour is usually hired by the hour or day or for the performance of specific tasks, while part-time labour is typically scheduled for a minimum number of hours per week. The incidence of casual labour is determined by the nature of the task to be performed. The major industries that have relied heavily on casual labour are construction, logging, sawmilling, agriculture, and the service trades. In present scenario Public Sector in India is also adopting this approach. Part-time labour is often preferred by students and retirees who seek regular scheduled work but are not able to work on a full-time basis. Part-time workers can be less costly to employ. The use of

\textsuperscript{129} Section 20, Beedi and Cigar Workers (Conditions of Employment) Act, 1966.

\textsuperscript{130} Government of India, Report: National Commission on Labour, para.7.335 (Ministry of Labour & Employment, 2002).
casual and part-time labour allows employers greater flexibility in hiring and firing and thus enables them to adjust to swings in production. Employment of casual labour is a common feature in the Railways and in Public Works Departments, both at the Central and the State level. In Public Sectors Corporations and in the Private Sectors, where the nature of work is similar, employment of casual labour in several categories of work is well recognized and not objected to. It is taken exception to mainly, when the such labour continually employed for long period to circumvent the provisions of law, (which confer benefits to permanent workers through better working conditions, more amenities, and the like), and what is more, when used deliberately to restrict the scope for regular employment. Though casual labour comes under the scope of some labour enactments relating to wages and regulation of hours of work and conditions of service, it is deprived of the advantages accruing from legislation which stipulates continuous employment for being eligible. Casual labour is thus denied annual leave with wages, maternity and sickness benefits, and employee provident fund, because under the law a worker must complete a minimum stipulated

132 Under the Factories Act, 1948 annual leave with wages is admissible only to workers who work for 240 days or more and under the Mines Act, 1951 to those who complete one calendar year's service.
133 Under the Maternity Benefits Act, no woman is entitled to maternity benefit unless she actually works in a particular establishment for a period of not less than 160 days (150 days under the Plantations Labour Act, 1951) in twelve months immediately preceding the date of expected delivery.
134 The sickness benefit under the Employees' State Insurance Act, 1948 is available to those who pay 13 weeks' contribution in a period of 26 weeks.
135 The Employees' Provident Funds Act, 1952 is applicable only to workers who have put in 240 days of continuous service in one year.
period of work in an establishment as a pre-condition for eligibility. All such stipulations are an invitation to an unenlightened employer to maintain a large complement of casual labour than is absolutely necessary. In such situations employers arbitrarily terminated the services of casual workers to prevent them from completing the prescribed period of service and thus deprived them of the benefits. This practice is very common particularly in smaller establishments where within a week of termination of the service, the same person is engaged afresh for the same job, makes the employer's intention obvious.\textsuperscript{136} The National Commission on labour (1969), considered the prevailing practice of discontinuing employment of a casual worker for short periods and again re-employing him to debar him from enjoying the benefits of a permanent workers pernicious and recommended that if employment is discontinued for a short period and then the worker is re-employed, this short period should not be treated as a break in service.

2.4.10 Scavengers

There are a very large number of people who are engaged in manual scavenging in different parts of the country, in rural areas as well as urban areas. Allocation of labour on the basis of caste is one of the fundamental tenets of the caste system. Within the caste system, Dalits have been assigned tasks and occupations that are deemed virtually polluting for other caste communities. According to Government statistics, an

estimated one million Dalits are manual scavengers who clean public latrines and dispose of dead animals. Scavenging is the hereditary occupation of some ‘untouchable’ castes. Dalits face discrimination when seeking other forms of employment, and are largely unable to escape their designated occupation even when the practice itself has been abolished by law. In violation of their basic human rights, they are physically abused and threatened with economic and social ostracism from the community for refusing to carry out various caste-based tasks. Manual scavenging has been a caste-based occupation. Dalit manual scavengers exist under different caste names throughout the country, such as the Bhangis in Gujarat, the Pakhis in Andhra Pradesh, and the Sikkaliars in Tamil Nadu and chura or jamadar in Haryana. Members of these communities are invariably placed at the very bottom of the caste hierarchy, and even in the hierarchy of dalit sub-castes. Using little more than a broom, a tin plate, and a basket, they are made to clear feces from public and private latrines and carry them to dumping grounds and disposal sites. Though long outlawed, the practice of manual scavenging continues in most States. The National Commission for Safai Karamcharis which is a statutory body claims that manual scavengers are ‘totally cut off from the mainstream of progress’ and are ‘still subjected to the worst

138 Ibid. para 7.79.
139 Ibid. para 7.80.
kind of oppression and indignities. What is more pathetic is the fact that manual scavenging is still largely a hereditary occupation. *Safai Karamcharis* are no doubt the most oppressed and disadvantaged section of the population. *Safai Karamcharis* are defined as persons engaged in, or employed for, manually carrying human excreta or any sanitation work. Social discrimination against scavengers is rampant. Most scavengers live in segregated rural colonies and are unable to make use of common resources. The National Commission in its report admits that this is the lowest occupation in the World, and it is done by the community that occupies the lowest status in the caste system. Even other scheduled caste people will not touch the safai karamcharis (cleaning workers). It is ‘untouchability’ within the ‘untouchables,’ yet, nobody questions it. Despite their appalling work conditions, manual scavengers are unable to demand higher wages or sanitary instruments for use in the collection of human excreta. This is the situation when there exists an enactment *The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993* that makes punishable the employment of scavengers or the construction of dry (non-flush) latrines with imprisonment for up to one year and/or a fine as high as rupees two thousand. Offenders are also liable to prosecution under the Scheduled

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Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. In Safai Karamchari Andolan and ors. v. Union of India and Ors. a Public Interest Litigation was filed under Article 32 of the Constitution of India, praying for issuance of a writ of mandamus to the respondent-Union of India, State Governments and Union Territories to strictly enforce the implementation of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993 *inter alia*, seeking for enforcement of fundamental rights guaranteed under Articles 14, 17, 21 and 47 of the Constitution of India, give directions to the Central Government to enact a legislation in this regard. On compliance of the effective intervention and directions of the Supreme Court, Government of India brought an Act called “The Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013” for abolition of this evil and for the welfare of manual scavengers. The Act got the assent of the President on 18.09.2013. In this case the Apex court issued the following directions:-

(i) The persons included in the final list of manual scavengers under Sections 11 and 12 of the 2013 Act, shall be rehabilitated as per the provisions of Part IV of the 2013 Act, in the following manner, namely:- (a) such initial, one time, cash assistance, as may be prescribed; (b) their children shall be entitled to scholarship as per the relevant scheme of the Central Government or the State Government or the local authorities, as the case may be; (c) they shall be allotted a residential plot and

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145 Writ petition(c) no. 583 of 2003, Decided by Supreme Court on 27th March 2014. [www.judis.nic.in/supremecourt](http://www.judis.nic.in/supremecourt).
financial assistance for house construction, or a ready built house with financial assistance, subject to eligibility and willingness of the manual scavenger as per the provisions of the relevant scheme; (d) at least one member of their family, shall be given, subject to eligibility and willingness, training in livelihood skill and shall be paid a monthly stipend during such period; (e) at least one adult member of their family, shall be given, subject to eligibility and willingness, subsidy and concessional loan for taking up an alternative occupation on sustainable basis, as per the provisions of the relevant scheme; (f) shall be provided such other legal and programmatic assistance, as the Central Government or State Government may notify in this behalf.

(ii) If the practice of manual scavenging has to be brought to a close and also to prevent future generations from the inhuman practice of manual scavenging, rehabilitation of manual scavengers will need to include:- (a) Sewer deaths- entering sewer lines without safety gears should be made a crime even in emergency situations. For each such death, compensation of Rs. 10 lakhs should be given to the family of the deceased. (b) Railways – should take time bound strategy to end manual scavenging on the tracks. (c) Persons released from manual scavenging should not have to cross hurdles to receive what is their legitimate due under the law. (d) Provide support for dignified livelihood to safai karamchari women in accordance with their choice of livelihood schemes.
(iii) Identify the families of all persons who have died in sewerage work (manholes, septic tanks) since 1993 and award compensation of Rs.10 lakhs for each such death to the family members depending on them.

(iv) Rehabilitation must be based on the principles of justice and transformation.

In the light of various provisions of the Act and the rules in addition to various previous directions issued by this Court, the Court further directed all the State Governments and the Union Territories to fully implement the same and take appropriate action for non-implementation as well as violation of the provisions contained in the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act. However, the Apex Court once again reiterates that the duty is cast on all the States and the Union Territories to fully implement and to take action against the violators. Henceforth, persons aggrieved are permitted to approach the authorities concerned at the first instance and thereafter the High Court having jurisdiction.

2.4.11 Rag Pickers

Rag picking and other scrap collection are not a new phenomenon especially in industrial towns and metropolitan cities. They have a bearing on the urban economy. Many production enterprises depend upon to recycling of these wastes. Scrap collection is mostly done by women and children in a working environment that is most unhygienic.\textsuperscript{146} Generally, 

there is no employer-employee relationship in this trade even though it is possible that some of the scrap picking activity is organized by contractors. Waste collectors are generally categorized as self-employed. Scrap traders do not provide any kind of receipts to them for the material they collect. No social security benefits are available to the worker in this sector\textsuperscript{147}.

2.4.12 Street Vendors/Hawkers

Street vendors and hawkers are among the most visible and active category of the workforce in the informal sector. Most of them come from impoverished rural families. Street vending activities absorbs millions of those who come to cities as economic refugees from the villages, because they can enter this occupation with a small amount of capital. They not only create employment for themselves through their entrepreneurial skills but also generate upstream employment in agriculture as well a small scale industry. They are the main distribution channels for a large variety of products of daily consumption, like fruits, vegetables, readymade garments, stationery, newspapers, and magazines and so on. Their elimination from markets would lead to a severe crisis for fruit and vegetable farmers, as well as small scale industries which cannot afford to retail their products through expensive distribution. Like the other unorganized workers they are also deprived of social security. The Parliament has enacted legislation namely, The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014, to protect the rights of urban street vendors and to regulate street vending

\textsuperscript{147} Ibid. para. 7.128.
activities and for matters connected therewith or incidental thereto. This Act classifies the street vendor into two categories namely (i) mobile vendor and (ii) street vendor. The Act defines the mobile vendors, according to it mobile vendors means ‘street vendors who carry out vending activities in designated area by moving from one place to another place vending their goods and service,’ and the term ‘street vendor’ is defined in the Act as ‘a person engaged in vending of articles, goods, wares, food items or merchandise of everyday use or offering services to the general public, in a street, lane, side walk, footpath, pavement, public park or any other public place or private area, from a temporary built up structure or by moving from place to place and of includes hawker, peddler, squatter and all other synonymous terms which may be local or region specific; and the words “street vending” with their grammatical variations and cognate expressions, shall be construed accordingly.’ In *Sudhir Madan & Others vs. Municipal Corporation of Delhi & Others*, the Supreme Court after a long period of twenty years, ruled that the Government should prepare a plan to provide the space for hawking activities keeping in the mind the principle that the right to use the path way, footpath etc. is that of the citizens, no hawker can claim a right to defeat the rights of other citizens. The authority which frames a scheme has to keep this paramount consideration in mind.

148 Section 2(d), The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014.
149 Section 2(l), The Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014.
2.4.13 **Rickshaw Pullers**

Rickshaw pullers particularly work in cities and towns. Mostly, they are migrants. They migrate from the villages to bigger towns and cities. Most of them are small peasants and are landless in the cities due to feudal oppression, exploitation by land mafia, or natural calamities like recurring floods. In big towns they have no place to stay. They generally sleep on footpaths or in their rickshaws, all of them do not own rickshaw. They take them on hire, and have to pay a large sum of money as rent, even if they do not earn enough. They do not have any social security cover. They live in miserable social and economic conditions. Due to small earnings their life is out of the main stream of society. Illiteracy and poverty chase them. Their employment also comes under unorganized sector. The Centre and State governments have not enacted even a single piece of legislation for the welfare and social security of the workers of this category. However a Central Legislation namely The Calcutta Hackney-Carriage Act, 1879 exists in this respect that provides for the regulation and control of hackney-carriages\(^{151}\) in certain municipalities and cantonments.\(^{152}\)

\(^{151}\) Section 2, The Calcutta Hackney-Carriage Act 1879. According to this Act “hackney-carriage” means any wheeled vehicle drawn by animals and used for the conveyance of passengers which is kept or offered or plies for hire; and “committee” means a municipal committee, or a body of Municipal Commissioners, constituted under the provisions of any enactment for the time being in force.

\(^{152}\) Section 3, The Calcutta Hackney-Carriage Act 1879. Application of Act to Municipalities: The State Government concerned may, by notification in the Official Gazette, apply this Act to any municipalities in Uttar Pradesh, Punjab as it existed immediately before the 1st November, 1956 ], the Central Provinces, Assam, Ajmer or Coorg].
2.4.14 Migrant workers

The migrant workers are those who are driven from their homes in search of means of earning a livelihood. Lacking any skills and assets they tend to end up in the unorganized sector both in rural and urban areas. Such laborers are often sourced by labour brokers. The United Nation Convention 153 defines migrant workers as follow the term, ‘migrant worker’ refers to a person who is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national. It also defines the other terms that comes within the purview of the migrant worker, these are followings; (a) The term ‘frontier worker’ refers to a migrant worker who retains his or her habitual residence in a neighboring State to which he or she normally returns every day or at least once a week; (b) The term ‘seasonal worker’ refers to a migrant worker whose work by its character is dependent on seasonal conditions and is performed only during part of the year; (c) The term ‘seafarer’ which includes a fisherman, refers to a migrant worker employed on board a vessel registered in a State of which he or she is not a national; (d) The term ‘worker on an offshore installation’ refers to a migrant worker employed on an offshore installation that is under the jurisdiction of a State of which he or she is not a national; (e) The term ‘itinerant worker’ refers to a migrant worker who, having his or her habitual residence in one State, has to travel to another State or States for short periods, owing to the nature of his or her

occupation; (f) The term ‘project-tied worker’ refers to a migrant worker admitted to a State of employment for a defined period to work solely on a specific project being carried out in that State by his or her employer; (g) The term ‘specified-employment worker’ refers to a migrant worker: (i) who has been sent by his or her employer for a restricted and defined period of time to a State of employment to undertake a specific assignment or duty; or (ii) who engages for a restricted and defined period of time in work that requires professional, commercial, technical or other highly specialized skill; or (iii) who, upon the request of his or her employer in the state of employment, engages for a restricted and defined period of time in work whose nature is transitory or brief; and who is required to depart from the State of employment either at the expiration of his or her authorized period of stay, or earlier if he or she no longer undertakes that specific assignment or duty or engages in that work; (h) The term ‘self-employed worker’ refers to a migrant worker who is engaged in a remunerated activity otherwise than under a contract of employment and who earns his or her living through this activity normally working alone or together with members of his or her family, and to any other migrant worker recognized as self-employed by applicable legislation of the State of employment or bilateral or multilateral agreements. It is to be pointed out that the terms, migrant and immigrant, are used interchangeably in this literature review. Both groups,

migrant and immigrant workers cover a wide range of people with different reasons for migration and skills levels. Obviously not all, but many of the migrant or immigrant workers are ‘at risk’ regarding their occupational safety and health. However in all cases migration is not an evil, it can bring career opportunities, which can enhance the general well-being of migrants, or it can be associated with potential health problems, especially in situations where departure has involved trauma. For example, migrant worker’s knowledge of the language of their host country is one of the major issues that may affect their safety and health at work. In India Migration of labour started during the period of British rule. It was aimed at to meet the requirements of capitalist’s development, both in India and abroad. The labour was moved from the hinterland to the sites of mining, plantation and factories. It was recruited from the rural areas and regulated in such a manner that woman and children remained in the villages while males migrated to the modern sector. Migration can be classified under the following categories from the distance point of view: (i) Rural to Rural (ii) Rural to Urban (iii) Urban to Rural (iv) Urban to Urban. Beside these, migration can be divided into following categories: (i) Intra-District, (ii) Inter-District (iii) Intra-State (iv) Inter-State (v) National and International.

From the duration point of view migration can be studied under three categories: (i) Casual-temporary (ii) Periodic-seasonal (iii) Permanent. The causes of migration are classified as push factors, which emphasize on the situation at the origin, that is, place from which migration started and pull
factors, which emphasize on the situation at the destination. Unemployment, flood, earthquake, drought, (i.e., natural calamities) etc, are the push factors. Pull factors that determine migration such as attraction of city life, for education, health, development of backward community, job opportunities and training facilities and so on. In India only the Inter-State migration is considered as migration. Such Migrant workers are covered by The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979. The Act defines “Inter-State migrant workman” means any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State, whether with or without the knowledge of the principal employer in relation to such establishment. This Act also defines the term ‘workman’ as ‘any person employed in or in connection with the work of any establishment to do any skilled, semi-skilled or unskilled, manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment by express or implied, but does not include any such person; (i) who is employed mainly in a managerial or administrative capacity; or (ii) who being employed in a supervisory capacity draws wages exceeding five hundred rupees per mensem, or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him functions mainly of a managerial nature. This Act

155 Section 2(e), The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.
156 Ibid. Section 2(j).
applies (a) to every establishment in which five or more Inter-State migrant workmen (whether or not in addition to other workmen) are employed or who were employed on any day of the preceding twelve months, (b) to every contractor who employs or who employed five or more inter-state migrant workmen (whether or not in addition to other workmen) on any day of the preceding twelve months.\textsuperscript{157}

\textbf{2.4.15 Agricultural Workers}

In India the Census started the defining ‘worker’ as early as 1872. According to the Census of India\textsuperscript{158}, all persons engaged in 'work' defined as participation in any economically productive activity with or without compensation, wages or profit are workers. The reference period for determining a person as worker and non-worker is one year and proceeded by the date of enumeration. The Census classifies workers into two groups namely, Main workers and Marginal workers. Main Workers are those workers who had worked for the major part of the reference period i.e. 6 months or more. Marginal Workers are those workers who had not worked for the major part of the reference period i.e. less than 6 months. The Main workers are classified on the basis of Industrial category of workers into the following four categories: (a) cultivators (b) agricultural labourers (c) household industry workers and (d) other workers, marginal farmers and share croppers. The expression ‘agricultural workers' denotes those rural workers

\textsuperscript{157} Section 1(4), The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.
\textsuperscript{158} Govt. of India, \textit{Census Report}, 1951.
who are employed on wages in agricultural occupations, are agriculture workers.

An ‘agricultural worker’ has been defined by the National Sample Survey Office\(^\text{159}\) as ‘a person who follows one or more of the following agricultural occupations either as a smaller marginal land holder, who part of the time offers himself for wage employment or a landless labourer who offers himself full time on hire, whether he is paid in cash or kind or partly in cash and partly in kind in any of the following activities (a) farming (b) dairy farming (c) production, cultivation, growing and harvesting of any horticultural commodity (d) raising of livestock, bee-keeping or poultry farming (e) fishing and (f) any practice performed on a farm as incidental to or in conjunction with the farm operation (including spraying of chemicals, well-digging and any forestry timbering operations and the preparation for market and delivery to storage or to market or to carriage for transportation of farm products).\(^\text{160}\) The Annual Report of the Ministry of Labour, 1999-2000 considers cultivators, sharecroppers and agricultural labourers as unorganised workers. In fact, the agricultural sector constitutes the largest segment of workers in the unorganised sector. Inadequacy of employment opportunities, poor security of tenure, low incomes, and inadequate diversification of economic activities are the main problems for the workers in this sector. Agricultural labour gets employment for less than six months in the year, and they have often to migrate to other


avenues of employment, like construction and similar occupations during the off-season. According to the Government Statistics\textsuperscript{161} there are 39.79 percent (430 million) of total population works in the unorganized sector and known as unorganized labour, out of which 237 million workers are engaged in the activities that relate to agriculture. Agricultural labour constitutes a distinct section in the peasantry. Yet, their total strength, community allegiance, comparative socio-economic status and political position in agrarian society have been overlooked because they belong to a poorly unorganized, badly exploited and oppressed class of rural society. They work on lands that belong to others, in various capacities, without owning any means of production\textsuperscript{162}. Since agricultural workers are unorganized, their bargaining capacity is marginal; this leads to ruthless exploitation by moneylenders, and rich farmers\textsuperscript{163}. The Agricultural Sector accounts for 60\% of the total employment in the rural sector, but it does not show any increase in employment opportunities\textsuperscript{164}. The existing labour laws which are applicable to and partially safeguard, the interest of agricultural workers are: The Employees’ Compensation Act, 1923, The Minimum Wages Act, 1948, The Maternity Benefit Act, 1961, The Contract Labour (Regulation and Abolition) Act, 1970, The Personal Injuries (Compensation Insurance) Act, 1973, The Bonded Labour System (Abolition)

\begin{footnotesize}
\begin{enumerate}
\item Government of India, Report: \textit{The National commission on labour}, para. 7.269 (Ministry of Labour & Employment, 2002).
\item Government of India, Report: \textit{The National commission on labour}, para. 7.270 (Ministry of Labour & Employment, 2002).
\end{enumerate}
\end{footnotesize}
Act, 1976, The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, The Child Labour (Prohibition and Regulation) Act, 1986 and Payment of Wages Act, 1936. The main legislations dealing with aspect of safety are, Insecticides Act, 1968, and Dangerous Machines (Regulation) Act, 1983. The Government has also implemented several schemes and programmes for the welfare of rural workers including agricultural workers such as the Employment Assurance Scheme, Jawahar Gram Samridhi Yojana, Swarnajayanti Gram Swarojgar Yojana. However, considering the inadequacy of these legislative measures and welfare schemes, an attempt has been made to enact a separate comprehensive legislation for agricultural workers. A draft Bill, The Agricultural Workers (Employment Conditions of Service and Welfare Measures) Bill, 1997 was prepared by the Central Government. The proposed Bill incorporates provisions relating to registration of land-owners and agricultural workers, working conditions, creation of a welfare fund, implementation of welfare schemes, setting up a dispute resolution mechanism, etc. Agricultural labour occupied the lowest rung of the rural ladder. Agricultural labour is provided mostly by economically and socially backward sectors, poor sectors from the tribes also. Agricultural labour is admittedly not homogeneous in character. It reveals regional variations dependent on demographic ecological, technological

and other reasons. It is not distinct type but is mixed with such occupational\textsuperscript{166}.

2.4.16 Bonded or forced labour

Bonded labour is a form of slavery. Bonded or forced labour means that ‘whereby one is compelled to work and accept employment at wages or remuneration less than statutory minimum wages or at times even without it or in lieu of payment of debt’. According to ILO\textsuperscript{167} the term ‘forced or compulsory labour’ means all work or service which is extracted from any person under the menace of any penalty and for which, the said person has not offered himself voluntarily. The bonded labour system is deeply embedded in feudal and semi-feudal social structure. In India, it is existed, even after the enactment of the Bonded Labour System (Abolition) Act, 1976. High incidence of bonded labour system in the agriculture sector is found in the States of Andhra Pradesh, Bihar, Haryana, Karnataka, Maharashtra, Orissa, Punjab, Tamil Nadu and Madhya Pradesh. In the non-agriculture sector, it is prevalent in brick kilns, stone quarries, beedi manufacturing, carpet-weaving, match and fireworks industry, pottery, construction projects and bonded child labour in the sericulture processing industry. Migrant bonded labour involving States such as Bihar, Jharkhand, Chhattisgarh, Tamil Nadu, Madhya Pradesh, Orissa, Rajasthan, present a heightened form of deprivation and exploitation often amounting to bonded labour system.


\textsuperscript{167} Article 2 (1), The Forced Labour Convention of 1930.
Domestic workers, *jogins* and *devdasis* are subjected to exploitation in the form of bonded labour system\textsuperscript{168}. There is no reliable data on bonded labour, but if rely on the report of the National Commission on Rural Labour\textsuperscript{169} eighty-nine percent employer of the bonded labour were agriculturist, who mainly belonged to upper caste and engaged the lower caste labour belonging to STs and SCs for cultivation activities. Wages in this sector are very meager and in most case laborers are not permitted to undertake additional work elsewhere to supplement incomes. Often the creditors of these labourers engaged them as bonded labour and pay much lower wages by deducting the debt, as a result, the labours are caught in vicious circle and have no mean to get out the bondage and often the other family members were also compelled to offer their services. Abject poverty leads to perpetuation of the bondage.\textsuperscript{170} This is an unequal exchange system which in its totality represents one of the worst violations of basic human rights and a disgrace to the dignity of labour. The bonded labour system which is the crude form of unorganized labour has been in existence in Indian society from the time immemorial. It is a social evil\textsuperscript{171}. In India bonded labour has been abolished by the Constitution. Article 23(1) of the

\textsuperscript{168} www.nhrc.nic.in/pib/bonded-labour.
\textsuperscript{169} The National Commission for Rural Labour (NCRL) was constituted on 11.08.1987 by Government of India, to study the problems of rural labour and make recommendations thereon. The Commission submitted its reports to the Government on 31.07.1991. The Government has taken action on the recommendations of the NCRL, which, inter-alia, include enactment of the Building & Other Construction Workers (Regulation of Employment & Conditions of Service) Act, 1996.
\textsuperscript{171} Abdul Majid, *Social security for unorganized workers*, p.21 (ed.2000).
Constitution of India states, “traffic in human being and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence and punishable in accordance with law”.

**Role of Judiciary on bonded labour**

The Constitution of India and Bonded Labour System (Abolition) Act, 1976 prohibit bonded labour, yet it is in existence. Perhaps eradication of bonded labour is not a one-time event. It can occur and recur any time in any industry, occupation and process. To end this evil the judiciary has played a significant role and several important judgments have been pronounced at the end of public interest litigations admitted as a Writ Petition by the Supreme Court under Article 32 of the Constitution. Clear, precise and authoritative directions have been issued by the Apex Court to competent authorities responsible for the enforcement of the provisions of the Bonded Labour System (Abolition) Act, 1976. In *Bandhua Mukti Morcha v. Union of India*, the Supreme Court held:

“It is a system under which the labourer is required to work for some economic consideration. This process of discovery and transformation poses a serious problems since the social and economic conditions in which it has to be accomplished is dominated by elements hostile to it. But this problem has to be solved if we want to emancipate

those who are living in bondage and serfdom and make them equal participants in the fruits of freedom and liberty”.

It is a problem which need urgent attention of the Government of India and the State Governments and when the Directive Principles of the State Policy have obligated the Central and the State Governments to take steps and adopt measures for the purpose of ensuring social justice to everyone. In People’s Union for Democratic Rights v. Union of India\(^{173}\), popularly known as Asiad worker’s case where non-payment of minimum wages to construction workers was successfully challenged, among others, for the violation of Article 23, the Supreme Court, after an elaborate discussion on the background philosophy and scope of the Article, held that “The prohibition against traffic in human beings and begar and other similar forms of forced labour is a general prohibition, total in the effect and all pervasive in its range. It is a charter of recognition of human dignity. The Court also held that all unwilling labour is forced labour whether paid or unpaid and is therefore prohibited. On the specific question of minimum wages the Apex Court held that when someone works for less than minimum wages the presumption is that he is working under some compulsion. The compulsion may be either the result of physical force or of legal provisions or of wants, hunger, and poverty”.

\(^{173}\) AIR 1982 SC 1473.
In *Neerja Chaudhury v. State of Madhya Pradesh*\(^{174}\) the Apex Court by issuing the important directions held the “Rehabilitation must follow in the quick footsteps of identification and release, if not, released bonded labourers would be driven by poverty, helplessness and despair into serfdom once again. Social action groups operating at the grass root level should be fully involved with the task of identification and release of bonded labourers. The district and sub-divisional level Vigilance Committees should be reorganized and activated. Their meetings should be held at more frequent intervals than now. Officers who are posted at different levels to deal with the problem of bonded labour system should be properly trained and sensitized so that they may develop a sense of involvement with the misery and suffering of the poor. Officers who are socially committed, naturally motivated, inspired by idealism, unpolluted by all kinds of pulls and pressures and are prepared to brave opposition should be encouraged and their efforts commended by way of suitable public recognition”. In *Santhal Pargana Antyodaya Ashram v. State of Bihar and Others*,\(^{175}\) the Supreme Court by making a release order for bonded labour, imposed a duty on the State that the collector should issue a released certificate to each of the person so release. The released bonded labourers must be rehabilitated by the State

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\(^{174}\) AIR 1984 SC1099.

\(^{175}\) (1987) SCC 141.
Government on a permanent basis. Implementation of the rehabilitation programme should not wait on account of the pendency of the present proceeding in the apex Court. The Apex Court in its order in *Public Union for Civil Liberties v. State of Tamil Nadu & Others*\(^{176}\) case directed that the National Human Rights Commission should be involved in monitoring the pace and progress of implementation of the law, National Policy and Programme of action. In *Mani Lal Dayal Ji & Company and others v. Competent Authority and inspector under Child Labour (Prohibition and Protection) Act and others*,\(^{177}\) High Court of Chhatigarh held that mischief created under section 3 is not applicable to any workshop where any process is carried on by occupier with aid to his family. Petitioners have obtained declaration from each of Gharkhata worker about details of family members including minors and Childers. Petitioners have no control over affairs which happens within house of Gharkhata worker. Child engaged by parents of Gharkhata workers or employee who has no control of workers cannot be held responsible for violating provision under section 3 of the Act.


\(^{177}\) 2015 II LLJ 433 (Chhat).
2.5 Unorganized Workers categorized by the ‘Nature of Employment

The unorganized workers can be classified not only on the basis of occupation but also on basis of nature of their employment. These categories are discussed below.

2.5.1 Wages Workers in the Unorganized Sector

Wage workers are ‘persons employed for remuneration as unorganized workers directly by employer or through agency or contractors. A wage worker includes casual and temporary workers, migrant workers or those employed by households including domestic workers’. Wage workers also include regular worker in the unorganized sector. Different groups of wage workers face different types/grades of vulnerabilities. According to the Unorganized Workers’ Social Security Act ‘wage worker’ means a person employed for remuneration in the unorganised sector, directly by an employer or through any contractor, irrespective of place of work, whether exclusively for one employer or for one or more employers, whether in cash or in kind, whether as a home-based worker, or as a temporary or casual worker, or as a migrant worker, or workers employed by households including domestic workers, with a monthly wage of an amount as may be notified by the Central Government and State Government, as the case may be\textsuperscript{178}.

\textsuperscript{178} Section 2(n), UWSSA,2008.
2.5.2 Self-Employed Workers in the Unorganized Sector

These are the persons who operate farm or non-farm enterprises or engages in a profession or trade, either on own account, individually or with partners, or as home-based workers. Own account workers include unpaid family workers also. The Unorganized Workers’ Social Security Act defines self-employed worker as ‘any person who is not employed by an employer, but engages himself or herself in any occupation in the unorganised sector subject to a monthly earning of an amount as may be notified by the Central Government or the State Government from time to time or holds cultivable land subject to such ceiling as may be notified by the State Government’179.

2.5.3 Unprotected Wage Workers in the Organized Sector

Unprotected workers in the organized sector are mainly in the categories of regular, casual and contact workers who remain unprotected because of non-compliance of the provision of the existing laws. This is a growing segment in the organized sector. They work in the organized sector but remain deprived the benefits and social security which are provided to their counterpart. They remain under economic coercion and cannot join or form trade union by which they can get bargaining rights in employment. However to form or join an organization is the fundamental right of workers under the

179 Section 2(k), UWSSA,2008.
Indian Constitution, but due to the lack of adequate social security, they have a fear to lose job and they cannot exercise such fundamental rights.

2.5.4 **Unorganised Workers in the Organised Sector**

Casual and contract workers in the organized sector are more or less equal to unorganised workers, as far as benefits are concerned, though they are eligible for most of the benefits under law. Regular and permanent workers are mostly eligible for, and receive legislative benefits. There is a section of workers on the official waitlist in most of the enterprises. They are the casual workers who are often called *badli* workers, daily-wage workers and so on. The present trend is of increasing casualisation where even regular workers in the organised sector are losing their work security. This section of labour, even though in the organised sector, has to be considered part of the unorganised sector. Contract workers in Public Sector Undertakings are the example of it. In Private Sector most of the large-scale factories are engaging a large number of contract labours, in some cases more than fifty percent of the workforce in the enterprise. Often, these contract workers are not properly educated, not fully trained to handle machines, chemicals, electricity etc. yet, they are employed to work on dangerous machines and dangerous
processes. The contractualised and casualised labour is also considered as a part of the unorganised sector\textsuperscript{180}.

2.5.5 Other Common Propriety Resources Based Workers

A large number of workers depend on natural resources for their livelihood. Natural resources include forests, water bodies and mineral/stone deposits. Forest workers including adivasis, grazers, fisher people, cultivators, miners, potters and quarry workers depend on these resources. In the modern time the State has taken over the ownership of some of these resources through legislation. This appropriation of ownership has made a change in the status of these resources, like forests, etc from common property to State or Government property. Those who lived in forest villages or tribal habitats or those who lived in the proximity of common grazing land, had access to these since they were the base on which their livelihood depended. Thus, fishermen on the banks of rivers, lakes, seas, and so on had the right of access to these common property resources for purposes of earning their livelihood. In other words, these were commonly owned, but were the means of livelihood for individuals living in them (forests) or beside them (lakes etc). With the new legislation, the State has inhibited this right of access, and in some cases totally taken away this right of access, thus denuding the poor unorganized subsistence workers, of their

means of livelihood. The case of mineral deposits and fisheries is not very different. Panchayats now own the water tanks where any leaseholder can do fishing. The leaseholder does not have to be a fisher-person. This development leads to two results: One, the new players from outside doesn’t depend on these resources for their livelihood, and therefore, do not mind exploiting these resources to their exhaustion and at the cost of the social assets in fish and water resources. Two, the natural stakeholder is pushed out totally, or subjected to serious jeopardy of subsistence\textsuperscript{181}. Traditional artisans such as basket weavers and rope makers, depend on the number of resources taken from forests and village commons, are also come within the meaning of the category of other common propriety resources based workers.\textsuperscript{182}

2.6 Sum up

There is a long history of existence of unorganised workers in India since ancient era. They constitute a huge labour force and play a pivot role in economy and development in India. But unfortunately they could not be recorded on statute books and remained out of the ambit of the statutory social security system from an immemorial time. The light has been thrown on the unorganised workers first time by the first National Commission on Labour (1969) and defined the term ‘unorganized worker’ as those who have not been able to organise themselves in pursuit of common objectives on account of

constraints like casual nature of employment, ignorance and illiteracy, small and scattered size of establishments and superior position of employers in industry etc. The 1991 Census has classified workers in this country into two distinct categories as main workers and marginal workers. The main workers are those workers who work for the major part of the year (296 days) and marginal workers are those who work for less than 6 months (183 days). Unorganised workers can be categorised on the basis of occupation and on the basis of nature of employment. Mines and quarry workers, plantation workers, home based workers, domestic workers, construction and building workers, Small and marginal farmers, landless agricultural labourers, share croppers, fishermen, and those engaged in animal husbandry, beedi workers, building and other construction workers, leather workers, weavers, artisans, migrant workers, rag pickers and rickshaw pullars are fall within the first category. Under the second category Attached agricultural labourers, bonded labourers, contract and casual labourers wage workers in the unorganized sector, self employed workers, unprotected and unorganized wage workers in the organized sector and other common propriety resources based workers can be considered. However the Second National Commission on Labour (2002) has recommended that the sex workers should also be included in the category of unorganized workers. The entire class of unorganized workers has low earnings for a number of reasons such as depletion of resources and lack of work. A high proportion of socially and economically underprivileged sections of society are concentrated in this class. In India, more than ninety percent of workforce belongs to this class. Beside the other informal sectors, the agriculture sector is the
single largest contributor to the Gross Domestic Product, and also the biggest sector for employment. According to the Committee on Unorganised Sector Statistics’ report\textsuperscript{183}, out of four hundred and twenty million unorganized workers in the unorganized sector, two hundred and sixty seven million workers are in the activities that relate to agriculture. Agricultural labour constitutes a distinct section in the peasantry. Yet, their total strength, community allegiance, comparative socio-economic status and political position in agrarian society have been overlooked because they belong to the poor, unorganized, badly exploited and oppressed class of rural society. The bargaining capacity of unorganized workers is marginal and this leads to ruthless exploitation by the employers. Debt bondage is also prevalent among them. When earnings and wages are below the statutory minimum wage the workers have to live by borrowing and have to lead an undignified life. Further the workers who are working in the organized sector on contractual, out sourcing, daily wages, or part time basis are also counted in unorganized workers. For example Anganwadi, Balwadi and ASHA (Accredited Social Health Activist) are the unorganized workers in organized sectors and are getting only nominal wages. These are the workers, who do not come within the ambit of the social security. They are used by Governmental and Semi-

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Governmental wings for tasks like campaigns against malnutrition, malaria and polio. At the same time, the employers are not ready to own them, and since the wages are insignificantly low, they officially term them as ‘honoraria’. These workers should also be considered as a part of the unorganized sector. They are also entitled to minimum wages and other relevant social security measures like, allowances, social security, health and safety, holidays and education, training and skill development etc. On the basis of the above study it can be concluded that the unorganized workers prior to the enactment of the Unorganized Workers’ Social Security Act, 2008 were not in statute books and have not been defined. However they have remained the part of the studies of various Commissions and Committees constituted for the labour. It is the first time when the unorganized workers in the country are defined by the Unorganized Workers’ Social Security Act, which is exclusively enacted for them. The definition of ‘unorganized worker’ given in this Act includes various categories of worker like, home based workers, wage workers, self employed workers, domestic workers, migrant workers, casual or temporary workers. In case of ‘self employed workers’ the Act prescribes a ceiling (limit) on monthly earning and holding on cultivable land, that may be notified by the Central Government or the State Government from time to time. Thus these categories of workers i.e. ‘self employed workers’ and ‘wage workers’ are not automatically considered as unorganized worker under the Act, but are subjected to the
conditions mentioned in the Act. Thus the Act has defined the ‘unorganized worker’ in wider sense, yet there is a need to expand the definition of ‘unorganized worker’ by including the sex workers and other workers who are not protected by any statutory social security system irrespective of that they are working in the organised sector or unorganised sector or they are self employed.