Chapter Three
Labour Laws and the Construction Sector:
Emerging Gaps between Statute and Implementation

The construction workers at most sites in the Commonwealth Games Village (in preparation for the Commonwealth Games to be held in Delhi in October 2010) are being denied minimum wages\(^1\), equal remuneration \(^2\), overtime, drinking water, toilet, crèche, first aid, and temporary living accommodations. It is ironic that the employers do not comply with minimum standards of working conditions and provision of facilities (prescribed under law) at the sites, which are broadly governed by the government. Innumerable labour laws are violated in almost all the construction sites: Minimum Wages Act, 1948; Equal Remuneration Act, 1946; the Inter-state Migrant Workmen (Regulation of Employment and Condition of Services) Act, 1979; Bonded Labour System (Abolition) Act, 1976; Contract Labour (Prohibition and Regulation) Act, 1970; and The Buildings and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.\(^3\) Majority of the workers are not aware of the provisions under various labour laws. Since most of the workers are not affiliated to any trade unions, a lot of the times their dissent and work related concerns are not represented to the principal employer/contractor.

A report by People's Union for Democratic Rights on the contract workers in a Central University, in Delhi, shows how hundreds of contractual workers (construction workers, sweepers, library staff, and mess workers), are being paid little more than 'subsistence' wage and denied their minimum wage. Apart from the non-payment of the minimum wages, there is no system of muster roll, and no provision for drinking water, toilets, or crèches provided for these workers.\(^4\) In addition to this, their working conditions are abysmal and devoid of the most basic amenities. Major construction work in the University campus (construction of hostels and schools/administration buildings) is entrusted to the Central Public Works Department. The government here does not abide to most of the labour laws, which it designs to protect workers. Also, since the work is

\(^1\) The minimum wages according to the Government till Feb 2009 was Rs 142 for unskilled workers whereas workers (men) were getting Rs 85, while women workers were getting Rs 80

\(^2\) Women unskilled workers are paid Rs 80, while their male counterparts are paid Rs 85 as daily wages

\(^3\) People's Union for Democratic Rights, *In the Name of National Pride: (Blatant Violation of Workers' Rights at the Commonwealth Games construction site)*, Delhi, April 2009

\(^4\) People's Union for Democratic Rights, *Fettered lives: Contract labour in Jawaharlal Nehru University*, Delhi, June 2007
divided into many layers of sub-contractors, it is often difficult to locate and/or prosecute the principal employer in the court of law in case of any labour law violation. Most of the labour laws focus on a direct employee-employer relationships leading to the exclusion of other forms of labour relationships such as sub-contracting, outsourcing, temporary work, or even fixed-contract employment (which characterises informalisation of work).

In some cases, the sub-contractors or labour contractors do not maintain any regular muster rolls or wage payment registers resulting in no exact record of number of workers engaged at the worksite. There were also some instances where few women workers are not shown in the records, so that the total number of workers employed does not exceed twenty, therefore, legitimising the non-applicability of most of the labour laws which directly are associated with the construction sector.  

Labour law regulations and enforcement in India have been focused towards workers in the organised sector leaving the vast majority of the unorganised sector practically unprotected. The applicability of labour laws has often been an important factor in distinguishing the characteristics of the organised and the unorganised sector. Though the organized sector workers (who constituted a small fraction of the labour force) had the promise of protection by numerous labour laws, which guaranteed job security, regular wage revisions, retirement and other benefits in the pre-reform period, there was still an absence of the welfare provisions such as education, health care, housing, public distribution system back then. Therefore, this distinction between the organized and the unorganized sector, based on the applicability of labour laws, does not stand true as the organized sector was not protected to the same degree as it was portrayed to be (since the welfare measures were not a part of the provisions, also the enforcement of the other provisions under the law was highly questionable). Secondly, there are few labour law legislations, which are directly applicable to the unorganized sector though the process of their implementation is questionable.

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This chapter is divided into three sections. The first section discusses the objectives and changing prioritization of labour law legislations in India. The second section discusses the provisions granted by the Equal Remuneration Act, 1976, the Minimum Wages Act, 1948, The Buildings and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, and the Building and Other Construction Workers Welfare Cess Act, 1996, since these Acts are directly linked to the construction sector. The third section discusses the National Rural Employment Guarantee Act, 2005, and The Unorganised Workers' Social Security Act, 2008, to critically study their provisions in the context of migrant construction workers and their social security needs.

Changing meanings and objectives of labour law legislations

The scope of labour laws is wide, extensive, and comprehensive, explaining their applicability to multi-dimensional aspects. It deals with employment, remuneration, conditions of work, trade unions, and labour-management relations. The early phase of development of labour laws was often limited to the most developed industries. But these limitations were gradually eliminated and extended to include handicrafts, rural industries, and agriculture, small undertakings, self-employed and office workers. Thus, the body of the law, originally intended for the protection of the working class, was gradually transformed into broader welfare legislations. Recent trends in labour laws include regulations for employment, individual employment relationship, wage, and remuneration, conditions of work, health, safety and welfare, social security, trade unions, and labour-management relations along with labour administration.7

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7 Individual employment relationships include: aspects of promotion, transfer, dismissal procedures, compensation, minimum wages, conditions of work and social security. Wages and remuneration includes: methods of wage payments, the protection of wages against unlawful deductions, determination of wages, fringe benefits in relation to wages. Conditions of work involves: working hours, rest periods, holidays, provision of child labour, regulation of employment of young persons, and some special provisions relating to the employment of women (e.g. admission to employment, night work, and excessive hours). Health, safety, and welfare include: matters as occupational health, accident prevention regulation and services, special regulations for particularly hazardous occupations (e.g. mining, building, dock workers). Social security provisions include: income security in the form of sickness benefits, unemployment allowance, old age pensions, payment of injury, maternity benefit, invalidity and survivor’s benefit, medical care, old age pension insurance, free compulsory education, free medical facility, retirement and health insurance. Trade union and labour management relations includes: legal status, rights, and obligations of trade unions and employers’ organisations, collective bargaining, and collective agreements. Administration of labour laws involves the functioning of administrative authorities concerned with labour problems. It includes labour inspections, and law enforcement mechanisms. Administration of law also covers the organisation,
Overall objectives of labour laws are aimed at protecting the interest of workmen in terms of employment security, social security, conditions of employment and wages by laying down various provisions. These include provisions to regulate and improve working conditions of workers to protect and promote their health, safety and welfare, to fix, pay and execute periodic revisions of minimum wages, to ensure the timely payment of wages, to provide freedom for workers to form or join trade unions and promote their welfare through collective bargaining, to provide for the prevention and settlement of industrial disputes, to ensure social security and benefits to workers (such as sickness, maternity, disablement and death), to provide appropriate welfare facilities by raising welfare funds, to undertake the provision for regular training in different trades, to regulate the employment and service conditions of contract labour. Also, there are provisions, which aim for its abolition, to provide regular and periodic furnishing of statistics by various enterprises on specific labour matters, and to make it obligatory for industrial enterprises to take effective measures in order to promote healthy environment. ⁸

Immediately after the First World War, the industrialized and developed countries witnessed severe workers agitation. And, it was the severity of these agitations, which resulted in the campaign for/ in favour of labour legislation, to regulate employment conditions and welfare of workers. The Russian Revolution, in 1917, also, added to the workers’ struggle for fair treatment and protection. The ILO, established in 1919, internationally mandated the necessity of labour legislations to protect the interests of workers. It has developed conventions and recommendations on labour standards for facilitating improvements in labour conditions, which have been adopted by its member countries, including India. ⁹

Along with the establishment of the ILO, the All India Trade Unions Congress, in 1920, spearheaded the movement for legislations to improve the poor conditions of workers in India. The colonial government in India passed the Factories Act in 1883 laying down the minimum conditions of work (in terms of hygiene, safety, and hours of work etc). Several other legislations were passed to regulate conditions of work and provide social security provisions before independence. The provision of compensation to workmen for any injury, sustained by them during the course of employment, was made

jurisdiction, composition and procedure of labour courts and other bodies for settlement of grievances arising out of existing contracts of collective agreements.


⁹ Ibid, 2008

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in the Workmen’s Compensation Act passed in 1923. Payment of Wages Act, 1936, was aimed at regulating intervals between successive wage payments, over time payments and deductions from the wage paid to the workers. In the sphere of industrial relations, Bombay Industrial Dispute Act of 1932 was an important labour legislation introduced prior to Independence. The Act provided that an industrial worker had the right to know the terms and conditions of his employment and the rules of discipline that he was expected to follow.¹⁰

There was a drastic change in the philosophy of the labour law legislations after independence. The ideas of social justice and welfare state as enshrined in the constitution guided the principles for the formulation of labour laws. The constitution made specific mention of the duties that the state owes to labour for their social regeneration and economic upliftment. One of the significant duties, which had a direct bearing on social security legislation, is the duty of the state to make effective provisions for securing public assistance in the case of unemployment, old age sickness, disablement etc.¹¹

After Independence the Industrial Disputes Act, 1947, provided protection to workers against layoffs and retrenchment for creation, maintenance, and promotion of industrial peace in industrial enterprises. This Act was later amended in 1972, 1976, and, in 1982, seemingly providing greater protection to workers. The Factories Act, 1948, replaced the one passed in 1883 and aimed at regulating the conditions of work in manufacturing establishment and ensuring adequate safety, sanitary, health, welfare measures, hours of work, leave with wages and weekly off for workers employed in ‘factories’(defined as establishments employing 10 or more workers using power and 20 workers without using power). Similarly, the Minimum Wages Act, 1948, was an important legislation that was expected to protect the unorganised sector workers, despite their lack of bargaining power. The minimum wages for scheduled employment was to be fixed and periodically revised by the central and the state governments in their respective spheres. The Industrial Employment (Standing Order) Act, 1956, was aimed at regulating the conditions of recruitment, discharge, and disciplinary action applicable to factories employing 50 or more workers. It requires the employers to classify workers into different categories as permanent, temporary, probationers, casual apprentices, and substitutes. The Contract Labour (Regulation and Abolition) Act, 1970, regulates the

¹¹ Ibid, 2008
employment of contract labour and prohibits its use in certain circumstances. It applies to all establishments and contractors who currently, or in the preceding year, employ at least 20 contract workers. A contractor who employees 100 or more workers on contract basis is required to provide drinking water, toilets, first aid and certain other basic facilities. In the sphere of social security, Employees State Insurance Act was introduced in 1948, providing compulsory health insurance to workers. The scheme provided certain benefits in the event of sickness, maternity and employment injury to workmen employed in or in connection with, the work of non-seasonal factories. The Act has prescribed self-contained code in regard to the insurance employees covered by it. 12

The Constitution provides an overarching framework for protection and promotion of livelihoods and regulation of conditions of work. The Fundamental Rights guaranteed by the Constitution prohibits the exploitation of labour employed as forced labour and child labour in factories and mines or in hazardous occupations. 13 It also guarantees non-discrimination by the State and equality of opportunity in matters of public employment. 14 The right to form associations and unions is also a Fundamental Right. 15 The right to work is included in the Directive Principles of State Policy, which is granted by the State through execution of effective provisions for enabling the enjoyment of this right. The Directive Principles also includes provisions for just and human conditions of work and maternity benefit. Overall, it directs the state to execute suitable legislation for all workers, (agricultural, industrial or otherwise), towards ensuring a decent standard of life (by providing right to work, a living wage, and decent conditions of work).

Labour related provision is included in the concurrent list of the Constitution and regulatory provisions of conditions of work 16 are included in the realm of both the state and the Central Governments, since labour laws can be legislated both by the Central and state governments. The state governments have the right to determine the coverage of particular laws and frame rules regarding implementation of these laws, which have been

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13 As per the Articles 13 and 14 of the Constitution of India
14 As per the Articles 15 and 16 of the Constitution of India
15 As per the Article 19 of the Constitution of India
16 As per the entries 22, 23 and 24 of List III in the 7th Schedule of the Concurrent list in the Constitution of India
passed by the Centre. In this context, two types of state laws may be noted. In the first case, the state governments have the right to make amendments to the Central laws, which are enacted by the Central Government. These amendments are made in conformity with the central laws with the approval of the Central Government. In the second case, the states have the right to enact laws relating to the working conditions of some sections of the workers in the states sphere.

Presently, there are over 60 central legislations dealing with labour matters and together with state level laws or state level amendments to Central laws, their numbers run into hundreds. Many of the existing labour laws apply to larger establishments employing 10–20 workers and roughly cover around 15 per cent of the work force. Therefore, it can be argued that labour laws have a limited coverage as their applicability is determined by a clear employer-employee relationship and as a result those workers engaged via intermediaries and or are self-employed are excluded. Also definitions used in the labour laws apply only to ‘workmen’ or those working in specific sectors, and as a result, non-workmen (administrative or managerial staff) and those employed in sectors where the law does not apply, may get excluded. The protective features of many labour laws relate to women and children, which are not only aimed at prevention of discrimination but also used as measures to achieve substantive equality. The prevention of children from working long hours and their total prohibition from certain forms of work, the ban on women performing night work, the prevention of sexual harassment at the workplace are some of the measures.

All laws applicable to both the organised and unorganised sector can be divided into six categories: legislations on social security, legislations on industrial relations, legislations on wages, legislations on labour welfare, legislation on employment and training.

The legislations on social security includes: Workmen’s Compensation Act, 1923; 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. The legislations on industrial relations includes: The Trade Unions

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18 Ibid, 2008


As mentioned earlier, due to the non-existence of a clear employer-employee relationship, especially in the unorganised sector, the workers usually lack comprehensive protection of the minimum conditions of work under various legislations. Central laws, which regulate conditions of work in the unorganised sector fall into three groups. The first group applies generally to the unorganised sector. The second group of laws apply to certain groups of workers in the unorganised sector and the scope of application is restricted by the nature of employment, or size of employment. The third group of laws apply mainly to the organised sector workers (viz. factories, establishments, or enterprises employing 10 or more workers). But, in certain cases, these laws can (be made to) apply to some sections of workers in the unorganised sector.

The Equal Remuneration Act, 1976 and The Bonded Labour System (Abolition) Act, 1976, apply to all sections of the unorganised sector labour. The laws which apply to some sections of the unorganised sector are: Minimum Wages Act, 1948; Child Labour (Prohibition and Regulation) Act, 1986; Dangerous Machines (Regulation) Act, 1983.

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21 Ibid, pg180

For the purposes of this research the provisions granted by the Equal Remuneration Act, 1946; the Minimum Wages Act, 1948; The Buildings and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996; and the Building and Other Construction Workers Welfare Cess Act, 1996, would be studied to understand the dynamics of the provisions granted by the above Acts and their actual applicability.

**Legislations for gender equality, wage, and welfare in the construction sector**

The Equal Remuneration Act, 1976; is designed for prevention of discrimination based on gender in matters of employment, applicable to women workers. Under the Act, the employer is obliged to pay equal remuneration to men and women workers for same work or work of a similar nature. By same work or work of a similar nature is meant work in respect of which the skill, effort, and responsibility required are the same, when performed under similar working conditions.  

The Act also provides for rules against discrimination while recruitment of men and women workers. The wordings ‘or in any condition of service subsequent to recruitment such as promotion, training or transfer’ were inserted by the Equal Remuneration (Amendment) Act, 1987, whereby discrimination based on employment terms (promotion, training, transfer) on the basis of gender is prohibited.

The applicability of this Act does not depend upon financial ability of the employer to pay equal remuneration. The deciding factors in finding out which appropriate government (central government or the state government) should be involved

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22 Ibid, 2007  
24 AIR 1987 SC 1281(1289): 1987 Lab IC 961
for implementation are: various places where the employment is carried on, for whose benefit the employment is carried on, under whose control the work connected with employment is carried on, etc. 25 Whether a particular work is 'same or similar in nature' can be determined on the basis of three considerations: the authority should take a broad view, take an equally broad approach for the very concept of similar work implying differences in details, and lastly, it should look at all duties actually performed, not those theoretically possible. Overall, while comparing, the authority should look at the duties generally performed by men and women. However, where men and women work at different times (e.g. at night), it is not required that they be paid the same basic rate as workers who work normal day shifts. Thus, a woman who works during daytime cannot claim equality with a man on higher basic rate for working night shifts. Also, the applicant herself would be entitled to that rate if she changed shifts. Therefore, there should be a proper job evaluation before any further enquiry is made as sex discrimination arises only where men and women doing the same or similar kind of work are paid differently. 26 It is evident from the definition that stress is upon the similarity of skill, effort, and responsibility when performed under similar conditions. 27

The legislations in the United Kingdom and France provide equal remuneration for the same work or work of equal value. The Equal Pay Act was introduced in 1970 in the United Kingdom. This Act provides for payment of equal wages for the 'like work' irrespective of the sex of the employees. The term 'like work' has been defined as work of the same nature or broadly similar to the work in question. 28 The Labour Code, 1973, of France, provides that all employers must ensure equal remuneration between men and women for the same work or 'work for equal value'. Violation of this provision is punishable by one-year imprisonment and / or a fine of French francs 25,000. France has set 2010 as the target date for eliminating the remuneration gap between women and men through collective agreements. 29

The ILO's Equal Remuneration Convention, 1951, and the European Union law enshrine the principle of equal remuneration for men and women workers for 'work of

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26 AIR 1987 SC1281:1987 Lab IC 961
29 Equality at Work: Tackling the Challenges, Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, International Labour Conference, 96th Session, 2007
equal value'. The European Union Law has played a significant role in trying to eliminate discrimination between men and women at the workplace and one of the areas in which women have suffered great inequity is the area of wage pay. Therefore, to address the issue, Article 119 of the European Commission (EC) Treaty and the Equal Pay Directive provided the principle that men and women should receive equal pay for equal work and that all discrimination on the grounds of sex with respect to all aspects of remuneration should be eliminated. Further, in May 1999, the Treaty of Amsterdam came into force which provided a broader article to replace Article 119. With the help of the new Article 141, EC strengthens the sex equality provisions. It, also, brings the EC Treaty in line with the Equal Pay Directive by defining the principle of equal pay as 'equal pay for equal work or work of equal value'.

The Equal Pay Act, 1963, by the Federal Government of the United States prohibits employers from discriminating on the basis of sex in paying wages for equal work, the performance of which require skill, effort, and responsibility and, which are performed under similar working conditions. The law on securing Equal Employment Opportunity and Treatment between Men and Women in Employment (EEOL) in Japan is designed to promote equal opportunity and treatment between men and women in employment. This is in accordance with the principle contained in the Constitution of Japan on ensuring equality under the law. The Equal Employment Opportunity Law 1986, mandated equal opportunity, and equal treatment in the job market for members of both sexes.

In India due to a strong engrained division of labour between men and women, often work assigned to both is different. This condition often helps the employers to evade the provisions under the act which stipulates equal remuneration to both men and women for the same or ‘similar nature of work’, on the other hand, based on the above cited examples, the act should rather be applicable to ‘work of equal value’.

This Act in India provides for advisory committees of not less than 10 (out of which one half should be women members) nominated by the government. The committees advise the government regarding the employment of women, their numbers,

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30 Ibid, 2009
suitability, nature, and hours of work in concerned establishment. In addition to this, they also advise the government on how to increase employment opportunities and create part-time jobs for women. The inspectors appointed by the government investigate whether the rules are being followed according to the Act. Violations of the provisions like not maintaining proper registers or giving women less remuneration than prescribed are liable for punishment. Since 1987, the Equal Remuneration Act, 1976, has involved some social organisations in the enforcement process. At present, four organisations are recognised under the Central Act, namely, the Centre for Women’s Studies, New Delhi; the Self-Employed Women’s Association, Ahmedabad; the Working Women’s Forum, Chennai and the Institute of Social Studies Trust, New Delhi.\(^\text{34}\)

The *Shramshakti* report pointed out that women were not being paid equal remuneration for the same work even when government is the employer. Also, ironically, in states where the status of women is not high (e.g. Nagaland, Manipur, Assam), this Act is still violated; therefore, it is evident that somewhere it has become acceptable to pay lesser remuneration for similar work to women workers.\(^\text{35}\) In the case of *People’s Union for Democratic Rights and Others v. Union of India*,\(^\text{36}\) it was alleged before the court that the workers engaged in construction work were being discriminated in matters of payment of wages on the basis of sex, which is a violative of the provisions of the Equal Remuneration Act, 1976. In this case the Supreme Court directed the Union of India and Delhi Administration to ensure that the provisions of the Equal Remuneration Act, 1976, are not violated. Latest data show that merely 4,697 violations were detected, 972 prosecutions launched and 489 convictions were obtained during 2001/2002.\(^\text{37}\)

In the construction sector due to intrinsic gender division of labour women and men are given different work based on skills. Therefore, due to the difference in nature of work the provision under the Equal Remuneration Act does not apply. For women workers there are multiple layers of discrimination. As most of the provisions of the Minimum Wages Act is not also followed in most construction sites they are doubly exploited.

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\(^{34}\) Ministry of Labour, Part I, Annual Report 2002-2003, Government of India


\(^{36}\) AIR 1982 SC 1473, popularly known as ‘Asiad’s case’

\(^{37}\) Ibid
The term ‘minimum wages’ has different connotations: statutory minimum wage, the bare minimum wage or basic minimum wage, the minimum wage, the fair wage, the living wage and the need-based minimum wage. Of these, the statutory minimum wage is the wage determined according to the provisions prescribed by the Minimum Wages Act.\textsuperscript{38} The bare or the basic minimum wage is the term used in awards and judicial pronouncements. The minimum wage, fair wage and living wage has been introduced in the report of the Committee on fair Wages and the need-based minimum wage was defined in the 15\textsuperscript{th} session of the Indian Labour Conference held in January 1957.

Three concepts on minimum wages were elucidated by the Committee on Fair Wages appointed by the Central Advisory Council as follows: ‘living wage’ should enable the worker to provide for himself and his family not merely the bare essentials of food, clothing and shelter but also a measure of frugal comfort including education of children, protection against illnesses, requirements of social needs and insurance against contingencies like old age. ‘Minimum wage’ was defined to be able to provide not merely for the bare sustenance of life but for preservation of the efficiency of the worker (with regard to education, medical requirements, and other amenities). ‘Fair wage’ was to attain the lower limit of the wage which must be the minimum wage, and the upper limit must be the capacity of the industry to pay.\textsuperscript{39}

In 1957, the 15\textsuperscript{th} session of the Indian Labour Conference (ILC) emphasised that the minimum wage should be need-based in order to ensure the minimum human needs of the industrial workers. The following 5 norms were recommended by ILC for fixation of the minimum rates of wages: three consumption units for one earner, minimum food requirement for 2700/ day calories per average adult, 18 yards of per capita cloth consumption for 4 members i.e. 72 yards per annum per family, rent corresponding to the minimum area provided for under Government's Industrial Housing Scheme, and fuel, lighting and other miscellaneous items of expenditure to constitute 20 per cent of the total minimum wages.\textsuperscript{40}

The First National Commission on Labour 1969 stated clearly that while determining the need based minimum wages the employer’s capacity to pay should be

\textsuperscript{38} The statutory minimum wages for most of the scheduled employments are generally expected to be lower than the prevailing organised sector wage rates, because the statutory minimum wage is only a floor level wage aimed at providing a subsistence income and is mostly fixed for unorganised sector.


\textsuperscript{40} Ibid, 2007
considered. This commission did not make any attempt to define the minimum wage. Instead of a National Minimum Wage, which it argued was neither feasible nor desirable; it recommended fixing regional minima for different homogeneous regions in each state.\textsuperscript{41}

The concept of 'General Minimum Wage' was introduced by the Committee of Secretaries of six States (viz. Bihar, Kerala, Manipur, Uttar Pradesh, West Bengal and Pondicherry) constituted in 1981 on the recommendations of the sub-committee of the Labour Ministers' Standing Committee. The General minimum wage was defined as the lowest wage essential to meet the bare minimum needs of workers and their families. The Indian Labour Conference in its meeting held in November 1985, expressed the view that till such time a National Wage was not feasible, it would be advisable to have Regional minimum wages. In this regard the Central Government was to lay down the guidelines based on the argument that the minimum wages should be revised at regular periodicity and should be linked with rise in the cost of living.\textsuperscript{42}

The National Commission on Rural Labour 1991 defined the minimum wage as a minimum subsistence wage, which must be paid to workers by all employers on socio-economic considerations. Minimum wage was considered the subsistence wage which cannot differ much in physical terms from employment to employment and from employer to employer. Taking into account the poverty line, as determined by the Planning Commission, the average number of earners in an agricultural labour household, the average number of employment days, and three consumption units per earner, the commission determined Rs. 20 as being the minimum wage in rural India in 1990/91.\textsuperscript{43}

The Second National Commission on Labour (2002) also considered the issue of minimum wage and recommended a National Minimum Wage based on the principles recommended by the 15th ILC. The commission recommended that the wage be revised from time to time and have a component of dearness allowance linked to the cost of living to be adjusted every six months. The wage itself could be revised every five years and the states could notify the minimum wage, which could vary from region to region, but could

\textsuperscript{41} First National Commission on Labour Report, Ministry of Labour, Government of India, 1969
\textsuperscript{42} Ibid, 2007
\textsuperscript{43} Report of the National Commission on Rural Labour, Ministry of Labour, Government of India, New Delhi, 1991
not be less than the National Minimum Wage. It also recommended that wages should not be fixed separately for each scheduled employment as is the case presently.\textsuperscript{44}

Expressing concern at the wide disparity in defining the minimum wages that existed and the lack of clarity on the concept, and parameters of wage fixation, the Central Advisory Board, constituted a Working Group in 2003 to go into these issues. The Working Group submitted its report in 2003. This Working Group decided to adopt the principles laid down by the ILC of 1957 and elaborated by the Supreme Court judgment of 1992. Accordingly, it determined Rs. 66 to be the National Minimum Wage as in 2002/03. The Committee recommended that this wage could replace the different state level minimum wages for different schedules of employment. With effect from February 2004, all the States/ Union Territories governments have been requested by the Labour Minister to ensure fixation/ revision of Minimum Rates of Wages in all the Scheduled employments at not below Rs.66 per day. However, there is no legal backup to the national floor level minimum wage fixed by the Government of India.\textsuperscript{45} The Ministry of Labour & Employment fixed the rates of minimum wages in the scheduled employments of ‘Construction’ and ‘Loading and Unloading’ in the Central sphere as follows: Rs 120, Rs 150 and Rs 180 for unskilled workers and for skilled workers at the rate of Rs 200, Rs 220 and Rs 240, in accordance with grade scale. This was based on the recommendation of the Minimum Wages Advisory Board (MWAB) in its meeting held in January and May 2008. From November 2009, the National floor minimum wage has been increased to Rs 100 from Rs 80 in September 2007.\textsuperscript{46}

The ILO in 1919 listed the provision of adequate living wage among the basic conditions of labour. Another ILO convention adopted in 1928 has influenced the fixation of minimum wage in several countries, including, India. In 1929, the colonial government appointed the Royal Commission on Labour which, on the line of the ILO convention, recommended that it would be necessary to create machinery for fixing minimum rates of wages in those trades in which wages are lowest and where there is no scope for collective bargaining. The campaign for establishing regulations on minimum wage gained momentum in 1930 when the Central Assembly passed a resolution urging the payment of sufficient wages and fair treatment to workers employed in industries. The

\textsuperscript{44} Second National Commission on Labour Report, Ministry of Labour, Government of India, 2002
\textsuperscript{45} National Commission for Enterprises in the Unorganised Sector, Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector, Government of India, 2007
\textsuperscript{46} http://www.labour.nic.in
issue of minimum wage legislation was further discussed at the meeting of the Standing Labour Committee and the Indian Labour Conference both held in 1943. Thereafter, a draft bill on minimum wages was placed before the Indian Labour Conference in 1945. The recommendations of the Conference were later discussed in the special sub-committee in January 1946, and a bill was finally introduced in Central Legislative Assembly in April 1946. The bill was passed in March 1948 and is known as the Minimum Wages Act 1948.47

The Minimum Wages Act, 1948, guarantees minimum rates of wages in certain employments and is applicable to the workers engaged in certain scheduled employments. It is applicable to agricultural, non-agricultural and to rural as well as urban workers. The scope of this act can be increased by adding new schedules by the government. This Act covers units employing even one worker, e.g. wage worker, home-worker, piece-rated work, time rated work but excludes the self-employed. According to this Act, different minimum rates of wages are fixed for different scheduled employments; different classes of work (based on skills/ age) in the same scheduled employment for adults, adolescents, children and apprentices; or based on different geographical regions. Similarly, minimum rates of wages may be fixed by the hour, day, month, or by such other larger wage period as may be prescribed. The government may fix the number of hours of work which shall constitute a normal working day, inclusive of one or more specified intervals; provide for a day of rest in every seven days, which shall be allowed to all employees by payment of remuneration in such days of rest; and pay not less than overtime rates to employees who work on the day of rest. Under the rules, ordinarily Sunday is the weekly day of rest. For an adult nine hours and for a child 4 ½ hours constitute a normal working day. Overtime is payable at 1½ times the wage in agriculture and double the rate in other cases of scheduled employment.48 The Supreme Court clarified this further by stating that the minimum wage is not just applicable to provide for the workers to keep them above starvation, but must ensure subsistence of their family and also preserve their efficiency as a worker.

Under this Act, the type of workers to be employed in any undertaking fall under three categories: skilled, semi-skilled and unskilled for whom minimum wages can be

48 Gazette of India, The Minimum Wages Act, 1948
fixed.\textsuperscript{49} If the state government in exercise of powers under section 5(1) (a)\textsuperscript{50} issues notification for revision of wages, the effect of which reduces wages payable to the employees, the said notification would be held null.\textsuperscript{51} The concept of a minimum wage does not imply a uniform rate of wage for all workmen.\textsuperscript{52} The government can fix different minimum wages for different industries or even similar industries in different localities. The fixation of the minimum wages depends on the prevailing economic conditions, the cost of living in a place, the nature of work to be performed and the conditions in which the work is to be performed.\textsuperscript{53}

The conviction obtained under the Minimum Wages Act, were just 3,094 during 2003/04.\textsuperscript{54} Also during the year 2004/05, there were 5,87,397 inspections, number of irregularities detected were for 6,22,673 workers and rectified for 3,99,921 workers. Settlements were made for Rs 50,599 while claims were filed for Rs 90 million. In total, 5925 cases were resolved and 9572 prosecutions were launched and overall, there were 56,099 pending cases altogether.\textsuperscript{55} During 2005/06, the number of convictions was 4,620 as obtained by the Central Industrial Relations Machinery (CIRM).\textsuperscript{56}

The Court in the case of \textit{Delhi Council for Child Welfare v. Sheela Devi and Another}, held that the appellant/ society is covered by provisions of the Minimum Wages Act, 1948, and, therefore, has an obligation to pay minimum wages to its workmen. It also applies to persons who work in mines or on construction sites, contract labour, and persons working in agriculture operations, on daily wages. Though this Act is a legal protection for unorganised sector workers it is often found that among construction workers, \textit{beedi} workers, \textit{agarbatti} workers, agricultural workers, workers in small shops and hotels, wages are below the prescribed minimum wages fixed by the government for the respective industry.

\textsuperscript{49} CLH Thakkar v. State of Gujarat (1981) 1 SCR 440; (1981) 1 LLJ 134
\textsuperscript{50} Section 5 of the Act provides for procedure for fixing and revising minimum wages. Section 5 (a) provides for appointment of as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision, as the case may be
\textsuperscript{51} Hotel Mazdoor Sabha v. state of Maharashtra (1987) 54 FLR 642 (Bom)
\textsuperscript{52} Chandrabhavan Boarding and Lodging Ltd. Ors v. State of Mysore by its Secretary, Department of Labour and Municipal Administration, Bangalore and ors AIR 1968 Mys 156; (1968) LIC 879.
\textsuperscript{54} Government of India, Indian Labour Year Book, 2004
\textsuperscript{56} Ministry of Labour and Employment, Annual Report, 2006-2007, Government of India
Some specific instances from reports have been highlighted to examine the changing rates of minimum wages, corresponding with time. According to a Delhi Administrative notification in 1974, the minimum wage rate for unskilled worker was fixed at Rs. 5.15 per day. However, during the survey, of the Delhi School of Social Work in 1975, it was found that none of the workers received the minimum wages and women workers were being paid only at the rate of Rs. 4.50 per day. The Report of the National Institute of Urban Affairs, titled, Women construction workers: with particular reference to legal security and social justice: A case study of Delhi in 1985, showed that the prevailing minimum wage in Delhi for unskilled workers was 9.25 per day while 83 per cent were getting Rs 8.25 after giving a commission of Rs 1 per day to the jamadar. However, almost all workers were getting less than the minimum wages, except a negligible 2 per cent, and wages were given fortnightly to the workers by the jamadar.

A survey of construction workers on sites in Tamil Nadu found that none of the workers on sites received the minimum wages of Rs 40 prevailing in 1993. Women were paid Rs 20–25 and men received Rs 30–35. No employment cards or wage slips were issued. In yet another study in December 2004 women are paid Rs 60 for the same work for which men received Rs 80 whereas the minimum wage was fixed at Rs 103. It was reported in Shramshakti report in 1988, that minimum wages legislations were also not strictly followed at an all India level across various industries, only with the exception of some regions of Kerala where trade unions exist. At famine relief worksites in Rajasthan, women workers are paid in food grains, which they had to sell off in order to get cash. In many cases the workers were switched to piece-rate basis so that it was not covered by the Minimum Wages Act.

The Article 23 of the Constitution provides for the fundamental right against exploitation and makes a specific reference to bonded labour and forced labour being prohibited. The scope of this provision was discussed by the Supreme Court in the landmark Asiad Workers Case, which concluded that where a person was working for

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58 Women Labour in India, Published by M.M Rehman for V.V.Giri National Labour Institute, 1996
60 Pratul Sharma, ‘No minimum wage or maternity benefits’, Grassroots; Reporting the Human Condition, 5 (12), December 2004
62 People’s Union for Democratic Rights v. Union of India, AIR 1982 SC 1473
less than the minimum wages, it would be considered forced labour as required by Article 23. In Bandhua Mukti Morcha V. Union of India, the Supreme Court further elaborated, “... whenever it is shown that the labourer is made to provide forced labour, the Court would raise a presumption that he is required to do so in consideration of an advance or other economic consideration received by him and he is, therefore, a bonded labour ... unless and until satisfactory material is provided for rebutting this presumption, the Court must proceed on the basis that the labourer is a bonded labourer.” 63 The legal position points out that where a worker receives less than minimum wages, it is considered to be forced/ bonded labour unless proven otherwise.

However, many a times, due to the absence of unionisation, low literacy levels of women workers, and lack of implementation infrastructure it is often easy for the employers to violate the provisions under this Act. Lack of adequate numbers of inspectors for checking the application of minimum wages, especially in unorganised sector, has often been argued to be responsible for poor implementation of minimum wages. 64 In the construction sector, the workers seldom receive minimum wages, also due to low awareness levels about labour laws they mostly don’t approach the courts. The workers are not unionised and that is yet another reason for their lack of awareness. Most of the workers travel in gangs led by the jamadar and are bound by the system of advance. 65 Parts of the wage they receive are paid to the jamadar as his interest. Therefore the workers end up getting even lesser than the prescribed minimum wages. The most important legislation which affects construction workers directly is the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act 1996.

The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Bill was passed in Lok Sabha on 1st August 1996 as a part of the Statutory Resolutions, during the second session of the budget of the 11th Lok Sabha. Along with this Bill, another bill called the Building and Other Construction Workers Welfare Cess Bill 1996 was also passed. There were several contentions regarding the coverage of the bills: implementation of a welfare scheme for the construction workers, mode of collecting cess, provision of pension, the issue of trade unions and demand for a

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63 Refer to the case [1984] 3 SCC 161
65 Already discussed in Chapter One
separate bill for agricultural labourers. The main reservations about the bills were brought forth by A. C Jos of Indian National Congress (INC), Hannan Mollah of Communist Party of India (Marxist) CPI (M), and Chitta Basu of All India Forward Bloc. After a severe debate on the Bills on 23rd July 1996, there was a decision to hold an All Party Meeting presided by the Speaker where the Bill was discussed at length and a common ground was reached and most of the amendments were accepted. The 1996 Act was passed during the tenure of H.D Devegowda who had come to power after a hung parliament in June of 1996.

The Building and Other Construction Worker’s (Regulation of Employment and Conditions of Service) Act, 1996, is applicable to the establishments engaging ten or more building and other constructions workers. It seeks to regulate the employment and conditions of work for building and other construction workers and provides for their safety, health and other welfare measures. The establishments engaging less than ten workers are not covered under this Act. The Act provides for fixing hours for normal working day inclusive of one or more specified intervals; provides for a day to rest in every period of seven days and payment of work on a day of rest at the overtime rate, wages at the rate twice the ordinary rate of wages for overtime work. It also provides for adequate drinking water, latrines and urinals and accommodation for workers, crèches, first-aid, and canteens at the work site. The appropriate government (Central or state) is empowered to make rules for the safety and health of building workers. It provides for

66 For further details refer to India, Parliament, Lok Sabha Debates, Second Session, Monsoon Xth Lok Sabha, (10th July 1996 to 13th September 1996).
67 Gazette of India, the Building and Other Construction Workers’ (Conditions of Work and Regulation of Employment) Act, 1996
68 Building or other construction workers, according to the Act, are employed in the construction, alteration, repairs, maintenance or demolition, 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 communications, dams, canals, reservoirs, watercourses, tunnels, bridges, viaducts, aqueducts, pipelines, towers, cooling towers, transmission towers and all those other works as may be specified in this behalf by the appropriate Government by notification. According to the act, ‘Building worker’ means a person who is employed to do any skilled, semi-skilled 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 (ii) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per month. Also see chapter one of the Act
69 Chapter one of the Act
70 According to section 28 and 29 in chapter six of the Act
71 According to section 32, section 33, section 34, section 35 section 36 and section 37 in chapter six of the Act
72 According to the section 38 and section 40 of chapter seven of the Act
the constitution of Expert Committee to advise on matters relating to framing of rules by
the appropriate government for registration of establishments, employing construction
workers, appointment of registering officers, registration of building workers\textsuperscript{73} and
issuance of their identity cards, lastly the establishment of welfare boards by the state
governments.\textsuperscript{74}

The section 22 of the Act describes the functions of the Board applicable to the
beneficiaries. These are: to provide immediate assistance in case of accident, to pay
pension to those who have completed the age of sixty years, to sanction loans and
advances for construction of a house, to pay some amount in connection with premium
for Group Insurance Scheme, to give financial assistance for the education of children of
the beneficiaries, to meet medical expenses for treatment of major ailments of
beneficiaries or dependents, to pay maternity benefit to the female beneficiaries, and to
make provisions and improvement of other welfare measures as may be prescribed.
Further, the Board can also grant aid, loans, and subsidies to local authorities and
employers in aid of any scheme relating to the welfare of the building workers.

This Act also provides for constitution of Central and State Advisory Committee
to advise the appropriate Government (Central or state) on matters arising out of
administration of the said Act and has provision for appointment of inspecting staff
including Director-General of Inspection at the Central level and Inspector-General at the
State level.\textsuperscript{75} There are special provisions regarding fixing responsibility of employers to
ensure compliance with regard to prevention of accidents, timely payment of wages, and
safety provisions, etc.\textsuperscript{76} The section 40 under the Building and other Construction
Worker’s (Regulation of Employment and Conditions of Service) Act, 1996, describes
the power of appropriate Government to make rules for the safety and health of building
workers. These are:

i. to provide for equipment and appliances necessary for ensuring their safety,
health and protection during work,

\textsuperscript{73} The section 12 of the act provides for every building worker who has completed eighteen years of age,
but has not completed sixty years of age, and who has been engaged in any building or other construction
work for not less than ninety days during the preceding twelve months to be eligible for registration as
beneficiary under this Act
\textsuperscript{74} According to section 5 in chapter 5, section 7 and section 6 in chapter 5, chapter 5, section 13 chapter 4,
section 18 in chapter 5 and lastly for welfare measures see clause (h) of sub-section (1) of section 22 of the
Act
\textsuperscript{75} According to sub-section (3) of section 3 and sub-section (3) of section 4, and section 42 in chapter eight
of the Act
\textsuperscript{76} According to section 47 in chapter ten of the Act
ii. the precautions to be taken in connection with the demolition of a building or other structure, handling use of explosives, under the supervision of a competent person and the avoidance of danger from collapse and explosion,

iii. use and maintenance of transporting equipment (such as locomotives, trucks, wagons, and trailers and appointment of competent persons to drive or operate such equipment),

iv. the erection, installation, use and maintenance of hoists, lifting appliances, lifting gear including periodical testing and examination and heat treatment,

v. the precautions to be taken while raising or lowering loads, restrictions on carriage of persons and appointment of competent persons on hoists or other lifting appliances,

vi. the adequate and suitable lighting of every workplace,

vii. the precautions to be taken to prevent inhalation of dust, fumes, gases or vapours during any grinding, cleaning, spraying or manipulation of any material and steps to be taken to secure and maintain adequate ventilation of every working place or confined space,

viii. the measures to be taken during stacking or unstacking, stowing or unstowing of materials or goods,

ix. the safeguarding of machinery including the fencing of every fly-wheel and every moving part of a prime mover and every part of transmission or other machinery,

x. the safe handling and use of plant, including tools and equipment operated by compressed air,

xi. the precautions to be taken in case of fire,

xii. the limits of weight to be lifted or moved by workers,

xiii. the safe transport of workers to or from any workplace by water and provision of means for rescue from drowning,

xiv. the steps to be taken to prevent danger to workers from live electric wires or apparatus including electrical machinery and tools and from overhead wires,

xv. the providing or the provision for safety nets, safety sheets and safety belts where the special nature or the circumstances of work render them necessary for the safety of the workers,
xvi. the standards to be complied with regard to scaffolding, ladders and stairs, lifting appliances, ropes, chains and accessories, earth moving equipments and floating operational equipments,

xvii. the precautions to be taken with regard to pile driving, concrete work, work with hot asphalt, tar or other similar things, insulation work, demolition operations, excavation, underground construction and handing materials,

xviii. the safety policy, relating to steps to be taken to ensure the safety and health of the building workers, the administrative arrangements, therefore, and the matters connected therewith, to be framed by the employers and contractors for the operations to be carried on in a building or other construction work,

xix. the provision and maintenance of medical facilities for building workers, any other matter concerning the safety and health of workers working in any of the operations being carried on in a building or other construction work. 77

The Building and Other Construction Workers’ Welfare Cess Act, 1996, provides for levy and collection of cess on the cost of construction incurred by the employers to be added to the resources of the Building and Other Construction Workers’ Welfare Boards. 78 These Boards are to be constituted under the Building and Other Construction Workers’ Act (Regulation of Employment and Conditions of Service) Act 1996 in the states. There are provisions for various social security measures (different for different states) for workers who register with the Welfare Board in a particular state. Maternity benefits, accident compensation, education for children, loans (for the purposes of building houses, marriages), old age benefit, pension, money to buy construction tools and equipments are some of the social security benefits which these Welfare Boards offer to registered workers. The Act specifies that the rates of the collection should not exceed 2 per cent and should not be less than 1 per cent of the cost of construction. There are certain clauses (Section 9) in this Act which has provisions of penalty (for instance by paying interest, imprisonment or payment of fine) depending on the nature of non-compliance to the Act.

77 Section 40 of the Building and Other Construction Workers (Regulation of Employment and Conditions of Work), Act 1996
78 The manner in which and time within which the cess has to be collected is mentioned under Sub-section (2) of Section 3 of the Act. The rate or rates of advance cess is leviable under Sub-section (4) of Section 3.
The provisions of the Building and Other Construction Workers’ (Regulation of Employment and Conditions of Service) Act, 1996, which directly applies to this sector is not yet been implemented in most of the states. Only Kerala and Tamil Nadu has adopted and implemented the act, other states like Andhra Pradesh, Arunachal Pradesh, Goa, Madhya Pradesh, Delhi, Haryana, Pondicherry, Uttarakhand, Gujarat, Orissa, J& K, Jharkhand, Maharashtra, Tripura and West Bengal have started the implementation process but far from operationalising its benefits.\(^79\)

This Act is also applicable to casual workers and daily wage workers. In *Municipal Corporation of Delhi v. Female Workers*, the Supreme Court declared that there is nothing in the Maternity Benefit Act which entitles only regular women employees to the benefit of maternity leave and should be extended to women engaged in work on casual basis or on muster roll on daily-wage basis.\(^80\) The provision for maternity benefit is also granted to women employees who are covered under the Building and Other Construction Workers (Regulation of Employment and Condition of Service) Act 1996, from the welfare fund.\(^81\)

There are many states where the Welfare Boards have been created and cess collection has started, but partly due to the non-registration of workers and partly due to bureaucratic proceedings, very often the Board has not been functional in disbursing the social security benefits to the workers. There are numerous case studies on the construction sector and the conditions of work for construction workers which reveal that workers are not provided with facilities of drinking water, toilet, crèche, canteen, safety measures and first aid, accommodations at the worksite along with other social security provisions (maternity benefits, old age benefit, pension, compensation of accidents).\(^82\)

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79 Detailed account of the implementation process of the Building and Other Construction Workers (Regulation of Employment and Conditions of Work) Act 1996 is discussed in chapter four and five where the implementation in the States of Gujarat and National Capital of Delhi is discussed.

80 AIR 2000, SC 1274


Most of the workers in this industry are contract, migrant workers without any social security benefits. The workers are highly exploited as most of the time they are not paid minimum wages and that too at irregular intervals.

A study undertaken by the ‘Commonwealth Games-Citizens for Workers, Women and Children’ highlighted the working conditions, safety and social security provisions for construction workers in 15 major sites (10 Commonwealth Games related sites and 5 Delhi Metro Rail Corporation site) in Delhi from February 2009 to December 2009. This study covered a sample of 702 workers. Majority of the workers were unskilled, migrant casual/contractual male workers, with a minority of women workers (less than 2 per cent) also a fraction of the men (10 per cent) were ‘maldanazdoor’.\(^1\) Workers mostly work for nine hours shift with below minimum wages (as per the law) also they do not get adequate overtime and not paid on time. Across sites, it is found that on an average there was one toilet for 114 workers and in some there was one toilet for 450 workers, which is cleaned only once a week or sometimes, even just once a month. Also, most of the sites had inadequate drinking facilities and crèche facilities. Crèches were found only in 7 sites (5 out of them were run by NGOs). In most of the sites workers are provided with safety equipments (helmets, gloves, boots), which are of poor quality, the new ones usually do not last and there are delays in getting further replacements. In few cases the cost of replacement is deducted from the workers’ wages.

Only 10 workers (out of 702) knew about the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act. Only 4 respondents (all men) knew about the existence of a safety committee at the site, but there was no representation of workers in them. 70 per cent of the accidents at the site take place due to collision with machines, rods or other objects. Only a few workers get partial compensation (bare minimum to cover medical costs). In total, there were 8 deaths due to accidents, 9 cases of serious injuries and 73 cases of minor injuries, which were

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\(^1\) These workers come from Maida in West Bengal. They work on contractual basis for 50 days and get Rs 5000- Rs 5500 for 12 hours of work on a daily basis.
reported. Most of the sites do not conduct health check-ups for the workers. They do not have a qualified doctor for treatment of the injured workers. The living conditions at the Commonwealth village sites have dorm arrangements with bunk beds, which occupies 50–60 workers and provision for only two fans, mostly the workers prefer to sleep outside. The workers also reported inadequate drinking water and toilet facility at the living areas. Only 9 respondents had been registered with the Welfare Board, none of the rest knew about the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act and its provisions.

A study, conducted across 9576 construction workers in 9 districts of Delhi, in June 2008, pointed out that a minority of the workers reported minimum level of facilities available at the work site; got accident compensation (only 4 per cent), drinking water facility (50 per cent), toilet facility (31 per cent), crèche facility (1 per cent), awareness of the welfare board (9 per cent), registered to the board (2 per cent).

Another study undertaken by the School of Building Science and Technology (SBST) in 2003 on safety and labour conditions in construction of high-rise frame structures in Ahmedabad pointed out that most construction companies did not have a formal, written safety policy. Workers were completely ignorant about the different kind of safety rules, and safety appliances. Equipment registration, test certificates, the awareness regarding the importance regular maintenance of machinery, lack of housekeeping and causes and record of accidents were missing from most of the sites.

In an accident that took place at one of the construction site near Akshardham temple, in December 2008, for the Commonwealth Games Village (CWGV), which killed one worker and injured another, and eventually led to massive agitation and a strike for two days by the workers demanding compensation for the accident. The workers in the agitation also had several other demands related to minimum wages, issue of identity cards, availability of cheap ration, distribution of safety equipments, regular medical checkups, double wages for overtime, availability of clean water, sanitation facilities,

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85 Ibid, 2009
86 Ibid, 2009
87 Study on Construction Safety and Labour Conditions in and around Ahmedabad; A study undertaken by SBST students on Engineer’s Day, organised by School of Building Science and Technology, Centre for Environment Planning and Technology, 2003
security at the sites, allowing union representatives to interact with the workers, and registration to the Delhi Building and other Construction Workers Welfare Board. 88

Keeping the non-applicability of labour laws in practise, the government should ensure that the contract migrant workers are protected with the various provisions of laws: minimum wages, timely payment of wages, safety and welfare provisions at the worksite. Labour laws should be consolidated to bring uniformity in definitions of certain key terms like 'employer', 'employee', 'establishment', and 'wages' in the informal sector for applicability of certain laws. In this context, the National Commission for Enterprises in the Unorganised Sector recommends formulation of a 'National Labour Code'. The labour code, in the form of a basic law, is grounded in substantive labour rights or labour standards such as minimum wages, maximum hours of work, minimum standards of safety and health at workplace. Collective bargaining is considered the main form of joint decision-making in resolving interest disputes with the representation of labour related issues through trade unions. The trade unions play an important role in ensuring proper functioning of labour law enforcement. Experience mostly shows that stricter law enforcement cannot be achieved without strengthening the labour administrative machinery. In the context of labour administration this commission recommends a database to be built on all aspects relating to industrial relations and the officers of the Labour Departments to have access to such database through computer connectivity. Reiterating on the recommendation by the Second National Commission on Labour (SNCL), it agrees that the Government should create an all India service for labour administration to provide professional experts in the field of labour administration in the labour departments, autonomous bodies and labour adjudicators to come together. In the case of faster adjudication process the institution of Lok Adalats must be encouraged to enable faster disposal of cases. 89 Though these recommendations have not been practically implemented, the major challenge still remains the enforcement and applicability of certain labour laws for the unorganised sector especially in the context of migrant construction workers.

88 The Delhi Asangthit Nirman Majdoor Union, Mahanagar Asangathit Majdoor Union both affiliated to INTUC and Building and Woodworks International were the unions which were working with some of the workers to take up these issues.
Legislations for migrant construction workers and their social security needs

The section discusses the National Rural Employment Guarantee Act, 2005, and the Unorganised Sector Social Security Act, 2008, as these legislations are an important step towards reducing distressed migration for work and protection from vulnerabilities in the unorganised sector especially for migrant construction workers.90

...migrant workers, particularly at the lower end including casual labourers and wage workers in industries and construction sites, face adverse work as well as living conditions. This group is highly disadvantaged because they are largely engaged in the unorganised sector with weakly implemented labour laws.91

Out of the broad canvas of labour laws, some specific laws have been extended to migrant workers: Minimum Wages Act, 1948; Contract Labour (prohibition and Regulation) Act, 1970; the Equal Remuneration Act, 1946; The Buildings and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996; the Workmen’s Compensation Act, 1923; the Payment of Wages Act, 1936; the Child Labour (Prohibition and Regulation) Act, 1986; the Bonded Labour Act, 1976; and the Inter-state Migrant Workmen (Regulation of Employment and Condition of Services) Act, 1979.92

One of the most important legislations for migrant workers was the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979; as it guaranteed right to work at the place of origin for migrant workers. This act is applicable to any establishment, which hires more than five inter-state migrants. The term “workmen” would mean workers employed to engage in skill, semi-skill, unskilled, manual, supervisory, technical or clerical work (does not include persons involved in administrative or managerial work/ or draws a salary of more than five hundred Rs per month). The act provides for equality on the basis of payment of wages, wage rates, holidays, hours of work, and other conditions of service (non-discriminatory towards inter-state migrants workers). Wages paid to the inter-state workmen should comply with

90 Although the NREGA is meant for rural areas and this research is based in urban areas, but as majority of the construction workers are migrants therefore the linkages are drawn between this Act and its relevance on livelihood opportunities in the originating areas for these migrants.
91 Ibid, Pg 97
92 Ibid, 2007
the minimum wages legislation. This act also provides for displacement allowance and journey allowance. Overall, the contractor has the primary responsibility for: registering the worker, issuance of passbooks, regular payment of wages, equal remuneration to men and women, ensure suitable condition for work, provide suitable residential arrangement, provide medical facility, provide clothing, in case of serious injury to the worker inform the next to kin and the state authorities.93

This Act has been ineffective because of the lack of proper implementation as well as lack of awareness about labour rights among the workers regarding existence of labour laws. Very few contractors have been issued licenses as very few enterprises employing enter-state migrant workers have registered under the Act. Also the record of prosecution and dispute settlement has been very weak. Migrant workers do not possess passbooks, prescribed by law, and which is the basic record of their identity and their transactions with the contractor and employers.94

Another act, which is meant to be a legal enforcement for the right to work, is NREGA.95 The Act guarantees 100 days of work per household per year at a statutory minimum wage. Any adult individual who applies for work under the Act is entitled to be employed on public works within fifteen days. Failing that, an unemployment allowance (one fourth of the minimum wage for the first thirty days and one half thereafter) has to be paid in accordance with the law. The Act places an enforceable obligation on the state and gives bargaining power to the workers, as it creates accountability. It is not an end but only a means for people living on the brink of hunger and starvation to slow down distress migration to urban areas (for instance, if work is available in the village, many rural families will stop heading to the cities during the slack season). The Act also provides an opportunity to create useful assets in rural areas (e.g. labour-intensive public works in the field of environment protection, watershed development, land regeneration, prevention so soil erosion, restoration of tanks, protection of forests and related activities). It can help activate and revitalise the institutions of local governance, including Gram Panchayats (village councils) and Gram Sabhas (village assemblies). Lastly, the Act is a tool to enhance the bargaining power of the unorganised sector

93 Gazette of India, Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979
95 It came into force on 2 February 2006 in 200 districts, and was extended to the whole country on April 1st 2008.
workers as it would help them to struggle for other important entitlements like social security and minimum wages.\textsuperscript{96}

The debate in the Lok Sabha on the National Rural Employment Guarantee bill after which this Act was passed was an extremely contentious one. On one hand, the Congress and the Left Parties were in favour of the bill, the National Democratic Alliance (NDA) was bringing forth criticisms of the bill while not completely rejecting it. Kishan Singh Sangwan from Bharatiya Janata Party (BJP), Suresh Prabhakar Prabhu from Shiv Sena raised several critical issues. The major points of criticism that were brought forth were regarding the clause to introduce it only in 200 districts in India.\textsuperscript{97} Also they disagreed with the definition of the term ‘household’. The term ‘household’, according to them, didn’t suffice as it had no limitation on the number of members within that ‘household’. They proposed to make it available to all adults. Kalyan Singh from the BJP argued about the non-requirement of a programme officer. He suggested the schemes should be prepared at the Gram Sabha level and should be accountable to the people themselves as a means of checking corruption. The overriding feeling among the Congress and Left party members was that the bill was definitely a historic one and would change the material reality of the poor population if implemented along with the Right to Information Act.

There are several provisions in the Act which are focused on women workers. The Act ensures one-third of the workers to be women. It has stipulated work to be located within five km of the residence and there is a sense of independence which it offers women.\textsuperscript{98} As the Act does not place any restriction on how each household’s quota is shared within the household, this gives ample scope to women under NREGA. The wages earned is equal for both men and women. Lastly, the Act provides for crèche facilities in worksites when more than five children under the age of six are present. In a recent assessment of the scheme, it was argued that in areas where rural women are traditionally homebound, such as Bihar and Uttar Pradesh this Act, has even more significance as a means of empowering rural women and curbing gender discrimination.\textsuperscript{99}

\textsuperscript{97} India, Parliament, \textit{Lok Sabha Debates}, Fourteenth Series, Volume XII, Fifth Session, No.20, Tuesday, August 23 2005
\textsuperscript{99} Aruna Bagchee, ‘Political and Administrative Realities of the EGS’, \textit{Economic and Political Weekly}, XLII(42), 2005

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Whereas, on the contrary, a field survey to study the impact of NREGA on women workers in six north Indian states: Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Rajasthan and Uttar Pradesh in 2008 showed that there was noticeable low participation rate for women workers. Some of the reasons for this were: non-recognition of women as workers, no child care facilities as promised by the Act, delayed payments such that in some cases women prefer not to take up employment. In some areas, such as Uttar Pradesh and Bihar, there were social norms against women working outside the home, therefore, in many areas women were told that NREGA was not applicable to them and were sent back by officials. Some women reported that women were the first to be turned away when there were more workers than the requisite numbers needed at the site. In many places, the contractors would come looking for able-bodied men and if women asked for work their request was ignored. Some studies show instances of older widows being refused labour cards on the grounds of their age. Also, migrant women are sometimes not registered due to the non-continuous registration process which takes place at the time of seasonal out-migration, migrant women whose husbands have migrated for work are refused cards as they do not qualify as ‘head of the household’. Although, the Act calls for verification on family, local residence and age, local bureaucrats administering the scheme demand illegal and unsound eligibility conditions and ask for documentary evidence (ration cards, voter identity cards, census list). Therefore, despite women’s inclusion ensured in the scheme, women (elderly, migrant, physically challenged, member of a female-headed household) are often excluded due to lack of documentary evidence and eligibility criteria. Due to complicated procedures for application and hurdles created in the process (unnecessary paper work and rounds of the bloc office) many women have given up pursuance of their claims. Added to this, there has been a rise of a system of informal intermediaries, private contractors who act as middlemen and extract a share of the wages from workers.

It has been argued that the Act by no means guarantees employment and is missing on various factors to be able to meaningfully define ‘right to work’: not full coverage of rural-urban areas, no individual entitlements, limited days of guarantee of work, no decent living wage given, exclusion of non-manual workers. In the absence of any universal Public Distribution System and only two schemes (Food for Work

100 Ibid, 2009
Programme and the *Sampoorna Grameen Rozgar Yojana*), which directly address food security in some rural pockets, some theoreticians argue that the NREGA at least in part should offer essential food items along with the wage to cater to the issue of food security. Some of the emergent problems with the implementation process of the Act are: the amount of work generated is very low, minimum wages are not met in most of the sites under this scheme, wage payment is often delayed by two to four weeks, unemployment compensation is not paid, work site facilities are highly inadequate (especially childcare and drinking water).  

Many workers are too poor to purchase implements, and implementing agencies are unwilling to provide such implements as part of the material costs. The Act assumes the many factors without providing enabling conditions to be practically implemented. These assumptions/factors are: the government machinery is efficient and committed, the poor are organised and aware of their rights, the rural population can make the *panchayat* administration accountable. Lastly, the NREGA does not mention any long-term consequence of the Act (for instance how this Act might expand employment in the long-run).

The NREGA should have few changes to make it more gender sensitive: there should be a move from the 100 days of entitlement of the household to 100 days of entitlement of the individual. Also there should be separate instead of a joint bank account for women. The Right to Information Act should be used by the local community to ensure the amount of funds released and actually spent in the process of implementation.

Many, however, acknowledge the importance of the NREGA (based on the Maharashtra Employment Guarantee Act) as an essential tool for poverty reduction and prevention of starvation, therefore, reducing distressed migration. The Maharashtra Employment Guarantee Scheme was successful in reducing the rate of rural unemployment, increased rural incomes, decline in rural poverty in the state, drought relief mitigation programme and has contained the rate of rural-urban migration. It was also evident from the several surveys that women reported to have avoided hunger and

102 Ibid, 2009
105 Ibid, 2006
migration ever since they started work at the NREGA worksites. With their earnings, food security has improved (buy food in large quantities, easier access to credit from local moneylender). Across the states, women have reported using their wages to treat an illness in the family or for their own medical expenditure. There were several positive results identified by the workers who got employed through NREGA, for instance: reduction in distress out-migration, improved food security with wages being channelled into incurring expenses on food, health, education and repaying of loans, employment with dignity, greater economic empowerment of women workers, and sustainable asset creation.\textsuperscript{107}

The success of the NREGA with reference to the participation of women in the programme is higher than the stipulated minimum requirement of 33 per cent in some areas. Women constituted 46 per cent of the beneficiaries in 2007/08. However, there are wide regional variations in the level of participation of women. In states like Kerala and Rajasthan, the participation rates for women are much higher than 50 per cent and in Tamil Nadu it was 81 per cent. Also, Dungarpur district in Rajasthan reported 75–80 per cent women beneficiaries. However, the same cannot be said about many other states. The statutory minimum requirement of 33 per cent participation by women was not met in Chhattisgarh (25 per cent), Jharkhand (18 per cent), Bihar (13 per cent), and Uttar Pradesh (5 per cent).\textsuperscript{108}

The National Commission for Enterprises in the Unorganised Sector recommends the relevant issues to improve gender-sensitive implementation of NREGA. The state governments should undertake proactive measures for fulfilment of the mandatory participation (33 per cent) for women. Women should occupy "50 per cent" share of NREGA posts, e.g. programme officers, gram rozgar sevaks, trained mates, social auditors, data entry operators, junior engineers, technical assistants etc. Women workers who are separated, widows or single should be entitled to separate job cards. Payment of women's wages through men's bank accounts (usually their partner/husband) should be

\textsuperscript{107} The GBPSSI Study (2009) covered ten districts - Bihar (Araria & Kaimur), Chhattisgarh (Surguja), Jharkhand (Koderma & Palamau), Madhya Pradesh (Badwani & Sidhi), Rajasthan (Dungarpur & Sirohi), and Uttar Pradesh (Sitapur). The survey was initiated by the G B Pant Social Science Institute, Allahabad under the guidance of Jean Dreze with additional support from the Department of Economics, Allahabad University. Field work was conducted in May-June 2008. And the findings of the "NREGS in India: Impacts and Implementation Experiences" Conference, organised by Institute for Human Development (IHD), New Delhi. The findings of the "NREGS in India: Impacts and Implementation Experiences" Conference, organised by Institute for Human Development (IHD), New Delhi, 2009


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prohibited. Women workers should have their own bank accounts or be equal co-signatories of joint accounts (e.g. husband and wife). Lastly, breast feeding breaks should be incorporated into the work schedule of women at NREGA worksite.¹⁰⁹

The Commission also recommends the limit to employment days under NREGA to be expanded and employment guarantee made applicable for each individual rather than per household. Awareness generation about the Act should be started to increase the number of beneficiaries and to make the scheme more transparent. It suggests steps to be taken to improve worksite provisions, such as mandatory child care facilities, providing works for persons with disabilities and women along with worksite facilities (water, shade, first-aid, and child care). Also start opportunities for light work on a daily-wage basis at every worksite for persons challenged by disability, illness, old age, pregnancy and related conditions. The use of wage slips should be mandatory along with state governments using model Payment Order, as recommended in the NREGA Operational Guidelines. The transparency norms applicable to wage payments in cash (payment in public, reading aloud of muster roll, updating of job cards, etc.) should be applicable to the distribution of wage slips or cheques. All payments should be made through account payee cheques. The Reserve Bank of India should be requested to issue strict instructions to all banks on the payment of NREGA wages to follow minimum safeguards. Strong grievance redressal rules should be framed at the national level.¹¹⁰

The enforcement process of the Act in the light of the above stated recommendations is yet to be practically implemented in the states. Though, many theorists argue that distressed migration can be reduced by many counts by this Act yet, the social security benefits which the migrant workers deserve is not addressed by it. Therefore, to get a holistic picture of the migrant construction workers and their dynamics with the institution of the law, it is important to study the provisions for social security under the labour legislations.

In the Indian context, the legislation relating to social security was initially extremely limited in its scope and provided relief only in cases of injuries resulting in death, permanent and partial disablement, and occupational diseases under the Workmen’s Compensation Act in 1923. After Independence, the scope of the legislation was extended to protect industrial workers against sickness, old age, invalidity, and

¹⁰⁹ Ibid, 2009
unemployment etc. Later the interim government formulated a five year programme for labour security in 1946. Its significant features included: organisation of health insurance scheme for factory workers; review of Workmen’s Compensation Act; develop scheme to provide maternity benefits and leave with allowance during sickness.\textsuperscript{111} Social security provisions to cover different risks were introduced after independence through legislations, such as Employees State Insurance Act, 1948; The Employee’s Provident Funds and Miscellaneous Provision Act, 1952; the Maternity Benefit Act, 1961; and the Payment of gratuity Act, 1972, and other acts formulated by various state governments independently. These enactments, however, apply mostly to the workers in the organised sector. In other words, protective social security measures were largely for the organised sector such as medical care and benefit relating to sickness, maternity, old age etc and promotional security were for the unorganised sector in terms of self-employment, wage employment, and provisions of basic needs such as health, food, and education.\textsuperscript{112}

The National Commission on Labour and the National Commission on Enterprises in Unorganised Sector (NCEUS) were commissions instituted by the government to study the social security needs of the unorganised sector workers. The NCEUS had proposed National Minimum Social Security Scheme for Unorganised Workers (for agricultural and non-agricultural workers). The main features of the proposed scheme are: health benefits to cover hospitalization, sickness allowance, and maternity benefits; life insurance to cover natural and accidental death; Provident Fund for Above Poverty Line workers and pension of Rs. 200 per month for old aged (+60) Below Poverty Line workers.\textsuperscript{113} The ‘social security now campaign’, a conglomeration of over 500 organisations from all over India has been demanding comprehensive social security for unorganised sector workers. They reject the insurance, welfare, and charity-based law, and demand non-discriminatory and non-contributory legislation with employment and


\textsuperscript{112} Some of the promotional social security provisions for the unorganised sector workers is discussed in Chapter one

\textsuperscript{113} Hospitalisation benefit for the worker and his/ her family to the tune of Rs. 15,000 per year, sickness allowance for 15 days beyond 3 days of hospitalization at Rs. 50 per day, Maternity benefit to the extent of Rs. 1,000 to the worker/spouse of worker, life and disability cover for all the unorganised workers to include: life and disability insurance to the tune of Rs. 30,000 (natural death); Rs. 75,000 (accidental death or total permanent disability) and Rs. 17,500 (in case of partial permanent disability), old age security in the form of: pension of Rs. 200 per month to all BPL workers above the age of 60 years o Provident Fund for other workers. for further details see, the National Commission for Enterprises in the Unorganised Sector, Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector, Government of India, Government of India, 2007, pg 211 and National Commission for Enterprises in the unorganised sector, Social Security for Unorganised Workers, Report, May 2006
livelihood regulation and dispute resolution mechanism. Also that social security has to be provided by the state and not through private insurance companies or other private businesses.

The demands for an act on social security for the unorganised sector worker's, has been quite longstanding. In 2006, the demands around the bill became all the more equivocal. In December 2006, during the 14th Lok Sabha Sessions, a number of Members of Legislative Assembly (MLAs) like Devendra Prasad from Rashtriya Janata Dal (RJD), Shailendra Kumar from the Samajwadi Party (SP), Madhusudan Mistry from the Indian National Congress (INC) and Suresh Prabhu (Shiv Sena) raised the issue of introducing a bill on the unorganised workers. Interestingly, the speaker of the House, Shrivarkala Radhakrishna, himself, voiced his ambiguity over another bill on the unorganised sector, even before the bill was in place based on the experience of the failure of The Beedi Workers’ Act, 1966; The Contract Labour Act and several others.4 Similarly, Madhusudan Mistry, Shailendra Kumar, and Suresh Prabhu also expressed their concern on the grounds of the ineffectivity of the Building and other Construction Worker’s Act, 1996. Devendra Prasad Yadav also expressed his demand for a bill on the unorganized sector while voicing his dissatisfaction over how the government has overlooked the Report produced by the National Commission on Labour in 2002. However, the bill was still being vehemently demanded by many of the members.

The central trade unions and trade unions of the unorganised sector workers have raised demands for a comprehensive legislation for unorganised workers including employment protection and social security for all categories of the unorganised sector workers. Simultaneously, there has been a demand for social-assistance-based social security system considering the low income levels of these workers. Trade unions have opposed insurance based or contributory social security and have demanded for employment security, employment regulation, and livelihood protection. More specifically, they demanded provisions of protection against retrenchment/ dismissal, appropriate compensation thereafter, working hours, labour inspection and appropriate dispute/ grievance settlement machinery, and punishment for violation of the act etc.115

Based on the recommendations of the two commissions, the government prepared six bills and considered 14 bills, which included the six bills proposed by commissions

115 A Dossier: Bills on Unorganised Workers 2000-2006, Centre for Education and Communication, 2006 139
and three others proposed by, the NCL (National Commission on Labour), the NCC-USW (National Campaign Committee for Unorganised Sector Workers), the UPA (United Progressive Alliance) advisory committee.

A bill was introduced on September 10, 2007, in the parliament to this affect. The bill immediately became contentious because of the numerous ambiguities within it. First of all, the bill was prepared without taking into consideration the recommendations of a number of reports and bills like that of National Commission on Enterprises for the Unorganised Sector. The definitions of a number of terms like that of “unorganized worker” and “unorganized sector” were left extremely open ended and vague. On 10th September 2007, when the bill was introduced in the Rajya Sabha, the debate became an extremely charged one because of the nature of the bill to which mostly those from the left parties had an objection to. Tapan Kumar Sen from Communist Party of India (Marxist) CPI (M) argued that:

...The Bill under introduction totally ignores, rather mocks at, the commitment of “comprehensive protective legislation” for the unorganised sector workers made by the United Progressive Alliance (UPA) combined in its National Common Minimum Programme. It is deplorable that the Government did not bother to give any credence to the recommendation of the National Commission for the Enterprises in the Unorganised Sector (NCEUS) constituted by the Government, and officially notified precisely for the same purpose of devising measures on the working conditions and social security for the unorganised sector workers. The Commission recommended and forwarded to the Government drafts of two separate comprehensive legislations for the unorganised sector workers and the agricultural workers along with a social security scheme. The Government must come out as to whether they have rejected the recommendation of the Commission as is clear from the content of this Bill, and if so, the reason therefore.116

He went on to mention how this bill completely negates labour protection issues and gives the Social Security Advisory Boards only recommendatory powers. He also suggested that there should be a separate bill for the agricultural labour because the nature of their work is completely different from that of industrial labour.

116 India, Parliament, Rajya Sabha Debates, Government Bills, Session Number 211, September 10, 2007, Pg 200
After this, the bill was referred to the Parliamentary Standing Committee on Labour on the 20th September 2007. The Parliamentary Standing Committee on Labour especially looked at the contentious issue of how to define ‘unorganised sector’ and ‘unorganised sector worker’. Unorganised worker’ was defined as an unorganized sector worker and also includes workers in the organized sector not protected by the existing laws relating to social security. The committee also took cognizance of the fact that unorganized workers must not pertain only to unorganized sector in Clause (1) Sub Clause (1) of the Act as even in organized sector, unorganized labour persists. Thus, the committee recommended the deletion of the word ‘Sector’ as a consequential changes wherever this word occurs in other clauses of the bill and has the implication of restricting the coverage of the bill. The committee took a segmented approach, rather than a universal one, to define unorganized labour. The bill was clearly aimed at approaching the issue through a number of programmes instead of a single one. The funding issue and its unaccountability were also brought up in the committee. The committee suggested that the funds must be allocated through various schemes: funded wholly by the Central Government, partly funded by the Central Government and partly funded by the state government or partly funded by the Central Government, partly funded by the state government and partly funded through contributions collected from the beneficiaries of the scheme or the employers as may be prescribed in the scheme by the Central Government. It, also, suggested the formation of the National Social Security and Welfare Fund. Regarding the issue of agricultural labour, the committee suggested that even they could be brought under the purview of unorganized labour, if it is defined broadly. However, later in the report, it also criticized the government for not bringing about two separate bills.

Though the Labour Minister argued that the Standing Committee Report had been taken into consideration, one can see that the most important of its recommendations have

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117 The Parliamentary Standing Committee on Labour that was formed after the proceedings in the Rajya Sabha on the 10th of September under Rule 331E (b) of the Rules of Procedure and Conduct of Business in Lok Sabha presented its report on the 3rd December 2007. It was chaired by Suvaram Sudhakar Reddy and was constituted by 18 members of Lok Sabha including Santasri Chatterjee, and 8 members from the Rajya Sabha including Arjun Sengupta.


119 Ibid pg 12

120 Ibid pg 19-20

121 Ibid pg 14

122 Ibid pg 27
not been taken into account. Also, no explanations were given as to why these recommendations were not included in the bill. On the 16th of December 2007, the debate in the Lok Sabha also got divided along the same lines. While the members of SP, Communist Party of India (CPI) and CPI (M) were vociferously against the bill, the Congress, Dravida Munnetra Kazhagam (DMK), and Pattali Makkal Katchi (PMK) members largely welcomed the bill. Santasri Chatterjee of CPI (M) flagged the debate by criticizing the bill on similar grounds as Tapan Kumar Sen.\textsuperscript{123} Ramjilal Suman (SP) also criticized the bill on the grounds that it completely erodes the fact that the bill is not a form of welfare but rather their right. Devendra Prasad Yadav (RJD) again raised the issue of the Building and Other Construction Worker’s Act, 1996, along with several others like the Workmen’s Compensation Act, 1923; The Minimum Wages Act, 1948; Maternity Benefit Act, 1961; and the Contract Labour (Abolition and Prohibition) Act, 1970, and argued that this new bill cannot be seen in isolation and has to be worked out in tandem with all these other Acts, which have so far remained ineffective. Sudhakar Reddy (CPI) also raised some crucial questions regarding the nature of procuring funds. Suresh Prabhu (Shiv Sena) raised specific questions regarding the Construction labourers. He said:

"...the government must ensure that the builder or whoever is constructing the property should deposit the money before he starts the construction because many a times we have seen that those who construct the houses are houseless and after the completion of the construction, they are not able to get anything. So we should make sure that the provision should be made in such a way that the provident fund should be deposited by the builder before he starts the construction."\textsuperscript{124}

He also raised questions regarding provisions of maternity benefits to women working in the construction sites. However, what strikes someone immediately is the fact that the Minister of Labour, Oscar Fernandes evaded some of the very difficult questions that the members of the house had raised. One of the very few questions that he chose to answer, regarding the disregard of the recommendations of the standing Committee report and the NCEUS Bill, he said:

\textsuperscript{123} India, Parliament, Lok Sabha Debates, Fourteenth Series Vol. XXXVI, Fourteenth Session (Part-II), 2008, No. 13, Tuesday, December 16, 2008
"...I would like to humbly inform Shri Santasri Chatterjee that it is not correct to say that we had not considered the Standing committee Report. In fact we were indeed benefited by the recommendations. A series of discussions were held thereon by the Government with its various stakeholders. Pursuant to these discussions we moved amendments in the Rajya Sabha incorporating a number of amendments based on the recommendations of the Standing Committee. These amendments included renaming of the Bill with a view to including such unorganized workers in the organized sector, making mandatory provisions regarding certain schemes, inclusion of the definition of unorganized workers, provision of grievance redressal mechanism and deletion of the term ‘advisory’ from the National and State Boards". 125

With this response, the Minister refrained from giving any more details about the changes made and the nature of the bill as was being contemplated. He also did not feel obliged to answer several other extremely important questions regarding the nature of acquiring funds, the reason why the Standing Committee Report was largely rejected, the issue of agricultural labourers and many others. It reflects the fact that the government had no intentions of even engaging in a debate with the questions that were being raised, let alone give substantial reasons for the positions taken by the government.

On December 18, 2008, the parliament passed the Unorganised Workers’ Social Security Bill. Though one is optimistic about the enactment of the Bill, it is with time that the social security provisions of the unorganised sector workers would be met.

The Unorganised Workers’ Social Security Act, which has proposed to register workers and issue them smart cards with unique social security numbers in order to provide social security to workers in the unorganised sector, has been criticised on various fronts. Instead of legislating a minimum floor level social security for all workers, the Act divides the unorganised sector workers into Below Poverty Level and those who are not. The Act is silent on the issues related to minimum wages (non-payment of wages, delays in payment, unequal remuneration etc) and the national minimum wage. 126 Lastly, there is no provision for women workers (e.g. equal remuneration, decent work


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conditions, protection from sexual harassment) in accordance to the recommendations made by the Ministry of Women and Child.\textsuperscript{127}

The Unorganised Workers' Social Security Act, 2008, has been a major step in providing social security for informal sector workers. If properly implemented in the states, this would provide protective and promotive measures for the vast majority of workers in the unorganised sector especially migrant contract/ casual construction workers. Although, it is equally important that these workers are protected by other labour law legislations and their provisions (e.g. Equal Remuneration Act, 1946, the Minimum Wages Act, 1948, The Buildings and Other Construction Workers Act 1996 and the Building and Other Construction Workers Welfare Cess Act 1996 and National Rural Employment Guarantee Act 2005) for gender equality in pay and equal rights at the work place, income security, employment security, decent conditions of work, guarantee of right to work as some important aspects of work.

The effectiveness of the implementation of this act would be gauged with time. Usually social security provisions in the organised and the unorganised sector has not been adequately addressed. For example, the risk of unemployment is not covered except by way of compensation in the event of retrenchment of regular workers. Mainly in the organised sector, loopholes in the laws and their poor implementation, often, with the connivance of official machinery, are the reasons. While, in the unorganised sector absence of regulation is obviously the main reason. Overall, the unorganised sector workers are covered in a piece meal fashion in various legislations and lack comprehensive protection of the minimum conditions of work.\textsuperscript{128}

...the implementation of the existing laws is abysmally poor. The main constraints on effective implementation of the existing laws appear to be the following: small size of the enforcement machinery in relation to the large and dispersed workforce and inadequate

\textsuperscript{127} The following recommendations were made by the \textit{Report of the Working Group on Empowerement of Women for the XI Plan}, Ministry of Women and Child Development, Government of India, to the Unorganized Sector Workers bill, which has now become an Act. Tripartite boards set up under the proposed law should have equal representation of women, the social security fund should be set up to provide benefits such as maternity entitlements and crèches, maternity entitlements should include three months paid leave plus medical expenses or ILO stipulation of 100 days. Include special provision for the prevention of sexual harassment at the workplace. Implement schemes so that women have more access to financial resources, marketing and transport facilities, women should have access to production resources and to the local markets for the sale of the goods. Registration procedures should be simple for women.


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infrastructure; almost exclusive focus on the organised sector; lack of voice for the unorganised workers and no participation of their representatives in ensuring effective implementation; and lack of or inadequate sensitivity among those responsible for implementation. Thus...as far as the regulatory framework for ensuring minimum conditions of work for unorganised wage workers is concerned: (a) there is lack of comprehensive and appropriate regulation in India; and (b) even where regulations exist, there are inadequate and ineffective implementation mechanisms. The Report recommended that there is a need for a comprehensive legislation, which can provide a regulatory framework for minimum conditions of work for all workers.\(^{129}\)

In the construction sector, for instance, there are many cases of workers being dismissed when the actual wages are reported by them to the labour inspector. Also workers are penalised for approaching labour courts. Most of the workers are not included in the process of labour inspections. Most of the questions are answered by the labour contractor.\(^{130}\)

The contract labour Act, 1970, was meant to check the authority of the jobbers and the sub-contractors of labour over the gangs they lead. The employment of such labour on a permanent basis is not allowed, but this applies to firms employing more than twenty workers. According to this act, the employers have to register if they employ contract labour, while the jobbers who supply and lead such gangs have to be licensed. Labour contracted on this basis has the right to numerous facilities in the workplace: a canteen, a rest room, drinking water, a latrine and first aid. In reality, these provisions are not applicable. To evade labour law legislations many government committees took sides of the employers and noted work as piece-rate rather than time-rate, as the worker’s were originally working.\(^{131}\)

Baxi argues that government lawlessness is rather peculiar to India. This involves the government’s failure in implementing their statutory obligations. For example, many states have inadequate staff for the enforcement of the Minimum Wages Act. Also, the requisite number of factory inspectors who will achieve the objectives of safety at work

\(^{129}\) Ibid, pg 181
\(^{131}\) Ibid, 1996
under the Factories Act is almost absent in all states.\textsuperscript{132} He further argues that the problem in India is the accessibility of law for the common man. There is, what he called, subversion of the law (planned systematic disregard of labour legislations and immunity towards credibility of law enforcement processes). Law is increasingly perceived as an instrumentality for the preservation of the status quo rather than change, of reinforcing inequalities rather than promoting redistribution. The crisis of the legal system in India is arising due to no corresponding structural change in the society.\textsuperscript{133}

It is also noted that in India there is a gap between formal equality rights and substantive inequality, including the under enforcement of the law, and the inaccessibility of the legal system to the majority of Indian women. The terrain of the law cannot be adequately captured by a dichotomous understanding of law as an instrument of oppression or liberation. Rather, law is a more complex terrain with an opportunity for interaction in order to reconstruct a more positive role of law.\textsuperscript{134} Along with legal literacy, law reform and litigation, resources have to be constantly and consciously allocated in the making of a law, its dissemination, creation of supportive structures (mobilization through public opinion), favoured interpretation systems (courts and tribunals), adequate implementation/enforcement systems, and continuing social audits of the operation of the law to make it a more dynamic institution.

In the case of the construction sector, there have been efforts to create welfare funds in accordance with the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, but, due to lack of awareness of the workers most of them have not been registered under the Welfare Board to receive the benefits. Therefore, raising the awareness levels of the workers about labour law legislations is the most important task to be able to make substantive changes at the grassroots level.

\textsuperscript{132} Upendra, Baxi, Alternatives in Development: Law; The Crisis of the Indian Legal System, Vikas Publishing House, Pvt Ltd, 1982, pg 29
\textsuperscript{133} Ibid, pg 10
\textsuperscript{134} Ratna Kapur, and Brinda Crossman, Subversive Sites: Feminist Engagement with Law in India, Sage Publication, 1996