Chapter III

LAWS AND SCHEMES GOVERNING AGRICULTURAL LABOUR
IN INDIA: A CRITICAL EVALUATION

3.1 Introduction

Labour is on the concurrent list in the Indian Constitution, and regulatory provisions of the conditions of work\(^1\), therefore, appear within the domain of both the State and the Central Governments. The Centre has passed a number of laws,\(^2\) but here too, the coverage of these laws as well as the rules regarding their implementation can be framed by the State Governments. The agricultural workers are covered in a piece meal fashion in various legislations\(^3\) and lack comprehensive protection of the minimum conditions of work.

The avenues of stable and durable employment for them have been limited leading to inter-district and inter-State migration in search of better avenues of employment and wages. This has caused considerable dislocation of family life, dislocation of education of children and numerous other


handicaps. Several measures have been taken to protect the interests of the working class and uplift the condition of agricultural workers. The very first legislation, the *Minimum Wages Act*, 1948 was applied to the agricultural sector also. Subsequently, the *Plantations Labour Act*, 1951 was enacted to provide certain basic facilities to plantation workers. Many other existing labour laws are applicable or have direct bearing on agricultural labour. The problems of agricultural labourers have been sought to be tackled through multi-dimensional course of action viz., improvement of infrastructural facilities, diversification to non-farm activities, skill improvement programs, financial assistance to promote self-employment, optimising the use of land resources etc., through a variety of rural development, employment generation and poverty alleviation programs. All these efforts have not been able to adequately protect the interests of agricultural workers. This is partly on account of lack of bargaining power. Keeping in view this broad perspective, it is necessary to bring a comprehensive legislation to safeguard the interests of agricultural workers.

6. The minimum wage fixed by the State Government under Section 3 of the *Minimum Wages Act*, 1948 for agricultural labourers, shall be considered as the wage rate applicable to that area.
8. Jawahar Rozgar Yojana, Prime Minister’s Rozgar Yojana, Rural Infrastructural Development Fund at the National Bank for Agriculture and Rural Development, Minimum Needs Programme, Mid-Day Meal Programme, Indira Awas Yojana.
The Government has enacted and extended various social security legislations to protect the social and economic rights of agricultural labourers. They are the *Debt Relief Act, 1976*, *Land Ceiling Laws, The Protection of Civil Rights, 1955*, *The Trade Unions Act, 1926*, *Equal Remuneration Act, 1976*, *The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979*, etc.

In spite of welfare programs and various social security legislations, the real improvement in the condition of agricultural labour has not been achieved due to the failure of percolation of these benefits in totality to the actual beneficiaries. The plans and laws in paper seem to be perfect but in action often meet with hurdles and have been practiced more in their breach. The hurdles like, lack of employment, lack of awareness about the welfare measures and legal provisions, low social status, economic dependency, lack of political will, oppressive social conditions and above all, their unorganized nature are inhibiting them from participating in the developmental programs. It is here, on behalf of agricultural labourers and society, voluntary organizations can come forward and contribute their might. This can be attempted by adopting any of the following:

a. by persuading or even forcing the Government to pass necessary social security legislations or to amend the existing legislations encompassing agricultural labour.
b. by supporting social legislations passed by the Government for their effective implementation.

c. by organizing and educating people for whom the social security legislations are meant on the purpose and provisions of these social legislations, and finally

d. functioning of pressure groups or watchdogs to see that social legislations are enacted and implemented\(^9\).

3.2 Agricultural Labour in India: Some challenges

India has neither ratified ILO Convention on Freedom of Association and Protection of the Right to Organise nor Convention on the Right to Organise and Collective Bargaining. The rights to organise\(^10\), collective bargaining\(^11\) and strike\(^12\) are restricted both in law and in practice. The authorities do not always respect the right to peaceful assembly and thousands of detentions and arrests are reported every year\(^13\). Anti-union discrimination takes place and many workers have faced threats and violence

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in their efforts to unionise or call a strike\textsuperscript{14}. In export processing zones, organising is particularly difficult.

### 3.2.1 Freedom of Association and the Right to Collective Bargaining:

Workers have the right to establish and join trade unions without prior authorisation\textsuperscript{15}. However, this is insufficiently protected in practice. A change in legislation in 2001, which amended \textit{the Trade Union Act} of 1926, states that a trade union has to represent at least 100 workers or 10 per cent of the workforce, whichever is less, compared to a minimum of seven workers previously. By international standards and practice, the requirement of 100 workers is excessive: the ILO Committee of Experts on the Application of Conventions and Recommendations has criticised countries which put in place the even lower minimum requirement of 50 persons to form a union\textsuperscript{16}.

The right to freedom of association in trade unions is guaranteed in the Constitution\textsuperscript{17}. \textit{The Trade Union Act} of 1926 prohibits discrimination against

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union members and organisers in the formal and informal sectors, without distinction.

The law on trade unions does not apply in Sikkim, a state annexed to India since 1975, and as a result, workers in Sikkim are not able to exercise their trade union rights. There are some workers’ organisations, but their coverage is minimal. The government notice regarding freedom of association replacing the law on trade unions in Sikkim provides for excessive interference by the police and also by the public in applications for registration of a workers’ organisation.

In a clear violation of the commitment of the WTO to adhere to the ILO’s core labour standards, the Government of Western Bengal State declared in December 2000 that trade union activism would no longer be allowed in order to attract industry\(^\text{18}\).

3.2.2 Discrimination and Equal Remuneration:

India has ratified ILO *Convention on Equal Remuneration and Convention on Discrimination (Employment and Occupation)*. Although the

\[\text{18. Internationally recognised Core Labour standards in India 03, Geneva, 2002.}
law prohibits discrimination on various grounds, certain groups face discrimination in employment\(^\text{19}\). There is a considerable gender pay gap\(^\text{20}\).

It has been estimated that 80% of working women are found in the informal sector. Women are working as cultivators, agricultural labourers, forest produce collectors, in tea plantations, construction industry, as landless labourers, fisheries, animal husbandry, sericulture, tobacco and bidi workers, and in home-based occupations, as weavers, spinners, garments, food processing, as vendors and hawkers and domestic workers\(^\text{21}\).

However, at the same time there are a growing number of families surviving solely on women’s earnings. Discrimination against widows is a particularly pervasive problem\(^\text{22}\). Women, especially those in informal occupations, are also subject to sexual harassment\(^\text{23}\).

The Constitution includes provisions with regard to non-discrimination on several grounds, including gender. Legal provisions stipulate equality of opportunity in matters of public employment and forbid

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gender discrimination in respect of any employment or office under the State. *The Equal Remuneration Act* of 1976 applies to an extensive range of classes of employment, which includes informal employment relationships. It requires employers to pay workers not less than that paid to the other sex for performing the same or similar work. Furthermore, employers must not discriminate on the basis of sex in the recruitment of workers for the same or similar work or in any terms or conditions of employment, such as promotion, training or transfer. The phrase “[s]ame work or work of similar nature” is defined as “work in respect of which the skill, effort and responsibility are the same when performed under similar working conditions or where any differences are not of practical importance in relation to the conditions of employment”\(^{24}\). The CEACR has criticised the fact that there is no legislative expression of the concept of “equal pay for women and men for work of equal value”, because the concept of “work of equal value” goes beyond “similar” work and encompasses work that might be of an entirely different nature, but which is nevertheless of equal value\(^ {25}\).

3.2.3 Child Labour and Agricultural Sector:

India has neither ratified ILO *Convention on the Minimum Age* nor *Convention on the Worst Forms of Child Labour Convention*. The law does


not sufficiently protect children from forms of labour that are illegal under those Conventions. The laws are not enforced adequately and child labour, including its worst forms, is prevalent\textsuperscript{26}. Child labour is not illegal in India except in hazardous sectors.

Governmental efforts to reduce child labour have yet to have much impact and must be considered inadequate to deal with the scale of the problem, although the activities of the ILO’s IPEC have been making some progress. The problem remains enormous, however, and there is a clear need for changes to national laws with regard to the prohibition of child labour and to provide universal, compulsory education\textsuperscript{27}.

The \textit{Constitution of India} states that no child below the age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment\textsuperscript{28}. In this way, although Convention on the Worst Forms of Child Labour sets the minimum age for hazardous work at 18 years of age, the minimum age for hazardous work in India is 14 years old.

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\textsuperscript{26} Patrice C. McMahon, \textit{Human Rights and Diversity: Area Studies Revisited} 185, USA: University of Nebraska, 2004.
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3.2.4 Forced Labour in Agriculture Occupation:

India has ratified ILO Conventions on Forced Labour and its Abolition. Forced labour and trafficking in human beings are prohibited by law\(^ {29}\). However, forced labour is a problem in agriculture, mining, commercial sexual exploitation, and other sectors. The vast majority of estimates for the number of forced or “bonded” labourers in India range between 5 million and, according to recent research from Anti-Slavery International, the much higher figure of 20 million\(^ {30}\). Bonded labour is a specific form of forced labour which describes a private contractual relationship whereby a worker incurs or inherits debts to a contractor and then must work off the debt plus interest.

Article 23 of the Constitution prohibits trafficking in human beings and forced labour. These crimes are prosecuted under various provisions both in the *Indian Penal Code* and in the *Immoral Traffic (Prevention) Act* of 1956. *The Bonded Labour System (Abolition) Act* of 1976 prescribes three years imprisonment for forcing workers into labour, which is considered an insufficient penalty for deterring the crime.

\(^{29}\) United States Department of State, Trafficking in Persons Report India, 27 June 2011: [http://www.unhcr.org/refworld/docid/4e12ee7427.html](http://www.unhcr.org/refworld/docid/4e12ee7427.html) [accessed on 22-06-2012].

India must ratify and fully implement ILO Conventions No. 87, 98, 138 and 182, and bring its legislation into line with and fully implement ILO Conventions No. 29, 100, 105 and 111, which it has already ratified.

In view of continuing problems with restrictions on the right to collective bargaining and to strike for government workers, as well as requirements more onerous than those facing private sector workers regarding forming workers’ organisations, the Government must safeguard the right of all workers to form and join organisations of their own choosing, without prior approval, and to use these organisations to bargain collectively.

The Government of West Bengal has threatened to crush eliminate trade unionism in an attempt to attract investment. This is a flagrant example of the use of exploitative working conditions in an attempt to achieve competitive advantage. This is not an approach that is conducive to the economic development of West Bengal, not to mention it is not conducive to attracting quality, productive investment.

Several other State governments, in their attempts to attract investment, are putting similar pressure on trade unions and on workers’ rights. Rather than offering tacit support to these efforts, the Government of India must safeguard the rights of its citizens as spelled out in its
Constitution, and not permit regional authorities to perform such competitive
devaluation of their social standards. The huge majority of workers in India
are not recognised under the law, cannot exercise their rights to freedom of
association and nondiscrimination, and have no access to basic social
protections. Labour legislation and social protection legislation must be
expanded to cover all workers. To treat these workers as part of a self
standing informal sector is not only inaccurate, but it forsakes much of the
possibility for the improvement of their living and working conditions. Many
of these workers are indeed closely connected to the official economy
through production chains and service contracts, and these connections must
be used to bring about their access to legal and social protections.

Discrimination on various grounds continues to be a serious problem
in India, including grounds of gender, caste and ethnicity. The Government
should take further measures to eliminate these forms of discrimination in
employment, and ensure equal access for all groups to employment, equal
pay for work of all value, and promotion to positions of responsibility.

Laws regarding child labour must be amended to provide a universal
minimum age for employment, and a higher minimum age for employment
in hazardous occupations.
Forced and bonded labour also remains a serious problem, where some steps have been taken, but many more are required if the problem is to be overcome. There are some legislative amendments required, but more important is the effective implementation of existing laws, and an increase in resources devoted to freeing forced and bonded labourers.

In line with the commitments accepted by India at the Singapore WTO Ministerial Conference and its obligations as a member of the ILO, the Government of India should therefore provide regular reports to the WTO and the ILO on its legislative changes and implementation programmes with regard to all the core labour standards.

The WTO should draw to the attention of the authorities of India the commitments they undertook to observe core labour standards at the Singapore and Doha WTO Ministerial Conferences.  

The law should be amended to give legislative expression to the concept of “equal pay for women and men for work of equal value”, because the concept of “work of equal value” goes beyond “similar work” and

encompasses work that might be of an entirely different nature but is nevertheless of equal value.

### 3.3 Laws covering Agricultural Labour:

In addition, the Government of India has passed and modified labour laws\(^{32}\) from time to time which recognize the rights, *inter alia*, of agricultural workers to protect and promote their social and economic interests. A critical evaluation of the existing laws in the light of relevant ILO Conventions and Recommendations would be in order here.

#### 3.3.1 *The Societies Registration Act, 1860:*

In view of the fact that small and marginal farmers and tenants find it difficult to get organized under the *Trade Unions Act*, 1926, they can form an organization under the *Societies Registration Act*, 1860 to promote the common interest through participation in various socio-economic projects, floated by Government and Non-Government agencies. A society registered under this Act acquires the legal status. This Act is applicable to both issue based NGOSs and co-operative societies. Only the NGOs and societies formed for the purpose of peoples’ welfare and development may be registered under the Act.

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Agricultural workers in India are largely unorganized. According to the Ministry of Labour verified statistics, hardly 1.8 million rural workers, out of 240 million were organized by major trade unions. Besides, Bhartiya Khet Majdoor Union, All India Agricultural Workers Union and All India Kishan Sabha reportedly organized about 5.5 million agricultural workers. Also, 3.09 million workers were organized by various co-operative societies. Thus, altogether, only 10.4 million rural workers, *i.e.*, about 4.2 percent organized. Even if we include the membership of independent trade unions and NGOs, hardly 5 per cent of the rural workers seem to have been organized.

In addition to the membership of trade unions about 3.1 million agricultural workers are organized along the co-operative line. There are about 7.7 thousand farmers’ societies with 354 thousand membership, 6.9 thousand fisheries societies having 764 thousand membership, 3.5 thousand forest labourers societies with 425 thousand members and 4.7 thousand women’s cooperative societies, having memberships of 5.3 lakhs membership. It may be seen that the State of Andhra Pradesh has the largest number of farmers cooperative societies (2345), having 1.5 lakh membership. Other States where farmers’ co-operative societies are strong include Assam, Gujarat, Karnataka, Uttar Pradesh and Kerala. The Fisheries societies have sizeable membership in Andhra Pradesh, Maharashtra, Tamil
Nadu, Assam, West Bengal, Karnataka, Orissa and Madhya Pradesh in that order. The forest Labourers’ societies have significant number of members in Madhya Pradesh, Gujarat, Maharashtra and Bihar. The women’s co-operative societies are relatively strong in Maharashtra.

Besides, there are nearly 3052 registered non-government Organizations which have made efforts to promote and participate in socio-economic projects for the rural workers. Quite a few of them like UNIFRONT, RWO, WWF etc., perform the dual role of both unions and co-operatives.

In recent years both government and non-government agencies have formed self-help groups of women and poor workers at the local level. The Government has set up Rashtriya Mahila Kosh for enabling groups of poor and asset less women in the informal sector to access credit through the medium of NGOs’.

The issue of industrial relations in agriculture is quite complex. Since the agricultural workers are not a homogeneous group and there is no direct employer-employee relationship on regular basis, especially in traditional crop production sector, the workers are largely unorganized. Generally speaking, they do not have any bargaining power. In relatively higher
productivity regions of Punjab, Haryana and Western Uttar Pradesh, wages are often higher than the minimum wages fixed because of high productivity of land and labour. But in other backward regions, this rule does not apply. The self-employed agricultural workers also suffer from numerous problems due to low price, low access to technology, credit market etc. But due to lack of organization, their voices are not heard by the Government. However, in a State like Kerala, agricultural labourers are mostly organized along the trade union line. In fact, *Kerala Agricultural Workers Act*, 1974 which provides for a number of security and welfare measures for the workers such as provident fund, gratuity, pension, overtime payment etc. is the result of trade union movement. Also the agricultural labourers in Kerala have greater security of employment as compared to those in other parts of the country. Generally a worker, who worked on somebody’s field last year, has also the *de facto* right of employment in the current year, unless the worker himself decides so otherwise. Besides, credit goes to the unionization of agricultural labourers that the average daily wages rates of agricultural labourers in Kerala are comparatively much higher than those prevailing in other States.

According to the Labour Bureau, in the traditional agricultural sector, there were nearly 29 industrial disputes in the year 1999, involving 382 thousand workers, which led to a loss of 3.7 million mandays. Similarly, in the plantation sector, about 3.6 million mandays were lost due to industrial
disputes in 1999 also the plantation sector workers, particularly in the 210 Estates having 25 acres or more land area each, are largely organized and due to their collective bargaining power, they get relatively higher wages, and other entitlements under the *Plantations Labour Act*. But the large estates employ hardly 20 to 25 per cent of the total employment. Thus, even in the plantation sector where 75 to 80 per cent workers work on small plots and estates are deprived of many benefits, like for *e.g.*, adequate medical care and housing facilities. Even though landowners try to provide accommodation and facility of drinking water, their standard is relatively poor, also their wage rates are comparatively lower.

### 3.3.2 Agricultural Labour and the *Trade Unions Act, 1926*:

"Trade unions" means any combination, whether temporary or permanent formed primary for the purpose of regulating the relations between workmen and employers or between workmen and workman and or between employers and employers or for imposing restrictive condition on conduct of any trade or business and includes federation two or more trade union registered under the Act. In the case of wage earners, the law specifically provides that any seven or more members may form a union and apply for registration under the *Trade Unions Act, 1926*. Every application for

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registration for the trade union shall have to be made to the registrar and shall be accompanied by the copy of rules of the trade union and the statement of the following particulars, namely the names, occupation and address of the members making the application; the name of the trade union and the address of Head Office and the titles, names, and address, occupation of the officers of the trade union\(^{35}\).

The Registrar, on being satisfied that the Trade Union has complied with all the requirements of this Act in regard to registration, shall register the Trade Union by entering in a register to be maintained in such form as may be prescribed, the particulars relating to the Trade Union contained in the statement accompanying the application for registration\(^{36}\). If all the terms of the Act are complied with, it is obligatory upon the Registrar to register a union and he has no discretion in the matter\(^{37}\). The Registrar, on registering a Trade Union, shall issue a certificate of registration in the prescribed form which shall be conclusive evidence that the Trade Union has been duly registered under this Act. Any person aggrieved by any refusal of Registrar to register a Trade Union may appeal to High Court or any other court, as

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appointed by Government. The appellate court may dismiss the appeal or pass an order directing the registrar to register the Union.

The law clearly provides that no suit or other legal proceeding shall be maintainable in any Civil Court against any registered Trade Union or any office-bearer or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the Trade Union is a party on the ground only that such act induces some other person to break a contract of employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills.

Thus, the *Trade Unions Act*, 1926 contains clauses that respect the basic principles and spirits of ILO Convention Nos. 87 and 98 relating to Freedom of Association and Protection of the Rights to organize and Rights to organize and Collective Bargaining. However, in reality the *Trade Unions Act*, 1926 covers inquisition of workers where employer-employee relationship exists. While wage earners under most circumstances can form an organization and get registered under the *Trade Unions Act*, the self employed workers including tenants, small and marginal farmers and petty artisans may not be able to form a union because of the absence of employer

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and workmen relationship. Even the waged workers in agriculture often fail to get organized under a trade union banner due to lack of established and regular employer-workmen relationship. Nevertheless, some Central Trade Unions have achieved noticeable success in registering membership of agricultural workers. However, there is much to be done to organize agricultural labour and strengthen their hands so as to successfully bargain for better social security and welfare deals for themselves.

The following paragraphs describe briefly the nature of laws adopted by the Government, which have implications for labour standards in agriculture.

3.3.3 The Workmen’s Compensation Act, 1923 and Agricultural Labour:
Agriculture is still one of the most hazardous occupations in India. Requirements for workers’ compensation may be difficult to understand as the law does not clearly specify every possible situation. Employers for which the workers’ compensation law may apply cannot obtain coverage which is necessary. For securing the workmen from work hazards it is essential to maintain muster roll by each employer to establish employer workmen relationship. Applicability can be thought of when the employer himself is having capacity to shoulder the responsibility. Many of the workmen do not get first-aid treatment due to which the situation worsens to
cause irreparable loss. Also no measures are adopted to reduce dangerous situation in agriculture sector for workers working over there.

However, employees seldom prevail because employers can invoke powerful legal defenses such as the "assumption of risk" doctrine, which says that workers had no remedy for the normal risks inherent to their jobs. Another doctrine, the “fellow servant” rule, says that employers are not liable to employees for injuries caused by the negligence of other employees. In order to prevail, the worker has to prove, at a minimum, that the employer was negligent. The employer could still use the employee's negligence as a defense to a lawsuit. The cost of workplace injuries is passed on to injured workers and their families, and to the public at large when workers could not pay for their medical care and collected public aid when they were unable to earn wages due to their injuries.

Under this Act, the employers are under obligation to pay compensation to workers for injury caused “out of and in the course of employment”, resulting in death or total / partial disablement. The compensation up to Rs. 80,000 in the case of death and Rs. 90,000 in the case of permanent total disablement is provided.40

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However in reality, the unorganized agricultural labourers fail to seek benefits from such Legislation, although in the large plantation estates, trade unions try to help the affected families to receive compensation under this Act.

3.3.4 *Minimum Wages Act, 1948: Its applicability to Agricultural Labour:*

Legislative protection for workers to receive a minimum wage can be considered as the hallmark of any progressive nation. It is one of the fundamental premises of decent work. In India, *the Minimum Wages Act, 1948* provides for fixation and enforcement of minimum wages in respect of scheduled employments and to prevent exploitation of the workers and for this purpose the Act aims at fixation of minimum rates of wages which the employer must pay.

This law provides for the fixation of minimum rates of wages of labourers including agricultural labourers and is thus in conformity with ILO Convention No. 99 relating to *Minimum Wage Fixing Machinery (Agriculture)*. The State Governments are empowered to fix the minimum wages\textsuperscript{41}. The law provides for revising the minimum rates of wages from

time to time. Wages under the Act may be fixed for time work, known as a ‘minimum time rate’ or for piece work known as a ‘minimum piece rate’.

There are two methods for fixing or revising the minimum rates of wages. One is by constituting committees and the other is by issuing notification in the official gazette. This law also provides for fixing hours for a normal working day in regard to any scheduled employment in respect of which minimum rates of wages under this Act have been fixed. For the overtime work the wages to be paid are at the rate of twice for non-agriculture work and one and a half time for agriculture work. The law provides for appointment of inspectors by the Government for proper implementation of this Act. These inspectors are empowered by the Act to make inspections regarding whether minimum wages are actually paid.

Exaction of labour and services against payment of less than the minimum wages amounts to forced labour and violates Article 23 of the Constitution. A claim for non-payment of minimum wages may be made before an appropriate authority under the Act. In the Central sphere,

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Regional Labour Commissioners are the authority under this Act and in the State sphere the Government normally appoints the Deputy Labour Commissioners as authority under this Act. The claim under the Act may be made either by the employee himself, or any official of a registered Trade Union or any Inspector. Any application for claim should normally be made within six months from the date on which minimum wages become payable. In case any employer contravenes any of the provisions under this Act or any rule or order made under this Act, if no other penalty is provided for such contravention, he/she is liable to be punished with a fine to the extent of Rs.500.

3.3.5 The Plantations Labour Act, 1951 Vis-à-vis Agricultural Labour:

This is an Act to provide for the welfare of labour, and to regulate the conditions of work, in plantations. According to this Act, in every plantation, effective arrangements shall be made by the employers to provide and maintain at convenient places in the plantation a sufficient supply of wholesome drinking water for all workers, medical facilities, canteen, crèches, recreation facilities, educational facilities, housing facilities and annual leave with wages and maternity benefits. The Plantations Labour

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Act, 1951 incorporates provisions\(^{50}\) that meet the obligations of ILO Convention No. 110 on plantation employers, even though the Government of India has not so far ratified this Convention. However, as per the available information, under the *Plantations Labour Act*, the Indian Tea Planters Association, Jalpaiguri provides a wide variety of facilities to the workers. The workers are provided free protective clothing *e.g.*., umbrella, apron, woolen Jersey/blankets once in two years, as also the facilities of library, hospitals, sports and games.\(^{51}\) The Estates affiliated to the United Planters Association of South India covering Karnataka, Kerala and Tamil Nadu provide free medical aid to plantation workers through Garden hospitals, group hospitals and dispensaries. Also free education facilities up to high school are provided to the children of plantation workers. Besides, for pursuing technical and higher studies, Tea, Coffee and Rubber Boards provide stipends towards, tuition fees, hostel charges *etc.* Crèches are provided by every plantation, employing 50 or more women workers. Arrangements are also made for providing adequate supply of drinking water.\(^{52}\)

\(^{50}\) *See, e.g.*, S. 25, *Ibid*, prohibits the employment of women between 19 hours and 6 hours (except for midwives and nurses) unless there is permission from the State Government. S. 12, *Ibid*, employers with more than 50 women workers (or with women workers having a number of children under six years old of 20 or more) must provide crèche facilities.


Protective clothes and some other non-statutory benefits such as annual leave, home travel concessions, free collection of fire wood, vegetable plot for kitchen garden, wages for mothers attending sick children, *ex-gratia* payment in cases of non-occupational chronic diseases, free liquid tea/coffee at work spots, *etc* are also provided\(^53\). Moreover, it is mandatory for every employer to provide and maintain necessary housing accommodation for every worker and his family residing in the plantations\(^54\). According to the rules under Section 15 and 16 of the *Plantations Labour Act*, 1951 State Government has fixed the standards and specifications of accommodation, which varies from a plinth area of 260 to 280 sq. ft.\(^55\) The enforcement of the Act is the responsibility of respective State Government.\(^56\) About 75 to 80 per cent holdings in tea, coffee and rubber are small and marginal where workers have access to free housing facility, free electricity and drinking water facilities and sometimes even medical care, they do not generally receive many of the benefits indicated above. Particularly women workers do not have access to maternity benefit in smaller estates. Also the wage rates of these workers are less as compared to those working in larger estates where the workers are organized. Besides, they do not get subsidized rations unlike the organized plantation workers.


\(^{54}\) *Ibid.*


3.3.6 The Employees’ Provident Funds and Miscellaneous Provision Act, 1952 and Agricultural Labour:

The main objective underlying this Act is to provide financial security for the future of workers after their retirement and for their dependents in case of early death of the worker. The Employees' Provident Fund aims to provide social security and to help employees increase savings. To the employers, it helps to ensure a steady workforce, which will increase productivity. It also gives the government a substantial sum for investment.

The Act provides for institution of compulsory provident funds for employees of an establishment employing 20 or more persons. But, the benefit of this Act does not reach the agricultural workers-where employer-employee relationship is not generally established. The State Governments of Assam, Kerala, Tamil Nadu and Karnataka have a separate scheme for the plantation workers.

3.3.7 Agricultural Labour and the Maternity Benefit Act, 1961:

The Maternity Benefit Act is intended to promote the welfare of the working women. This Act applies to every establishment employing women and provides for the maternity leave and payment of certain monetary benefits

for women workers during the period when they are out of employment on account of their pregnancy or any illness etc., arising out of pregnancy. However, the amount of benefit is too meager.\(^59\) This Act, applies to every establishment whether a factory, mine, a plantation or shops and establishments. The State Governments are responsible for implementation of the Act in agriculture and plantation. While the plantation workers are covered by this Act which meets some obligations under ILO Convention No. 110 for Plantation Workers, however, other women agricultural workers remain outside the purview of this Act. Even in the plantation sector, only the women workers in large estates which fall under the preview of *Plantations Labour Act* receive maternity benefits\(^60\).

The maximum period for which women get maternity benefit is twelve weeks of which six weeks must be taken prior to the date of the delivery and the remaining six weeks immediately following the date of delivery\(^61\). In order to be entitled to maternity leave, a woman must have actually worked at least for a period of 160 days in the calendar year before expected date of delivery.\(^62\) This has now been revised to 80 days. No pregnant woman when she makes a request to the employer one month before the six weeks prior to expected date of delivery should be compelled or allowed to do any hard

\(^{59}\) Surendranagar District Panchayat v. Dahyabhai Amarsinh 2005 (8) SCC 750.
\(^{60}\) B. Shah v. Presiding Officer, Labour Court, Coimbatore 1978 AIR 12 [Singh, Jaswant, Krishnaiyer, J].
work which is likely to interfere with her pregnancy or the normal development of fetus or is likely to cause her miscarriage or otherwise affects her health.  

After the delivery a woman worker is to be given two nursing breaks of prescribed duration (15 minutes) in addition to her regular rest intervals for nursing until the child attains the age of fifteen months. Besides, an employer cannot reduce the remuneration on account of light work assigned to her for the breaks taken to nurse the child. Further she cannot be discharged or dismissed on grounds of absence arising out of pregnancy, miscarriage, delivery or premature birth. Nor can her service conditions be altered to her disadvantage during this period. If any employer contravenes the provision of this Act or the rules made there under, he shall be punishable with imprisonment, which may extend to three months, or with fine which may extend to five hundred rupees, or with both; and where the contravention is of any provision regarding maternity benefit or regarding payment of any other amount and such maternity benefit or amount has not already been recovered, the Court shall, in addition recover such maternity benefit or amount as if it were a fine and pay the same to the person entitled.

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64. Municipal Corporation of Delhi v. Female Workers (Muster Roll) and amr., 2000 (2) SCR 171 [S. Saghir Ahmad, J and D.P. Wadhwa, J].

thereto. The punitive actions however, are so insufficient that many employers may continue to violate the law.\textsuperscript{66}

Article 42 directs that the State shall make provisions for securing just and \textit{humane} conditions of work and for maternity relief. Article 43 directs that the State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or cooperative basis in rural areas.\textsuperscript{67}

Plantation is a part of agriculture and it directly employs more than 2 million workers in the country\textsuperscript{68}. Plantation plays a very crucial role in the export of agricultural produce. About 15 per cent of the total export earnings of agriculture products come from crops like tea, coffee and rubber, although these plantations occupy only one per cent of the total cropped area\textsuperscript{69}. At all plantations level it is observed that more than 90 percent of employers are maintaining proper records relating to attendance, wages and bonus. Women workers have all along been an integral part of the labour force engaged in

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\textsuperscript{66} Supra note 64.  
\textsuperscript{67} \textit{Socio-economic Conditions of Women Workers in Plantation} 33, Chandigarh: Ministry of Labour and Employment, 2009.  
\textsuperscript{68} Ibid.  
\textsuperscript{69} [http://www.agriinfo.in/default.aspx?page=topic&superid=2&topicid=1338][accessed on 23-09-2012]
the Plantation Industry in India. A majority of the plantation labourers are women workers. Owing to the very fact that soft hands and nimble fingers are suited especially for tea leave plucking and picking of coffee seeds, women workers dominate the employment scene in these Plantations. About 83 per cent of tea plantation units, 64.7 per cent coffee plantations, 63.6 per cent units of rubber plantations and 39 per cent cardamom plantation units are keeping the records of maternity benefits paid to female workers.\(^{70}\)

3.3.8 Relevance of Insecticides Act, 1968 to Agricultural Labour:

The Insecticides Act regulates the import, manufacture, sale, transport, distribution and use of insecticides with a view to prevent risk to human beings or animals, and for matters connected therewith.

All pesticides are toxic in nature and required to be used judiciously and with care. The Act provides for registration of all import, manufacture and uses of pesticides. So far, 182 pesticides have been granted regular registration for use in the country and 25 pesticides have been banned\(^ {71}\). The uses of pesticides formulation, namely nicotine sulphate and capaphol 80% DS have been banned for use, but their manufacture is allowed to export. However, a number of pesticide poisoning cases are reported from different

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\(^{71}\) *Pepsico India Holdings Pvt. Ltd. v. Food Inspector*, (2011) 1 SCC 176.
parts of the country. It has been observed that farmers and agricultural labourers often do not know the hazards involved in use and spraying of pesticides. Due to lack of training, farmers and farm labourers apply chemical fertilizers and pesticides often without a protective cover. As a result, there are reports of skin diseases, allergies, lung diseases and parasitic disease affecting them. Trade unions as well as Government need to organize large scale training programmes to educate the farmers regarding the proper handling the pesticides and chemicals. Moreover, mass awareness campaign along with promotion of bio-pesticides would be necessary to reduce health hazards due to the use of pesticides.\(^{72}\)

### 3.3.9 Impact of *Equal Remuneration Act, 1976* on Agricultural Labour:

This Act provides provision for payment of equal remuneration to men and women workers and for the prevention of discrimination on the ground of sex against women in the matter of employment and for matters connected there with or incidental there to.\(^{73}\)

The main provisions of this Act provide for the following benefits:

- “No employer shall pay to any worker, employed by him in establishment or employment, remuneration, whether payable in cash

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73. Randhir Singh v. Union of India, 1982 (1) SCC 618.
or in kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex in such establishment or employment for performing the same work or work of a similar nature.\textsuperscript{74}

- Also on and from the commencement of this Act, no employer shall, while making recruitment for the same work or work of a similar nature, make any discrimination against women except where the employment of women in such work is prohibited or restricted by or under any law for the time being in force\textsuperscript{75}.

Amongst agricultural occupations, well digging was observed to be the highest paid occupation for men possibly on account of the requirement of skill and risk in the performance of the activity followed by ploughing and sowing occupations. Transplanting occupation fetched maximum wages for women followed by harvesting and threshing occupations. The all-India average daily wage rates for women in transplanting occupation ranged between Rs.53.20 in August, 2006 and Rs.59.28 in June, 2007.\textsuperscript{76}

\textsuperscript{76} \textit{Wage Rates in Rural India} 9-12, Chandigarh: Government of India, 2006.
3.3.10 Bonded Labour System (Abolition) Act, 1976 and its effect on Agricultural Labour:

Even if a person has contracted with another to perform service and there is consideration for such service in the shape of liquidation of debt or even remuneration, he cannot be forced by compulsion of law or otherwise to continue to perform such service, as that would be forced labour within the inhibition of Article 23\(^77\). This Article strikes at every form of forced labour even if it has its origin in a contract voluntarily entered into by the person obligated to provide labour or service.\(^78\) The reason is that it offends against human dignity to compel a person to provide labour or service to another if he does not wish to do so, even though it is in breach of the contract entered into by him. There should be no serfdom or involuntary servitude in a free democratic India which respects the dignity of the individual and the worth of the human person. Moreover, in a country like India where there is so much poverty and unemployment and there is no equality of bargaining power, a contract of service may appear on its face voluntary but it may, in reality, be involuntary, because while entering into the contract, the employee, by reason of his economically helpless condition, either to starve or to submit to the exploitative terms dictated by the powerful employer. It would be a travesty of justice to hold the employee in

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such a case to the terms of the contract and to compel him to serve the employer even though he may not wish to do so. That would aggravate the inequality and injustices from which the employee even otherwise suffers on account of his economically disadvantaged position and lend the authority of law to the exploitation of the poor helpless employee by the economically powerful employer.

Now the next question that arises for consideration is whether there is any breach of Article 23 when a person provides labour or service to the State or to any other person and is paid less than the minimum wage for it. It is obvious that ordinarily no one would willingly supply labour or service to another for less than the minimum wages when he knows that under the law he is entitled to get minimum wage for the labour or service provided by him. It may therefore be legitimately presumed that when a person provides labour or service to another against receipt of remuneration which is less than the minimum wage, he is acting under the force of some compulsion which drives him to work though he is paid less than what he is entitled under law to receive. What Article 23 prohibits is 'forced labour' that is labour or service which a person is forced to provide and 'force' which would make such labour or service 'forced labour' may arise in several ways. It may be physical force which may compel a person to provide labour or service to another or it may be force exerted through a legal provision such as a
provision for imprisonment or fine in case the employee fails to provide labour or service or it may even be compulsion arising from hunger and poverty, want and destitution. Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as 'force' and if labour or service is compelled as a result of such 'force', it would we 'forced labour'. Where a person is suffering from hunger or starvation, when he has no resources at all to fight disease or feed his wife and children or even to hide their nakedness, where utter grinding poverty has broken his back and reduced him to a state of helplessness and despair and where no other employment is available to alleviate the rigour of his poverty, he would have no choice but to accept any work that comes in his way, even if the remuneration offered to him is less than the minimum wage. He would be in no position to bargain with the employer; he would have to accept what is offered to him. And in doing so he would be acting not as a free agent with a choice between alternatives but under the compulsion of economic circumstances and the labour or service provided by him would be clearly 'forced labour.' There is no reason why the word 'forced' should be read in a narrow and restricted manner so as to be confined only to physical or legal 'force' particularly when the national charter, its fundamental document has promised to build a new socialist republic where there will be socio-economic justice for all and every one
shall have the right to work\textsuperscript{79}, to education\textsuperscript{80} and to adequate means of livelihood\textsuperscript{81}. The Constitution makers have given us one of the most remarkable documents in history for ushering in a new socio-economic order and the Constitution which they have forged for us has a social purpose and an economic mission and therefore every word or phrase in the Constitution must be interpreted in a manner which would advance the socio-economic objective of the Constitution. It is often that in capitalist society economic circumstances exert much greater pressure on an individual in driving him to a particular course of action than physical compulsion or force of legislative provision. The word 'force' must therefore be constructed to include not only physical or legal force but also force arising from the compulsion of economic circumstance which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage of course, if a person provides labour or service to another against receipt of the minimum wage, it would not be possible to say that the labour or service provided by him is 'forced labour' because he gets what he is entitled under law to receive. No inference can reasonably be drawn in such a case that he is forced to provide labour or service for the simple reason that he would be


\textsuperscript{81} Art. 39 (a), Ibid. See, Centre for Environment & Food Security v. Union of India, (2011) 5 SCC 676.
providing labour or service against receipt of what is lawfully payable to him just like any other person who is not under the force of any compulsion.\textsuperscript{82}

The economic literature, official and other, on agricultural and working class indebtedness is escalating and disturbing. Indeed, the 'money-lender' is an oppressive component of the scheme. Money-lenders charge heavy interest ranging from 15 to 50 percent and often more.\textsuperscript{83} In addition to high interest, these people take advantage of illiteracy of agriculturists and manipulate the accounts regarding loans to their advantage. The conditions of loan repayment are so designed that the debtor is forced to sell his produce to the \textit{mahajan} at low prices and purchase goods for consumption and production at high prices. In many other ways these money lenders take advantage of the poverty and the helplessness of farmers and exploit them. Unable to pay high interest and the principal, the farmers even lose their land or live from generation to generation under heavy debt. Unless viable alternatives are made available, the \textit{mahajan} will continue to hold, an important, harmful and enervating place in this sphere. The harmful consequences of indebtedness are economic and affect efficient farming, social in that the 'relations between the loan givers and loan receivers take on the form of relations of hatred, poisoning the social life. The money-lenders,

\textsuperscript{82} People's Union for Democratic Rights and Others v. Union of India, 1982 AIR 1473 [per, Bhagwati, Islam, Baharul, J. J.]

few in number, belong to poor class. There are often disputes between the
two classes which get sharpened on the exploitation of the poor. In fact the
social groups get split into two broad classes- the exploiting class and the
exploited class. Apart from losing land and leading to tension in the
villages their evil effect is rampant the heavily indebted farmers lose even
their human existence. They not only render bonded labour to money-
lenders, their very self-respect and even respect of their women folk do not
remain safe. They are forced to live the life of slaves. Of course, laws have
now been enacted which protect these debtors. But these laws are difficult to
be enforced either because farmers are illiterate, or they do not have
enough resources to go to the courts, or the money-lenders prove too clever
for them.

It has become proverbial that an Indian agriculturist is born in
debt, he lives in debt and he dies in debt.\textsuperscript{84}

\textbf{3.3.11 Dangerous Machines (Regulations) Act, 1983 Vis-à-vis Agricultural Labour:}

This Act aims at improving the occupational safety and health situation of
agricultural workers. The law requires the State Governments to frame rules,
appoint controller and other functionaries to regulate the uses of power
tillers, thresher which could cause serious injury. However, implementation

\textsuperscript{84} Fatehchand Himmatlal & Others v. State of Maharashtra, 1977 AIR 1825.
of law has been very poor so far. The irony is, a number of States have yet to notify rules and appoint a functionary to implement the law.

3.3.12 *Mahatma Gandhi National Rural Employment Guarantee Act, 2005* [MGNREGA]:

This Act was introduced with an aim of improving the purchasing power of the rural people, by providing primarily semi or un-skilled work to people living in rural India, whether or not they are below the poverty line\(^85\). Due to *MGNREGA*, labourers are now bargaining with farmers for wages prescribed by *MGNREGA*. Otherwise they are not ready to come for work especially in peak season of labour demand.

People are, undoubtedly, benefited by recent technology and Hybrid varieties in cropping systems. Due to maintenance expenses of farming like use of pesticide, insecticide, weedicide labour cost is decreased. However, adequate care that should have been taken considering the ill effects of these harmful products has been totally neglected. Moreover, the ecosystem has become the scape goat. This apart, the uncontrolled launching of agricultural equipments by industries for partial gain has resulted, *inter alia*, in increasing unemployment. Authentication of the research carried out by these companies before the launch of any new product has to be effectively

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checked by Government machinery which ironically is scarcely done in India. Soil, environment, products produced, etc are going to be ill effected. Natural chain is getting disturbed. People were benefited less and banks more as interest loan waiver off scheme as no recovery was seen. People of a particular region were benefited more by the variation in rates of reimbursement after natural calamity like drought, wet drought, inadequate timing of precipitation, etc. Uniformity in workability of schemes launched cannot be seen due to political will, and machinery involved in it.

Suicide figures show repeated crop failure, rising cost of cultivation were some reasons and number of cultivators was more as compared to labourers. In some cases it was due to personal reasons like indebtedness due to marriage of family member, addiction, abnormal mental conditions, etc., after going through survey by major newspapers, magazines.

3.3.13 Unorganized Workers’ Social Security Act, 2008: Some Salient Features with Special Emphasis on Agricultural Labour

The Act provides scheme which is being implemented in a phased manner to cover six crore unorganized workers, and in turn their family members of 30

crore people, over a period of five years, extending benefits to 1 crore 20 lakh workers per year. This makes it amply clear that the Act is only an eyewash and intends to cover just 6 crore workers out of the total workforce of more than 42 crore. Any legislation is meant for guaranteeing certain legal commitments on the part of the State; this Act, instead, leaves the implementation entirely to the whims of Governments of the day.\(^89\)

As if to compensate for its lack of substance, there are multiple ‘Social Security Advisory Boards’ with powers of recommendation, advice, review and monitoring.\(^90\) Needless to say, these are ornamental powers and cannot achieve the implementation of any welfare scheme. The real power is retained by the Central Government which may give directions to these Boards or to the State Governments in matters relating to the implementation of the legislation. The Boards, thus, at both Central and State levels are powerless. In addition, they are also very large. The Central Board must consist of at least 31 members and the State Boards 28 members. Along with the support and administrative staff needed to run these Boards, to no apparent gain since they do not have substantive powers, ensure that a lot of financial resources are used with minimal effort.\(^91\)

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www.jurisonline.in [accessed on 28-08-2009].
91. PRS Legislative Research: Unorganized Workers’ Social Security Act, 2008
Clause 9 of the *Unorganized Workers’ Social Security Act, 2008* creates the only legal entitlement in the entire Act that of all unorganized sector workers above 14 years to register themselves and receive a ‘smart’ identity card. There are no immediate dangers that registration might pose to unorganized sector workers. Certainly, there are no gains since the Act is “insubstantial and purely symbolic”. The use of ‘smart’ cards with each holder’s biometric information such as fingerprints may go some way in preventing fraud. But, again, since the legislation is itself weak, this will just mean that the Government will spend a lot of money making and distributing ‘smart’ cards to no apparent gain. Certainly, in situations where there is political will to implement welfare schemes, unorganised sector workers will benefit with ‘smart’ cards.

The Act has mentioned that the Government would periodically notify schemes related to life and disability cover, health and maternity benefits, old age protection and any other benefit as may be determined by the central Government. It has also mentioned ten schemes in the schedule which includes *Aam Admi Bima Yojana, Rashtriya Swasthya Bima Yojana, Janshree Bima Yojana, Janani Suraksha Yojana*, Old Age Pension, Family Benefit and schemes related to weavers, artisans and master crafts persons. None of these schemes are new and are mostly applicable only for BPL

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Moreover, most of these schemes are insurance schemes which are to be sourced from workers and operated by insurance companies. The only possibility is that the Central and State Governments may subsidise contributions from BPL workers at a ratio of 75:25\textsuperscript{95}. Beyond this, there appears to be no plan for the Government to fund the entire social security schemes.

The State Governments have been given a free hand to design their own schemes related to provident fund, employment injury benefit, housing, education, skill up-gradation, funeral assistance and old age homes. It can be noted that none of them are mandatory on any Government.

The function of registration of workers, the ‘biggest’ advantage of the entire Act, is left to the State Governments to be performed through the bureaucracy at district level. Any unorganized worker of above 14 years of age can register himself/herself with the worker facilitation centre by giving a self-declaration. By getting a unique identification number and smart card that are portable, the worker will be eligible for suitable social security schemes if he/she would pay the prescribed contribution.


What is really good about this legislation is an enforceable ‘floor scheme’ that creates in each unorganized sector worker beneficiary a legal entitlement of Governmental protection within a specified time frame. For instance, the *MGNREGA* creates a legal entitlement of 100 days of work for a specified minimum wage with penalties accruing to its denial. *The MGNREGA* is both successful and unsuccessful, depending equally on the political will behind its implementation as the legal content of its provisions\(^96\).

The Act says that unorganized worker means a home-based worker, self-employed worker or a wage worker in the unorganized sector but it is also subjected to the condition of a ceiling on monthly earnings which is not defined. It could be the ceiling for determining BPL (Rs.300 in rural areas and Rs.500 in urban areas) or could be the extent of landholding or could be anything which is unknown and yet to be notified by the Government.

It is also becoming clear that agricultural labourers will also be excluded. The Parliament rejected the amendments for clarification while the Labour Minister claims to have included agricultural labourers as well. Replying to the debates, Oscar Fernandes, the then Minister of State of Labour and Employment stated as follows:

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I would like to clarify that ‘unorganised worker’ means every worker in this country who is not in the organized sector. I have referred to 94 per cent of our people and this includes every agriculturist. Specifically, I would like to say that the migrant worker is one who does 150 days of agricultural work and then goes to the cities and works there as a mason or unorganized worker. So, the Bill covers totally the unorganized sector workers. Agricultural workers are also getting the benefit\textsuperscript{97}.

If this is what the Government means to be the coverage of agricultural labourers, it is obvious that all those who are engaged in agricultural work have been effectively excluded. Hence, the claim that the Act covered rural agricultural labour is an utter lie\textsuperscript{98}.

3.3.14 Absence of Statutes for Protection of Women Labourers in Agriculture:

The fact that majority of women are employed as agricultural workers and labourers-unspecified in India calls for immediate legislation to safeguard their interests. Any measure of protection should apply only to regular wage-earners in agriculture, and no difference should be made between agricultural undertakings employing only a few women separately, and those employing


\textsuperscript{98} Supra note 316.
female labour in groups. The International Labour Conference recommends that, "measures should be taken to ensure to women wage-earners employed in agricultural undertakings, protection before and after child-birth similar to that provided by the International Draft Convention adopted by the International Labour Conference at Washington for women employed in industry and Commerce, and that such measures should include the right to a period of absence from work before and after child-birth, and to a grant of benefit during the said periods, provided either out of public funds or by means of a system of insurance."\textsuperscript{99}

Some countries like Finland, Great Britain, and Switzerland, have already got general sickness insurance schemes which include Maternity Insurance\textsuperscript{100}. A series of laws has established measures for the protection of women workers in agriculture in Soviet Russia and granted them special privileged conditions\textsuperscript{101}. This has greatly improved their cultural level and living conditions. During pregnancy and child-birth, women are allowed time off with full pay for a period of 8 weeks before and 8 weeks after child-birth. India should spend on Socialized Restaurants, Children's Nurseries, Sanatoria, Kindergartens and Hygiene Institutes, which relieve women of a large part of their domestic burdens.

\textsuperscript{101} Derek Howard Aldcroft, Richard Rodger, \textit{Bibliography of European Economic and Social History} 195, New York: Manchester University Press, 1993.
In India, owing to the breaking up of the rigidity of customs and traditions, the employment of women labourers in all forms of agricultural operations, and the employment almost entirely of married women, the need for the prohibition of the employment of women before and after child-birth appears to arise imperatively. Motherhood in India means not only a danger to life, but an unconditional loss in wages.

In India, however, the protective measures adopted should be extended to: women workers employed permanently on a farm; women workers who are not members of the farmer's family; women workers employed individually or in groups, casual unspecified labourers, dairy-maids and domestic servants:

(a) In view of the poverty of the masses work should be stopped two months before and for one month after child-birth.

(b) Provision should be made concerning an allowance of half an hour twice a day, in addition to meal time, for the purpose of nursing the baby, for the second and third month after the child-birth.

(c) The extension of Child Welfare and Maternity Centers and recruitment of Health Visitors to work in conjunction with the rural Labour Inspector or the Village Panchayat is also necessary.

(d) It is difficult in India for the employer to pay wages to an absent worker, therefore, at least in the case of independent workers, this maintenance
should be provided by public bodies or the *Kisan Sabhas* through a system of insurance; or by the State through the maternity welfare department.

(e) State aid is necessary to provide to independent workers funds during maternity period as well as free attendance by a qualified doctor or certified midwife. It is strongly recommended that a scheme of general benefit should be introduced in India to relieve women agricultural workers of a part of their domestic duties\(^\text{102}\).

### 3.3.15 Protection of Child Worker in Agriculture via *Child Labour (Prohibition and Regulation)* Act, 1986:

The employment of children in agriculture as compared with other branches of industry offers a field for investigation distinctly unique. It is frequently claimed that such employment is not open to criticism as it affords a wholesome physical and moral training, that then is no temptation for night work that the work is done in fresh air, and there are less hazards than in industrial occupations. Moreover, the majority of children engaged in agriculture is working either for their parents or with them, and parental influence and protection are usually present. But, while in agriculture there has been no Government intervention as evidenced in factory legislation, still the standards of judgment as to wages, legitimate hours and working conditions, vary so widely between" different employers and in different

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parts of India, that abuses are of constant occurrence, and therefore the problem claims serious consideration.  

The administration of a child labour legislation which will regulate the employment of children in agriculture presents serious difficulties. But conditions of employment in agriculture, where employees may frequently work on widely separated fields under the same employer, make detection and enforcement difficult. Inspection over vast areas becomes costly and inefficient. Indirect measures for protection of child labour in agricultural pursuits are adopted by many countries in the form of compulsory school attendance laws which present relatively few administrative difficulties. For the period during which children are by law required, to attend school, their continuous employment in agriculture or any other class of work, with its consequent evils is immediately prevented and the relative cheapness and simplicity of administration of such laws in proportion to their undertaking has had considerable success in European countries.

The Government of India has enacted the Child Labour (Prohibition and Regulation) Act, 1986 which prohibits the employment of children in hazardous work and also regulates the conditions of work in certain other employment where the employment is not prohibited. There are some

flaws\textsuperscript{104} in the \textit{Act} like for example it covers only 10 percent of the total working children. Moreover, the agricultural sector, which contributes more than 75 percent of the child employment, is not covered by the \textit{Act}. This \textit{Act} is not easy to enforce in the unorganized sector because the units are numerous and unregistered. The employer-employee relationship is continuously changing, and frequently the unit is tiny a family-based one. Most of these units spring up and disappear overnight and are very difficult to keep track of in the absence of any requirement of registration.

3.4 Initiatives taken at State level for enacting laws covering agricultural labour

3.4.1 \textit{Kerala Agricultural Workers’ Act, 1974:}

The State of Kerala is the first State in the country, which passed a specific, albeit comprehensive law for the agricultural workers, in 1974. This \textit{Act} provides for a number of security and welfare measures for the workers, namely, provident fund, gratuity, pension and overtime payment \textit{etc.}, since the agricultural workers in the State are largely unionized, it has also been possible to implement the law, in its right spirit. In fact, the All India Agricultural Workers Bill which is pending in the Parliament for the past

\textsuperscript{104} In S. 3 of the Act amendment should be made so that it shall be presumed that occupier is also the employer for the purpose of the Act and the onus to prove that the child is a member of his or her family would rest on the occupier. Also S. 14(3) speaks of penalty of one month or with fine which may extend to ten thousand rupees or with both has no deterrent effect on the defaulting employer. As per S. 16 no time period has been prescribed with in which metropolitan magistrate or magistrate of I class required to complete the proceedings.
several years has been modeled on the pattern of *Kerala Agricultural Workers’ Act, 1974*[^105]. The Central Trade Unions are pressurizing for its early enactment. This will give the unions a legal basis for organizing the agricultural workers on certain key issues.

Nevertheless, the existing administrative structure and mechanism seems to be highly inadequate for enforcement of laws relating to agricultural workers and agricultural workers’ organizations. There is a general impression all over the country that labour commissioners as well as labour inspectors are indifferent towards implementation of these labour laws[^106]. Majority of them do not favour the unionization of agricultural workers, in the apprehension that it would affect land productivity and also create more social tensions. It is often suggested that agricultural and rural workers constitute the bulk of the total work force in the country and therefore there should be a separate position of Rural Labour Commissioners in each State with adequate number of labour inspectors. Such a separate structure will be able to monitor the implementation of labour laws in rural areas for agricultural labour more effectively.

An important feature of this Act is the setting up of the Agricultural Workers Provident Fund to which both the employer and the employee make contributions at a given rate\textsuperscript{107}. The landowner or the employer shall not reduce the wages of any agricultural labour by reason only of his liability for a payment of contribution to the fund. The enactment also fixes the number of hours at 8 that an adult worker is required to put in per day\textsuperscript{108}. No adolescent or child is to work for more than 6 hours per day\textsuperscript{109}. The periods of work on each day shall be so fixed that no period shall exceed 4 hours continuously, and no agricultural labourers works for more than 4 hours before he has a rest for at least half-an-hour\textsuperscript{110}. Conciliation machinery is conceived in the Act to deal with cases of dispute on the issue of wages and likewise\textsuperscript{111}.

The Act provides for punishment of various offences varying from imprisonment for a term that may extend to 6 months or fine, which may extend to Rs 1,000 or both\textsuperscript{112}. The Act also provides that the executive authority of every local body shall prepare a register of agricultural workers.

\begin{flushright}
\textsuperscript{109} Ibid.
\textsuperscript{110} S. 17, Ibid.
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residing within the jurisdiction of the local authority\textsuperscript{113} and the Act enjoins on every land-owner that he shall maintain such registers and records as may be prescribed by the rules\textsuperscript{114}.

Kerala was the first state in India, followed only by Tripura, which passed \textit{The Tripura Agricultural Workers’ Act,} 1986 a comprehensive legislation for protecting the interests of agricultural workers\textsuperscript{115}.

\textbf{3.4.2 The Tamil Nadu Agricultural Labourers Farmers (Social Security and Welfare) Act, 2006:}

The Act defines agricultural labourers to be “any person in the age group of 18 to 65 years, engaged to work in agricultural or allied agricultural operations for wages but who does not own any land”\textsuperscript{116}. A farmer, on the other hand, will be between 18 and 65 years who own not more than 2.5 acres of wetland or five acres of dry land and cultivates the land himself or has a registered cultivating tenant\textsuperscript{117}. The members will not be charged any fee for registration and each member will be issued with an identity card for a family\textsuperscript{118}. In the event of an accidental death of a member, the government

\begin{footnotesize}
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\item \textsuperscript{113} S. 35, \textit{Ibid.}
\item \textsuperscript{114} S. 36, \textit{Ibid.}
\item \textsuperscript{115} Mishra Sanjay K., “The Unfinished Agenda”, \textit{Labour File Bimonthly Journal} (2002) pp 34.
\item \textsuperscript{117} S. 2 (f), \textit{Ibid.}
\item \textsuperscript{118} S. 6, \textit{Ibid.}
\end{itemize}
\end{footnotesize}
will provide the family Rs 1 lakh. And, in the event of a member dying due to natural causes, the assistance will be Rs 10,000. In case of natural death of a member, the family would be provided funeral expenses of about Rs 2,500. The children of the members would also be provided financial assistance for their education ranging from Rs 1750 and more from tenth standard upwards. For marriages, the Government will sanction Rs 3,000 for men and Rs 5,000 for women. Assistance for delivery or miscarriage of pregnancy or termination of pregnancy by a registered female member will be Rs 6,000 which will be paid in installments at the rate of Rs 1,000 every month from the seventh month of pregnancy. Every destitute member over 60 years will get a pension of Rs 400.

The quantum of assistance due to the beneficiaries is prescribed in the schedule of the Act and if any changes are needed the Act has to be amended every time. While the Agricultural Labourers Farmers Welfare Board is responsible for administering the scheme, its role is limited because such welfare schemes are implemented by the Revenue Department.

The 2006 Act is being repealed because of the cumbersome process and

119. S.18, Ibid.
120. S. 20, Ibid.
121. S. 19, Ibid.
122. S. 21, Ibid.
123. S. 22, Ibid.
124. S. 23, Ibid.
125. S. 24, Ibid.
126.  S. 3(2), Ibid.
limited role of the board constituted under the Act, explains the statement of objects and reasons.\textsuperscript{128}

In the considered opinion of the researcher decision of Tamil Nadu repealing this law is like throwing both baby and the bath water together. If the procedure was cumbersome a step to make it easy instead of repealing this Act should have been done.

3.5 Various Schemes and Programs projected for Agricultural Labour:
Effective implementation would require the involvement of trade unions and other agricultural workers’ organizations. In fact, they can act as watch dog and minimize leakages in the implementation of various anti-poverty and development programs. Here a brief discussion of various development schemes available for the agricultural workers in India would be in order.

3.5.1 Jawahar Gram Samridhi Yojana:
The objectives of Jawahar Gram Samridhi Yojana are (a) creation of demand driven infrastructure at village level for enabling the rural poor to have more opportunity for sustained employment and (b) generation of wage employment for the unemployed poor. As per the new guideline for Jawahar Gram Samridhi Yojana 100 per cent funds allocated would be made

\textsuperscript{128} Jaya Menon, “TN’s Farmers, Workers Get Security Net to Fall Back On”, \textit{The Indian Express} 16-02-2007.
available to the Panchayats. Although the implementation of scheme is through Gram Panchayat, Trade Union and other Agricultural Workers’ Organizations can join the Gram Sabha and assist in proper implementation of the scheme in the interest of the poor workers\textsuperscript{129}. However, the greatest hurdle here is non-availability of such trade unions or any other agricultural worker’s organizations for proper implementation of the scheme.

The program is implemented by the Village Panchayats with the approval of Gram Sabha. For assistance, the agriculture and other workers can contact village Pradhan, Sarpanch, Panchayat Members, Local Development Officers, District Collector or District Rural Development Agencies\textsuperscript{130}.

\textbf{3.5.2 Swarnjayanti Gram Swarozgar Yojana:}

The Swarnjayanti Gram Swarojgar Yojana was launched as an integrated programme for self-employment of the rural poor with effect from April 1, 1999. The main objectives of the Yojana was to bring every assisted family above the poverty line within three years through establishing a large number of micro-enterprises in the rural areas and building upon the potential of the poor.

It was assumed that the rural poor in India had competencies and given the right support can be successful producers of valuable goods/services. The selection of activities was made in such a way that each selected Swarojgari gets an opportunity to expand its asset and skill base in three years\textsuperscript{131}. Subject to availability of funds, it was proposed to cover 30\% of the rural poor in each block in the next five years\textsuperscript{132}. This scheme was meant for the rural families/individual falling below poverty line\textsuperscript{133}. Out of the total Swarojgaris selected under the scheme, 50\% are SC/STs, 40\% Women and 3\% disabled\textsuperscript{134}.

In either case, the Swarojgaris are identified from the list of BPL households identified through BPL census. The list of selected persons for assistance under Swarnjayanti Gram Swarojgar Yojana is approved by Gram Sabha. The Swarnjayanti Gram Swarojgar Yojana is an integrated program of micro-enterprises covering all aspects of self-employment, \textit{viz.}, organization of the rural poor into Self Help Groups and their capacity building, planning of activity clusters, infrastructure build-up, technology, credit and marketing\textsuperscript{135}. Credit is the critical component in Swarnjayanti

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132. \textit{Ibid}.
Gram Swarozgar Yojana, subsidy being only as an enabling element. The credit requirement of the Swarojgaris is assessed and they are encouraged to increase their credit intake over the years.

The Yojana takes into account the role of every participant the Panchayat, Gram Sabha, Banks, Financial Institutions, PRIs, NGOs as well as technical institution in the district. Care has been taken to involve them right from the conceptualization stage, so that they work as a team for the success of the program.

3.5.3 Indira Awas Yojana:

Housing is one of the basic human needs. Owning the house provides significant economic security and dignity in society. Indira Awas Yojana was launched in 1985-86 by the Government of India to provide dwelling units free of cost to the bonded labourers, SC/ST families who are victims of atrocities, households headed by widows/unmarried women, and families who are below the poverty line.

Three per cent of the houses are reserved for the below-poverty-line disabled persons living in rural areas. This is a specific scheme earmarked for disadvantaged categories of the rural poor. The allotment of house is made in the name of the female member of beneficiary household. Alternatively, it may be in the joint name of both the husband and wife. The beneficiaries are involved from the very beginning in construction work and have to make their own arrangements for construction to suit their requirements. As far as possible houses are built in cluster so as to facilitate the use of common facilities provided. This scheme also would give out loans to people at subsidized rates to make houses.

3.5.4 Pradhan Mantri Gram Sadak Yojana:

Recognizing the role of rural roads in economic growth and poverty alleviation, Government has launched a 100 per cent centrally sponsored program, called the Pradhan Mantri Gram Sadak Yojana. The Program aims at providing connectivity to all unconnected villages with a population of more than 500 persons through good all weather roads by the end of the 10th Plan period, at an estimated cost of Rs.60,000 crore.

138. Ibid.
3.5.5 *Krishi Shramik Samajik Suraksha Yojana 2001*: 

On July 1, 2001, the Government of India launched a Social Security Scheme for agricultural workers which provides that if a worker dies before 60, the family would receive a lump sum payment of Rs.20,000 on natural death and Rs.50,000 in case of death due to accident and Rs.50,000 in case of permanent disability\(^{142}\). Currently it is implemented in 50 selected districts\(^{143}\).

3.5.6 *Food for Work Program*: 

The Food for Work Program is a general scheme which can form a part of any wage employment scheme of the Government, being implemented in districts affected by natural calamities. The Government of India makes available appropriate quantity of grains to each of affected States. This is meant for providing wage employment and help in drought proofing activities. During 2001-02, about 4988 man-days of employment were generated under this scheme and about 2 million tons of food grains were distributed\(^{144}\).

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3.5.7 Annapurna Scheme:

The Annapurna Scheme was launched in April 2000, with the aim of providing food security to all senior citizens above 65 years, who are not covered under the National Old Age Pension Scheme\(^{145}\). This scheme provides 10 kg of free food grains a month for the eligible senior citizens\(^{146}\). Also food grains are distributed to eligible persons at highly subsidized rates, \textit{i.e.}, at Rs.4.90 per kg. up to September, 2001, about 4.76 lakh beneficiaries were reported\(^{147}\).

3.5.8 Minimum Support Price Policy:

In order to protect the interests of farmers from fluctuating prices, the Government of India on the recommendation of the Commission of Agricultural Costs and Prices, fixes the minimum support prices for as many as 24 agricultural commodities\(^{148}\). In case the market price fall below the minimum support prices, the Government Agencies would intervene and make purchases till market price stabilize. In fact, for commodities like paddy and wheat, Government makes preemptive purchases, irrespective of the market prices and thus tries to ensure minimum guaranteed prices and


protect the income of farmers. Unfortunately, this policy is effective only in some regions like Punjab, Haryana, Andhra Pradesh and to some extent Uttar Pradesh\textsuperscript{149}. In other regions where the market price often fall much the below the minimum support prices, the policy does not work mainly because of lack of adequate infrastructure and initiative of the local Government. Particularly small and marginal farmers who make distress sales immediately after harvest have not benefited much from the Minimum Support Price system in these regions\textsuperscript{150}.

3.5.9 Public Distribution of Food Grains:

It has been an establishment policy of the Government to maintain buffer stock of food grains and supply grains to people at subsidized price; \textit{i.e.}, at a price which is much below the economic cost. At present, about 11 million tons of rice and wheat are distributed through fair price/ rations shops\textsuperscript{151}. There is a dual pricing system one for people above the poverty line and another for people below poverty line\textsuperscript{152}. However, the current prices are often higher than market prices and therefore, there is no off-take of above poverty level quota. But people below the poverty line still find it attractive,

\begin{footnotesize}
\begin{enumerate}
\item Regions cultivating pulses, jowar, bajra, jute, \textit{etc.}, prices have been non-remunerative. See, Chengappa P.G., Nareppa Nagaraj (eds.), \textit{International Conference on 21st Century Challenges to Sustainable Agri-Food System} 673, New Delhi: I.K. International Publishing House, 2007.
\item Pradhan Swapna, \textit{Retailing Management Text and Cases} 90, 3\textsuperscript{rd} edn., New Delhi: Tata Mcgraw hill, 2009.
\end{enumerate}
\end{footnotesize}
even though the Public Distribution Scheme infrastructure and consequently supplies in the traditionally poverty stricken region of Bihar, Jharkhand, M.P., Chhattisgarh and Orissa are found to be weak and inadequate\textsuperscript{153}.

It becomes clear from the foregoing discussion that Government has launched a number of anti-poverty and development programs effective implementation of which could have improved the socio-economic condition of agricultural workers. Unfortunately, according to Government’s own admission\textsuperscript{154}, the implementation of all these schemes and programs have been far from satisfactory from the point of view of making their impact on poverty reduction.

3.6 Agricultural Labour: Need for Special Legislation:

The demand for a special legislation for agricultural workers is not new. In 1975, the Standing Committee of the Labour Ministry accepted the need for a special legislation for agricultural workers. The first special legislation for agricultural workers was passed in 1974 by the Kerala Government. The 26\textsuperscript{th} State Labour Ministers Conference in July 1975 discussed the Kerala Agricultural Workers Act, which was appreciated by many Ministers. The Conference recommended to the Central Government to enact a special labour law for agricultural workers. The Centre in turn

\textsuperscript{153} Supra note 360. 
\textsuperscript{154} Government of India, Planning Commission (Mid-Term Appraisal) 53, New Delhi, 2000.
called a special Conference to study the problems of unorganised rural workers in January 1978. This Conference recommended the formation of a Central Standing Committee to advise the Central Government on appropriate steps to solve the problems of rural workers. This conference also discussed the draft for a special legislation for agricultural workers. The Central Standing Committee set up another sub-committee for preparing draft legislation on the rates of wages, working hours and other conditions of services and machinery for the settlement of disputes. This sub-committee was also entrusted the work of recommending welfare measures for agricultural workers. The sub-committee studied the problems of agricultural workers in detail. They visited various parts of Kerala to study the implementation of the Kerala Agricultural Workers Act. It prepared a draft for Central Special Legislation for Agricultural Workers, which was sent to all the State Governments. The Central Government then convened in 1981 a special meeting of State Labour Ministers to discuss the draft legislation. A sub-committee of this Conference studied in depth the provisions of the draft. However, it failed to find out a draft, which was acceptable to all the concerned parties. Another State Labour Ministers’ Conference held in 1982 unanimously recommended a special legislation for agricultural workers to regulate the minimum wages, hours of work, welfare measures and other service conditions. As per its recommendations, only Tripura has so far enacted a special legislation for agricultural workers.
All the central trade unions of India called a convention of agriculture workers on 15 March 1990 in the national capital, which demanded immediate enactment of a special legislation for agricultural workers. However, it took another five years for the central government to declare its intention to pass such a law. A Bill was introduced by the government in 1996, but had to leave the office. The Bill was forgotten after Parliament was dissolved in 1998155.

The hard fact emerging from this discussion is that laws enacted and welfare programs undertaken have proved to be an eye wash. Steps taken by the Government till today in every manner have proved to be futile having no resultant benefit in any form to the agricultural labour. There is need for proper implementation of schemes and the ratio to be decided maybe through an exclusive legislation measuring all the loopholes and the methods to eradicate them.

CHAPTER IV: PROPOSED CENTRAL LEGISLATION FOR AGRICULTURAL LABOUR IN INDIA

4.1 Introduction

The proposal for enacting a comprehensive legislation for agricultural labour has been under consideration of the Ministry of Labour since 1975. A draft Bill was prepared and circulated in 1980. Since then, the matter had been discussed several times at various fora including the National Commission on Rural Labour, State Labour Ministers Conference, Indian Labour Conference, Group of Ministers, Parliamentary Committees attached to the Ministry of Labour. The draft Bill was revised in 1997 and placed before the Labour Ministers Conference in the same year. There was no consensus among the State Governments during the Conference. The matter was again discussed in the Conference of State Labour Ministers held on 18th January 2000. However, again there was no consensus amongst the State governments and the matter could not be processed further. Ironically since the views of the States are divergent, it is not possible to indicate any time frame for enacting such legislation¹.

Model Draft Bill proposed by the Researcher in this segment of the Doctoral Thesis comprises of nine chapters. Apart from the preliminary matters, these chapters deal with:

(1) Comprehensive definition of the term Agricultural Labour
(2) Regulation of Conditions of Work;
(2) Social Security Benefits;
(3) National Social Security and Welfare Board;
(4) National Social Security Fund;
(5) State Social Security and Welfare Boards;
(6) State Social Security Fund;
(7) Registration of Labour;
(8) Delivery of Benefits; and
(9) Enforcement and Dispute Resolution².

4.2 Proposed Bill for Agricultural Labour Conditions of Work and Social Security

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STATEMENT OF OBJECTS AND REASONS

The agricultural sector of the economy in India is the largest sector in terms of employment of the workforce. It consists of crop cultivation and other agricultural activities such as forestry, livestock and fishing. The labour in this sector may be broadly divided into labour and farmers. Almost the entire agricultural sector (except the Plantation Sector) is unorganized i.e., it has neither any formal system of social security nor regulation of conditions of work. This Bill is intended to regulate the minimum conditions of work to agricultural labour and provide a measure of social security to agricultural labour and marginal and small farmers in the unorganised sector. The Central and State governments should implement a package of National Minimum Social Security Scheme for which all agricultural labour would be entitled. It is also intended to provide minimum conditions of work for agricultural labour whose minimum conditions of work are not regulated by any other legislation. It also provides a mechanism for dispute resolution for such labour.
**Background**

The agricultural labour in the Unorganised Sector face problems that arise out of deficiency or capability deprivation in terms of inadequate employment, low earnings, low health, *etc.*, as well as of adversity in the absence of fall back mechanisms (safety net). These labour have limited or no formal social security cover which increases their vulnerability during times of illness, old age, unemployment and untimely death. The absence of social security mechanisms is a critical factor in downturns in the conditions of these households, many of whom are already very poor. It destroys the labour ability to contribute meaningfully, and to increasing production and productivity. It leads to disaffection increasing social costs, widespread crimes, and persistent ill health. Presently, less than 6% of the entire unorganised sector workforce has recourse to any social security cover. Therefore, the proposed law will be based on the following objectives:

1. To provide for a right based entitlement for the agricultural labour, and
2. To provide for a universal national/ state minimum social security scheme to cover all the labour in the unorganised agricultural sector in a phased manner within a period of 5 years.

A BILL to provide for regulation of conditions of work, social security and welfare, and a dispute resolution mechanism for Agricultural labour and to provide for other matters connected therewith or incidental thereto.
BE it enacted by Parliament in the Sixtieth-fourth Year of the Republic of India as follows:—

Chapter I: PRELIMINARY

Section 1. Short Title, Extent, Commencement and Application

(1) This Act may be called the Indian Agricultural Labour Conditions of Work and Social Security Act, 2013.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different States and different areas in a State and for different provisions of this Act, within six months from the date of the assent.

Section 2. Definitions

For the purposes of this Act, unless the context otherwise requires, -

a) **Accessor** means a person nominated from the Tehsil/ Mandal who is/ are deemed to be fit in advising or reporting regarding the factual status of the matter in dispute.

b) **Adolescent:** Adolescent means a person of the age of 14 years and above and who has not completed 18 years of age.

c) **Agricultural labour:** If a labour performs both agricultural and non-agricultural labor, the entire service will be considered to be agricultural
labor if 50% or more of the time in a pay period was spent in agricultural labor and also includes -

i) a labour engaged in agriculture in consideration of wages, whose employment is of casual nature;

ii) inter-State and intra-State migrant labour.

iii) a labour involved in the production of goods or services as specified by an employer, in his/ her own home or other premises of his / her choice (other than the work place of the employer) for remuneration, irrespective of whether or not the employer provides the equipment, materials or other inputs.

iv) a person employed in agriculture for a remuneration directly by an employer or through any agency or contractor, whether exclusively for one employer or for one or more employers, whether simultaneously or otherwise, whether in cash and/or in kind whether as a temporary or casual labour, or as a migrant labour.

Explanation: Labour eligible for protection under the Plantation Workers Act are excluded from the purview of this Act.

d) **Agriculture** means the following occupations:

(i) Farming, including the cultivation and tillage of soil, *etc*;

(ii) Dairy farming;

(iii) Production, cultivation, growing and harvesting of any horticultural commodity;
(iv) Raising of livestock, bee-keeping or poultry;

(v) Fishing and/ or fish farming or sericulture;

(vi) Any practice performed on a farm as incidental to, or in conjunction with, the farm operations (including any forestry or timbering operations and the preparation for market and delivery to storage or to market or to carriage for transportation of farm products);

(vii) Growing fodder or thatching grass or for grazing cattle.

e) **Agriculture Dispute Resolution Council** shall be comprised of individuals from a variety of disciplines who are trained and knowledgeable in mediation and selected to be representative of the geographical and cultural diversity of the State and to reflect fairness.

f) **Child** means a person who has not completed 14 years of age.

g) **Employer** means a natural or juridical person, or an association of such persons, by whom any agricultural labour is engaged or employed either directly or otherwise, in consideration of wages.

h) **Farmer** means any person engaged in agricultural activities, either individually or with one or more persons, and not owning or operating a holding of more than two hectares or such limits as may be notified from time to time by the State government.

i) **Government** means either Central Government, or State Government, or Union Territory administration, or local government, or Cantonment Boards as the case may be.
j) **Identity card** means a card issued to an agricultural labour carrying a unique number issued by the authorised agency of the Central /State Board.

k) **Mediation** is a voluntary, party-centered and structured negotiation process where a neutral third party assists the parties in amicably resolving their dispute by using specialized communication and negotiation techniques. Even though the mediator facilitates their communications and negotiations, the parties always retain control over the outcome of the dispute\(^3\).

l) **Mediator** is an independent, impartial, neutral third party person trained to assists disputants in the process of mediation to reach a mutually acceptable resolution of their conflict\(^4\).

m) **Mediation Committee**: means a team of members constituted to oversee the effective implementation of Agricultural Dispute Mediation in the country.

n) **National Board** means the National Social Security and Welfare Board for agricultural labour.

o) **Presiding Officer** is a person possessing legal knowledge specialized in labour laws in general and laws governing unorganized agricultural labour in particular.

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\(^3\) This definition is influenced by S.30, the *Arbitration and Conciliation Act, 1996*: Chapter III, the *Mediation Training Manual of India* 16-19, New Delhi: Mediation and Conciliation Project Committee Supreme Court of India [http://supremecourtofindia.nic.in/MEDIATION%20TRAINING%20MANUAL%20OF%20INDIA], [accessed on 20\(^{th}\) December 2012].

\(^4\) This definition is influenced by Chapter III, the *Mediation Training Manual of India*, id., at 17.
p) **Registered Agricultural labour** means an agricultural labour registered for benefits under this Act.

q) **Remuneration** means as defined in the *Equal Remuneration Act, 1976*.

l) **Sexual Harassment** is such unwelcome sexually determined behavior such as physical contact, advances, sexually coloured remarks, showing pornography or making sexual demands, whether verbal, textual, graphic or electronic or by any other actions, which may -.

   (i) contain implied or overt promise of preferential treatment in that labour employment; or

   (ii) contain an implied or overt threat of detrimental treatment in that labour employment or an implied or overt threat about the present or future employment status of that labour and includes the creation of a hostile working environment; or

   (iii) interfere with a labour work or create an intimidating, hostile or offensive work environment; or

   (iv) be humiliating and may constitute a health and safety problem.

Explanation 1: Hostile Environment: A work environment is “hostile” when unwelcome verbal, non-verbal or physical behaviour focusing on sexuality is severe and pervasive enough to interfere with the victim’s work performance or be intimidating or offensive to a reasonable person.

m) **State Board** means the (name of the State) State Social Security and Welfare Board for agricultural labour.
n) **Wages** means as defined in clause (vi) of Section 2 of the *Payment of Wages Act, 1936* (4 of 1936).

**Section 3. Rules of Evidence**

In this Act, notwithstanding anything contained in the *Indian Evidence Act, 1872*, the burden of proof that compliance with the provisions of the Act and the Scheme has been effected shall be entirely on the employer and the units of the Board, wherever applicable.

[Explanatory Note: This section facilitates shifting the burden of proof from the labour to the employer. This is a departure from the normal practice and ordinary rules of evidence, which places the burden on the plaintiff.]

**Chapter II: CONDITIONS OF WORK TO BE ENSURED FOR THE LABOUR**

**Section 4. Physical Conditions of Work**

(1) Every employer shall provide in all the lands where agricultural work is carried on such basic amenities and first-aid facilities, and reasonable housing and provision of basic amenities for seasonal migrant labour, as may be prescribed.

(2) Every employer shall ensure that personal protective safety equipments are provided to such agricultural labour as are required to handle machinery and agro-chemicals as are hazardous to the life and limb of such labour. The
State Board shall carry out periodic studies on occupational hazards arising in this sector and develop suitable outreach/extension programmes for this purpose.

(3) Every employer shall compensate a labour for any accident or occupational hazard arising out of or in the course of employment that results in any temporary, permanent, partial or total disablement of the labour, at rates to be specified in this behalf.

(4) The employer shall ensure that there is no sexual harassment of the agricultural labour at the place of work. The State Government shall make appropriate rules concerning the disciplinary action that may be taken by an employer where a complaint of sexual harassment is established against a labour; and the compensation payable by an employer where a case of sexual harassment is established against the employer himself/herself.

(5) The State Board shall make rules with respect to child care facilities to be made available at local levels.

**Section 5. Duration of Work**

(1) The normal hours of work of an agricultural labour shall be limited to eight hours a day beyond which a labour shall be paid overtime at one and a half the normal rate of wages per hour.

Provided that nothing contained in this section shall be deemed to prohibit an agreement between the employer and the labour engaged in agriculture for
working for less than eight hours on any particular day or days or on all days of employment or to affect any custom or practice prevailing in the locality under which the labour engaged in agriculture is required to work for less than eight hours.

Explanation: Nothing contained in this section shall extend the normal hours of work beyond eight hours to give effect to any custom or practice prevailing in the locality.

(2) Every eight hour working day of the agricultural labour shall have at least half an hour break, so however that the spread over of work shall not exceed ten hours.

(3) Women and adolescents shall not be employed as agricultural labour between the hours of 9 p.m. and 5 a.m., except where permitted under rules made in this behalf.

(4) Every agricultural labour shall be entitled to one paid day of rest after completing six continuous days of employment by or under a single employer.

Section 6. Conditions of Work and Payment of Wages

(1) No employer shall employ any agricultural labour, in contravention of the existing Acts which are applicable to the labour. In particular, the employer shall comply with the following Acts:

a) Bonded Labour System (Abolition) Act, 1976;
b) *Child Labour (Prohibition and Regulation) Act, 1986*;

c) *Minimum Wages Act, 1948*; and

d) *Equal Remuneration Act, 1976*

(2) (a) The Central government shall notify a National Minimum Wage.

(b) The National Minimum Wage shall apply to all agricultural labour in employments not notified under the *Minimum Wages Act*. Provided that where the wage under the *Minimum Wages Act* is lower than the National Minimum Wage, the concerned State Government shall amend the prescribed Minimum Wage to bring it in conformity with the National Minimum Wage. Further, the labour shall be entitled to receive the National Minimum Wage till such amendment is done.

(c) The Central Government shall fix a National Minimum Wage for all employments, after taking into account the minimum basic needs of the wage and labour and his/her family, variations in the cost of living in different areas and other parameters on the basis of consultation with a tripartite body consisting of labour, employers and the Government representatives.

(d) The National Minimum Wage shall be periodically reviewed through a modality prescribed by the National Board.

(3) Where the wages are determined by a piece rate system, the earnings of an agricultural labour working for 8 hours should be at least equal to the time rated minimum wages fixed for that category of work in the State concerned,
and where the rates have not been fixed under the Minimum Wages Act, 1948 in the relevant State, the rates as fixed under clause (2) above.

(4) Wages in employments performed predominantly by women shall be brought on par with employments certified as equivalent in value by an Employment Certification Committee to be constituted by the State Board. The Employment Certification Committee shall periodically evaluate employments in the State for this purpose.

(5) Wages of agricultural labour shall be duly paid for the periods agreed upon. The wage period can on no account exceed one month; any delay in payment beyond this periods will require the employer to pay penal rates of interest, as specified in this behalf, for the period of the delay to the agricultural labour.

(6) There shall be no deduction from wages, including in such cases where such wages are paid as advance to the labour, in the form of interest, payments to contractors or agents, overvaluation of goods supplied or basic amenities provided including accommodation in the case of seasonal migrant labour, fines, inadequate or poor quality output, except in accordance with rules made in this behalf by the State Government.

(7) (a) Every employer shall provide an agricultural labour the details of remuneration received by him/her in such form as may be prescribed by the State Government.
(b) Every agricultural labour, except casual labour, shall receive a letter of employment from his/her employer, stating the terms of employment of his/her employment.

(c) Every employer shall maintain such registers and records as may be necessary to verify the employer’s claim regarding the employment status of agricultural labour and details of payments made to them.

(8) All agricultural labour shall have the right to organise, by forming trade unions or other membership based organisations, for representation and collective bargaining.

(9) No employer shall discriminate against any agricultural labour on the grounds of sex, caste, religion, incidence of HIV-AIDS, migration status, place of origin, in employment, wage rates and conditions of work as laid down in this Act.

Chapter III: SOCIAL SECURITY BENEFITS

Section 7. Framing of Schemes

(1) The Central Government shall formulate and notify in the Official Gazette a National Social Security Scheme containing such basic features as provided for in the Schedule to this Act.

(2) The National Social Security Scheme for the agricultural labour shall consist of a package of the following national minimum social security benefits:
(i) Health benefits for self, spouse and children below the age of 18 years, and maternity benefits for women labour or spouse of men labour;

(ii) Life and disability cover for natural or accidental death of the labour;

(iii) Old age security in the form of old age pension for labour above the age of 60 years or Provident Fund.

(3) The Scheme will be applicable to all eligible labour within a period of five years.

(4) In addition to the national minimum, the Central Government may frame on recommendations of the National Board such schemes as it may deem necessary or finance such schemes of the State governments/Welfare Boards as it may find appropriate, subject to availability of finance by such means as mentioned in Section 8 and may include those listed under (5) below.

(5) The State Government on recommendations of the State Board may formulate schemes for such agricultural labour as it may find appropriate to:

(a) strengthen the national minimum social security by way of its own contribution, and/or (b) design and implement additional social security benefits through its own schemes. These may include:

a) Provident Fund schemes;

b) Employment injury benefit scheme;

c) Housing schemes;

d) Educational schemes for children of labour;

e) Skill up-gradation;
f) Funeral assistance;

g) Marriage of daughters; and

h) Any other schemes to enhance socio-economic security.

(6) The Central Government shall have the power to remove difficulties that arise in giving effect to the provisions of the Scheme by an order published in the Official Gazette, not inconsistent with the provisions of the Act, as appears to it necessary or expedient for the removal of the difficulty.

Chapter IV: NATIONAL SOCIAL SECURITY AND WELFARE BOARD FOR AGRICULTURE LABOUR

Section 8. Establishment and Incorporation

With effect from such date as the Central Government may, by notification appoint, there shall be established for the purposes of this Act, a Board to be called the National Social Security and Welfare Board for Unorganised Labour.

Section 9. Composition of the Board

(1) The National Welfare Board for unorganised labour shall be constituted by the Central Government consisting of the following member organisations: