

**40TH SESSION OF THE INDIAN LABOUR CONFERENCE
(NEW DELHI – 9-10 DECEMBER, 2005)**

ITEM I : SOCIAL SECURITY FOR UNORGANIZED SECTOR WORKERS INCLUDING AGRICULTURE SECTOR WORKERS COVERING THEIR SERVICE CONDITIONS, SOCIAL SECURITY AND OTHER BENEFITS.

As per National Sample Survey conducted by the National Sample Survey Organistaion (NSSO) during 1999-2000, the total workforce in the country is about 39.7 crore out of which, hardly 2.8 crore are employed in the organized sector and remaining 36.9 crore are engaged in unorganized sector.

Over the years, status of the labour in the country has been studied by several commissions viz; by First National Labour Commission, 1969, National Commission on Self-Employed Women, 1987, National Commission on Rural Labour 1987 etc. All these studies have projected the plight of workers engaged in the unorganized sector and called for substantial measures to improve their labour protection. Considering the enormity of the persisting problems of labour protection in this area, the Second National Labour Commission (SNLC) constituted in 1998 was assigned only two tasks i.e. to recommend a comprehensive legislation for the protection of interest of the workers in the unorganized sector and to recommend rationalization of labour laws in the organized sector.

RECOMMENDATIONS OF 2ND NATIONAL COMMISSION ON LABOUR.

The Second NCL submitted its recommendations in June 2002 which provided a draft of the model legislation for the unorganized sector workers. A bill was drafted for the unorganized sector workers immediately thereafter. Discussions, on a wide range of alternatives were held with the representatives of the State Government, Trade Unions and NGOs and others concerned at various forums including a two-day National Seminar on 7-8 November, 2002 and a workshop at V.V. Giri National Labour Institute. After detailed deliberations with all stakeholders, the Ministry of Labour & Employment drafted the 'Unorganized Sector Workers Bill'. The Cabinet in its meeting of 6th November, 2003 decided that the Ministry of Labour instead of piloting a 'Bill', in the first instance should prepare a comprehensive scheme in consultation with the Ministry of Finance. A scheme was thus prepared viz: the "Unorganised Sector Workers Social Security Sechme-2003" and was launched in February, 2004 by the then Prime Minister. This was to be implemented by EPFO in 50 districts. However, the scheme could not be implemented properly due to the absence of statutory support and non-availability of appropriate implementing infrastructure. The scheme was also not proving viable because contribution from the employers was not forthcoming.

CONSTITUTION OF NATIONAL COMMISSION FOR ENTERPRISES IN THE UNORGANISED SECTOR

The Government has in the meanwhile constituted the National Commission for Enterprises in the Unorganised Sector (NCEUS) to examine the problems being faced by enterprises in the unorganised/informal sector and make recommendations to provide technical, marketing and credit support to these enterprises. The terms of reference of the Commission, inter-alia, include review of social security system available for the workers in the unorganised sector and to make recommendation for expanding their coverage.

THE UNORGANISED SECTOR WORKERS BILL, 2004

The National Common Minimum Programme (NCMP) of the United Progressive Alliance (UPA) Government underlines that “ The UPA Government is firmly committed to ensure the welfare and well being of all workers, particularly those in the unorganized sector who constitute 93% of our workforce. Social Security, health insurance and other schemes for such workers like weavers, handloom workers, fishermen and fisherwomen, toddy tappers, leather workers, plantation labour, beedi workers, etc. will be expanded.”.

The welfare of unorganized workers being one of the thrust areas of the Government, the ‘Bill’ was redrafted immediately after the coming into power of the UPA Government and has undergone the process of consultations with the stake holders. The comments of most of the States as well as central trade unions have been received. Most of the States are of the view that all funds required for providing social security to the workers should be provided by the Central Government. Similarly, Central trade unions are also of the opinion that there should, not only be liberal funding by the Central Government but it should set apart 3% of the GDP for social security schemes for the workers.

SALIENT FEATURES OF THE DRAFT BILL

Definition

- The worker means a person engaged in the Scheduled employment directly or through any agency or otherwise for one or more employers whether simultaneously or otherwise and includes: a casual or temporary worker, a migrant worker, a home based worker whether self-employed or employed for wages and drawing pay/income not exceeding Rs. 5000/- per month.

Establishment of Welfare Boards

- Establishment of a tripartite ‘Central Unorganised Sector Workers’ Welfare Board’ consisting of representatives of Central Government, Central Trade Unions, Employers Organisations and NGOs/Associations.
- Functions of the Board, inter-alia, incorporate advising the Central Government on policy matters relating to formulating schemes on social security measures, etc.
- Constitution of Unorganised Sector Workers’ Welfare Fund at Central and State level to meet expenditure on social security & welfare schemes for workers.
- Constitution of tripartite Welfare Boards at State level.

Source of Funding

- These funds would be created by contribution from the workers, employers, central and state governments.
- The rate of contribution is as under:
 - (i) Contribution of registered workers not exceeding 5% of their monthly wages.
 - (ii) Employers’ contribution at the rate of 5% of the monthly wages of the registered workers.

- (iii) In cases where employers are not identified matching contribution by the appropriate State Government at the rate of the contribution made by registered workers not exceeding 5% of monthly wages.
- (iv) The contribution of the Central Government @ not exceeding 2.5% of the monthly wages of the registered workers in all cases.

Benefits under the proposed legislation

- Provision for formulation of welfare and social security schemes like old age pension, health care, group insurance, personal accident insurance, housing and education etc.
- Provisions relating to hours of work, payment of wages, equal remuneration, maternity benefits, and compensation for injury, welfare measures and penal provisions for contraventions.
- Provision for legal-aid to the workers in the matters connected with the denial of benefits available under the legislation.
- Constitution of Workers' Facilitation Center for registration of workers and employers, issue identity cards to the workers, etc.
- Enabling provisions to merge existing welfare funds at the Center and in States, if required.
- Bulk of the work force in the unorganized sector falls under the States, therefore, most of the implementation work of the schemes would be done by the States.
- Annual administrative expenses of the Boards restricted to 5% of the contribution received.

STATUS OF THE DRAFT BILL

The draft Bill has been circulated to the State Government, Central Trade Unions, Employers' Organizations, and NGOs etc. for their comments. The draft Bill is also available on the web site of the Ministry of Labour & Employment. The central trade unions had made certain suggestions like definition of the unorganized sector worker, tripartite composition of Workers' Facilitation Centers (WFCs), government funding, etc. These suggestions have been taken into account and draft Bill has been revised accordingly. The suggestions like tripartite composition of the WFCs would be looked into at the stage of formulation of the Rules under the proposed legislation.

The NCEUS is also seized of the matter of expanding social security cover to the unorganized sector workers. There have been several rounds of discussions with the Commission in regard to this 'Bill'. The Commission has further constituted a Task Force under the Chairmanship of Dr. K.P. Kannan, Member NCEUS on social security, of which Director General Labour Welfare is also a member.

In the meantime, the Ministry has received a draft Bill namely, "the Unorganised Sector Workers Social Security Bill, 2005 from National Advisory Council (NAC). The NCEUS has also given two bills i.e. (i) Unorganised Sector Workers (Conditions of Work & Liveihood Promotion) Bill, 2005 and (ii) Uniorganised Sector Workers Social Security Bill, 2005. All these Bills are under consideration of the Ministry. The major difference in these Bills are given below in tabulated form:

| | Ministry of L&E | NAC | NCEUS |
|-----------------|--|--|---|
| Contribution | Well defined contribution by worker/employer/centre/state | Registration/renewal fee from workers | Contribution by workers/employers/ centre/ state (BPL's share by the centre) |
| Cess/Tax | No | Cess or tax or to create a mechanism for collection of employers' contribution and cess / tax by centre/ state on goods produced | Cess or tax by centre/state govts. |
| Social Security | Health, Pension, group insurance maternity benefits, housing etc. (depending upon funds) | Floor level: health, life & permanent disability cover, maternity benefit (fully funded by centre) & contributory pension scheme | Minimum level: health, life & permanent disability cover, maternity benefit & pension |
| Implementation | Utilisation of state labour department machinery, PRIs, local bodies etc. all in the shape of WFCs | National Social Security Authority through Facilitation Agencies i.e. Post offices, Self help Groups, PRIs, TUs, etc. | National Social Security Board through WFCs i.e. Self –help Groups, PRI. Tus, etc. |

A presentation has also been made before the Dy. Chairman, Planning Commission on 14.09.2005, which was attended by Shri Jairam Ramesh, Member, NAC. The Ministry is, presently, working on an insurance scheme for these workers in consultation with LIC.

CENTRAL LEGISLATION FOR AGRICULTURAL WORKERS

Agricultural workers constitute a high percentage of the workforce in India. According to the sample survey conducted by the National Sample Survey Organisation in 1999-2000, more than 60% of the workforce in the unorganized sector is engaged in agriculture sector.

A proposal to enact a comprehensive Central legislation for the agricultural workers was under consideration of the Ministry of Labour since 1975 to enact a uniform Central legislation for the agricultural workers on the pattern of Kerala Agricultural Workers' Act, 1974. A draft Bill on Central legislation was prepared as early as in 1980. There were divergent views amongst the State Governments and the matter was left to the State Governments. The matter was again discussed at various forums i.e. many sessions of Indian Labour Ministers' Conference, Standing Labour Committee, Consultative Committees attached to the Ministry of Labour, All Party Meetings etc. The draft Bill was revised in 1996 and comments of the State Governments were invited. There were divergent views of the State Governments. In order to discuss the matter further, a Conference of the State Labour Ministers was held on 18th January 2000. However, no consensus was arrived at during this meeting also. The main reservation of the State Governments was on the creation of a corpus for the implementation of the welfare measures for the agricultural workers. While some States were of the view that enactment of law may lead to social tension, some others were of the view that the legislation may lead to industrial atmosphere in the agricultural sector. Some States wanted the matter

to be left to the States and some others were of the view that the Central Government should bring the Central legislation but bulk of provisions be left to the State Governments. In the absence of consensus amongst the State Governments, the proposal for legislation on agricultural workers could appropriately be left to the State Governments to act upon.

POINTS FOR DELIBERATION:

Modalities for adequate social security through the Unorganised Sector Workers Bill may be discussed. Annexure I-IV includes copies of the Draft Bills.

THE UNORGANISED SECTOR WORKERS' BILL, 2004

A

BILL

to regulate the employment and conditions of service of unorganised sector workers and to provide for their safety, social security, health and welfare and matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Fifty-fourth year of the Republic of India as follows:-

**CHAPTER I
PRELIMINARY**

1. (1) This Act may be called the Unorganised Sector Workers' Act, 2004.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,-

- (i) "appropriate Government" means,-
 - (a) in relation to an establishment in respect of which the appropriate Government under the Industrial Disputes Act, 1947, is the Central Government, the Central Government;
 - (b) in relation to any such establishment, being a public sector undertaking, as the Central Government may, by notification in the Official Gazette, specify, which employs workers either directly or through a contractor, the Central Government;
 - (c) in relation to a self-employed worker or any other establishment which employs workers either directly or through a contractor, the Government of the State in which that other establishment is situate;
- (ii) "Board" means the Unorganised Sector Workers' Welfare Board established under section 3 or section 20;
- (iii) "Chairperson" means the Chairperson appointed under section 5;
- (iv) "Dispute" means any dispute or difference between employers and employees or between employers and workers, or between workers, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of workers.
- (v) "employer" means in relation to a person by whom a worker is employed, whether for any remuneration or otherwise and in relation to an establish, the owner of the establishment or any other person who has the ultimate control over the affairs of the establishment.

- (vi) "establishment" means any office or place where any industry, trade, business or occupation is carried on and includes any technical institution or training center including any Deptt/Ministries of Central/State Government/UTs or local authorities, directly without any contractor, the authority specified in this behalf, or where no authority specified, the HOD or the Chief Executive as the case may be.
- (vii) "family" in relation to a worker, means his or her spouse and dependent children and includes dependent parents;
- (viii) "financial year" means the year commencing on the 1st day of April;
- (ix) "Fund" means the Unorganised Sector Worker's Welfare Fund constituted under section 24;
- (x) "member" means a member of the Board appointed under section 5;
- (xi) "notification" means a notification published in the Official Gazette and the word notified shall be construed accordingly;
- (xii) "prescribed" means prescribed by rules made under this Act;
- (xiii) "record" means the records maintained in the form of books or registers or stored in a computer or in such other form as may be specified, by notification, by the appropriate Government ;
- (xiv) "Schedule" means the Schedule to the Act;
- (xv) "Scheduled employment" means an employment in the unorganised sector as specified in the Schedule;
- (xvi) "scheme" means a scheme notified under section 23;
- (xvii) "worker" means a person engaged in the Scheduled employment directly or through any agency or otherwise for one or more employers whether simultaneously or otherwise and includes:
- a casual or temporary worker
 - a migrant worker
 - a home based worker whether self-employed or employed for wages and drawing pay/income not exceeding Rs. 5000/- per month.
- (xviii) "Workers' Facilitation Centre" means an unit established under section 21.

CHAPTER II UNORGANISED SECTOR WORKERS' WELFARE BOARD

3. (1) 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 Central Unorganised Sector Workers' Welfare Board.

(2) The Board shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to contract, and shall, by the said name, sue or be sued.

(3) The office of the Board shall be at Delhi.

4. The Board shall perform the following functions, namely:-

(i) to advise the Central Government on policy matters relating to employment, social security, safety and welfare of workers;

(ii) to formulate schemes and review their implementation and recommend to the Central Government, the changes required from time to time in such schemes;

(iii) to create public awareness about schemes available for workers;

(iv) to collect statistics and information of workers engaged in the scheduled employments under the Central Government;

(v) to collect statistics and information of employers who seek to engage workers;

(vi) to guide workers in respect of social security, safety and welfare activities undertaken by the Central Government and non-governmental organisations or associations.

(vii) organizing the unorganised workers and guide them informing the association/cooperatives/self-help groups etc.

(viii) to supervise the functioning of Workers Facilitations Centres

5. (1) The Board shall consist of the following (persons as members) namely:-

(a) a Chairperson to be appointed by the Central Government;

(b) the Director General(Labour Welfare), ex-officio member secretary;

(c) five members not below the rank of Joint Secretary to the Government of India, to be appointed by rotation to represent the Central Government and Union territories in such manner, as may be prescribed;

(d) five members to represent the employers of unorganised sector workers of scheduled employments under the Central Government appointed in such manner, as may be prescribed;

(e) five members to represent the unorganised sector workers of scheduled employments under the Central Government appointed in such manner, as may be prescribed;

(f) five members to represent non-governmental organisations or associations which are concerned with or are engaged in the welfare activities of the unorganised sector workers of scheduled employments under the Central Government appointed in such manner, as may be prescribed; and

- (2) The members shall be appointed by the Central Government by a notification:
- Provided that an appointment under clause (c) shall be made on the recommendation of the Central Government/ the Union territory concerned, as the case may be.
- (3) The terms, conditions and qualifications of the Chairperson, and members shall be such as may be prescribed.
6. (1) Every member shall hold office for a term of five years from the date of notification under sub-section (2) of section 5 and shall be eligible for re-appointment:
- Provided that no person shall hold office as a member after he has attained the age of sixty-five years.
- (2) Notwithstanding anything contained in sub-section (1), a member may,-
- (a) relinquish his office by giving in writing under his hand to the Central Government a notice of not less than ninety days; or
- (b) be removed from his office in accordance with the provisions of section 9:
- Provided that a member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of ninety days from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of term of office, whichever is the earliest.
- (3) A casual vacancy of a member in the Board shall be filled in accordance with the provisions of section 5 and the person so appointed shall hold office only for the remainder of the term for which the member in whose place he was appointed would have held that office.
- (4) A member shall receive such allowances as may be prescribed.
7. The Chairperson shall have powers of general superintendence over the affairs of the Board established under section (3) of the Act.
8. If a member-
- (a) relinquishes his office under clause (a) of sub-section (3) of section 6; or
- (b) becomes subject to any of the disqualifications mentioned in section 9; or
- (c) is in the opinion of the Board absent, without sufficient excuse, from three consecutive meetings of the Board, his seat shall there upon become vacant.
9. (1) The Central Government may, remove from office, any member who-
- (a) is adjudged an insolvent; or
- (b) is of unsound mind and is so declared by a competent court; or

- (c) has become physically incapable of acting as a member; or
- (d) has been convicted of an offence which, in the opinion of the Central Government, involves moral turpitude; or
- (e) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member; or
- (f) has so abused his position as to render his continuation in office detrimental to the public interest.

(2) No member shall be removed under clauses (c) to (f) of sub-section (1) unless he has been given a reasonable opportunity of being heard in the matter.

(3) A member who has been removed under this section shall not be eligible for re-appointment.

10. (1) The Board shall meet at least once in every six months and shall observe such procedure in regard to transaction of business at its meetings, including quorum at such meeting, as may be prescribed.

(2) If, for any reason the Chairperson is unable to attend a meeting of the Board, any other member chosen by the members present from amongst themselves at the meeting shall preside, at such meeting.

(3) All questions which come up before any meeting of the Board shall be decided by a majority of votes by the members present and voting, and in the event of an equality of votes, the person presiding at the meeting, may exercise a second or casting vote.

11. No act or proceeding of the Board shall be invalid merely by reason of-

- (a) any vacancy in, or any defect in the establishment of, the Board; or
- (b) any defect in the appointment of a person as a member of the Board; or
- (c) any irregularity in the procedure of the Board not affecting the merits of the case.

12.(1) The Central Government shall provide the Board with such officers and employees as it may deem fit.

(2) The officers and employees of the Board shall discharge their functions under the general superintendence of the Chairperson.

(3) The salaries and allowances and other conditions of service of the officers and other employees of the Board shall be such as may be prescribed.

13. All orders, decisions and other instruments issued or made by the Board shall be authenticated by the signature of the Member-Secretary or any other officer of the Board authorised in this behalf.

14. The Board shall furnish, from time to time, to the Central Government, such returns in such form, as may be prescribed.

15. The members, officers and other employees of the Board shall be deemed, when acting or purporting to act in pursuance of any of the provisions of this Act, to be public servants within the meaning of section 21 of the Indian Penal Code.

16. The Board shall, in each financial year, prepare in such form and at such time, as may be prescribed, its budget for the next financial year and forward the same to the appropriate Government at least three months prior to the commencement of the next financial year.

17. (1) The Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Board shall be audited by the Comptroller and Auditor-General at such intervals as may be specified by him and any expenditure incurred in connection with such audit shall be payable by the Board to the Comptroller and Auditor-General.

(3) The Comptroller and Auditor-General and any person appointed by him in connection with the audit of the accounts of the Board under this Act shall have the same rights and privileges and the authority in connection with such audit as the Comptroller and Auditor-General generally has in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Board.

18. The Board shall prepare, in such form and at such time, for each financial year, as may be prescribed, its annual report, giving a full account of its activities during the previous financial year and forward a copy thereof to the Central Government.

19. The Central Government shall cause the annual report together with a memorandum of action taken on the recommendation contained therein, and the reasons for the non-acceptance, if any, of any of such recommendations and the audit report to be laid as soon as may be after the reports are received, before each House of Parliament.

20. (1) A State Government may, by notification, establish for the purposes of this Act, a Board to be called the -----(Name of the State) Unorganised Sector Workers' Welfare Board.

(2) The State Board shall consist of the Chairperson, Member Secretary and such other members to be appointed by the appropriate State Government not exceeding twenty representing State Government concerned, employers of the unorganised workers, the unorganised workers, non-governmental organizations or association which are concerned with or engaged in the welfare activities of the unorganised sector workers of scheduled employments and as may be specified, by notification.

(3) The terms conditions and qualifications of the Chairperson, Member Secretary and the members shall be such as may be specified, by notification.

21. The state Board shall perform the following functions, namely:-

- (i) to advise the State Government on policy matters relating to employment, social security, health, safety and welfare of workers;
- (ii) to formulate schemes and review their implementation and recommend to the State Government, the changes required from time to time in such schemes;
- (iii) to create public awareness about schemes available for workers;
- (iv) to collect statistics and information of workers engaged in the scheduled employments under the State Government;
- (v) to collect statistics and information of employers who seek to engage workers;
- (vi) to guide workers in respect of social security, health care, safety and welfare measures undertaken by the State Government and non-governmental organisations or associations.

22. (1) The appropriate Board shall establish Workers' Facilitation Centre at such places as considered necessary for the purposes of this Act.

(2) A Workers' Facilitation Centre shall consist of,-

- (a) an officer not below the rank of Section Officer in the Government of India
- (b) such other employees as may be considered necessary, to be appointed by the appropriate Government on such terms as may be prescribed.

(3) The Workers' Facilitation Centre shall be responsible for, -

- (a) registration of workers;
- (b) registration of the employers of the unorganised sector workers;
- (c) guide the workers in resolution of disputes by conciliation;
- (d) guide the workers about self-help groups;
- (e) guide the workers about the schemes available for their benefits; and
- (f) create awareness about contribution towards Fund.

(4) The Workers' Facilitation Centre shall maintain a register and other records, in such form as may be prescribed, of all workers who have made an application under section 22.

23. (1) Every worker shall make an application, in such form and manner as may be prescribed, to the Workers' Facilitation Centre for registration under the provisions of this Act.

(2) Every worker whose name has been entered in the register under the provisions of sub-section (1), shall be provided by the Workers' Facilitation Centre a social security number and identity card in such form and shall be entitled to such benefit, as may be prescribed.

24. The appropriate Government shall, on the recommendations of the Board, by notification, formulate schemes for ensuring safety, social security and welfare of workers employed in scheduled employments or establishment and other schemes providing for-

- (a) the welfare of workers;
- (b) regulation of the employment in unorganised sector;
- (c) health and medical care, employment injury benefit, maternity benefit, group insurance, housing safety measures and provision and improvement of such other welfare measures;
- (d) frame a pension scheme for the registered workers to be called Unorganised Sector Workers Pension Scheme for the purpose of providing for-
 - (i) superannuation pension, retiring pension or permanent total disablement pension to the registered workers; and
 - (ii) widow or widower/s pension, children pension or orphan pension payable to the beneficiaries of such workers.
- (e) The manner in which and the persons by whom the cost of operating the schemes is to be defrayed; and
- (f) administration of the schemes generally.

CHAPTER III
Unorganised Sector Workers' Welfare Fund

25.(1) With a view to providing safety, social security and welfare of workers, the appropriate Government shall constitute a Fund to be called the Unorganised Sector Workers' Welfare Fund and there shall be credited thereto-

- (a) all grants or loans made to the Board by the Central Government or any State Government
- (b) all sums received by the Board from such other source as may be decided upon by the appropriate Government; and
- (c) contributions by the registered employers/establishment and registered worker in such form and in such manner, as may be prescribed.

(2) The Fund shall be applied for meeting-

- (a) the salaries, allowances and other remuneration of the members, officers and other employees of the Board;
- (b) the expenses towards schemes formulated under section 23 of the Act for the registered workers, or such other just and reasonable cause, as may be prescribed; and
- (c) any other expenses of the Board in connection with the discharge of its functions or for the purposes of this Act.

- (d) There shall be established as soon as may be after framing the pension scheme, a Pension Fund out of the Unorganised Sector Workers Welfare Fund
- (e) that all sums received as the contribution of the Central Government shall be credited to the Pension Fund.

(3) No Board shall, in any financial year, incur expenses towards salaries, allowances and other remuneration to its members, officers and for meeting the other administrative expenses exceeding five percent of the contribution received during that financial year.

26. Notwithstanding provisions contained under any other law, the Appropriate Government may merge any existing Welfare Board/Boards and Welfare fund/funds constituted under any other law into the Board and the Fund constituted under Sections (3) and (24) respectively of this Act.

27. (1) The appropriate Government shall, after due appropriation made by Parliament, or the State legislature, as the case may be, by law in this behalf, pay to the Board by way of grants such sums of money as the appropriate Government may think fit for being utilised for the purposes of this Act.

(2) The Board may spend such sums as it thinks fit for performing the functions under this Act, and such sums shall be treated as expenditure payable out of the grants referred to in sub-section (1).

28. the rate of the contribution shall be-

- (a) the contribution of registered worker shall not exceed 5% of the monthly wages.
- (b) the employers' contribution @ 5% of the monthly wages of the registered worker.
- (c) in case where employers are not identifiable, the appropriate State Government shall make a matching contribution @ the contribution made by the registered worker not exceeding 5% of the monthly wages of the registered worker.
- (d) the contribution of the Central Government shall be @ not exceeding 2.5% of the monthly wages of the registered workers in all cases.

29. (1) When any registered worker has not paid his contribution under section 27 for a continuous period of not less than one year, he shall cease to be a beneficiary of the Fund.

(2) Where the registered worker is in a position to prove to the satisfaction of the Workers' Facilitation Centre that the reasons for non-payment of contribution were beyond his normal control, he may be allowed to deposit the arrears of contribution and his registration may be restored on such deposit and on making an application in such form as may be prescribed.

30. Any arrear of amount due under the provisions of this Act from the employer, towards contribution to the Fund, shall be recovered as an arrear of land revenue.

CHAPTER IV
Conditions of Service of Workers

31. No worker shall be required to work for more than eight hours in a day with half an hour break.

32.(1) Every worker shall be paid such wages within such time as may be prescribed but such wages shall in no case be less than the wages fixed under the Minimum Wages Act, 1948.

(2) Where an unorganised worker is required by the employer to work for more than the hours of work fixed, he shall be entitled in respect of each hour of such over-time work to wages at the rate of twice his ordinary rate of wages for one hour

(2a) For the purposes of this section, “ordinary rate of wages” means the basic wages plus such allowances as the unorganised worker is for the time being entitled to but does not include any bonus.

(3) No employer shall pay to any worker, remuneration, whether payable in cash or kind, at rates less favourable than those at which remuneration is paid by him to the workers of the opposite sex for performing same work or work of a similar nature.

33. Every employer of the worker shall be bound to pay to every worker a minimum bonus @ 8.33% of the salary or wage earned by the worker during the preceding year or Rs. 100 whichever is higher.

34. For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to a worker at the rate of fifteen days’ wages based on the rate of wages last drawn by the worker concerned after completion of the years of the service as prescribed.

35. A woman worker shall be permitted to be absent from work for a period of 30 days and during this period to ex-gratia payment of minimum wages payable to her in the month immediately preceding the date from which she absents herself on account of the delivery of the child.

36. If personal injury is caused to a worker by accident arising out of and in course of his employment, the employer shall be liable to pay compensation in accordance with the provisions of the Workmen’s Compensation Act, 1923.

36(a) If five or more unorganised workers employed, the employer shall provide and maintain a room of reasonable dimensions for the use of their children under the age of six years.

36(b) the worker shall be entitled to such basic necessities at work place like first-aid, drinking water, latrines, urinals and washing facilities and rest rooms.

36(c) The worker shall be entitled to free legal aid in the matters connected with the denial of benefits available under the Act.

37. Whoever contravenes the provisions of this Act or of any rules made thereunder shall be punishable with imprisonment for a term which may extend to three months, or with fine which may extend to two thousand rupees, or with both.

CHAPTER V
Miscellaneous

38. (1) The Central Government may give directions to State Government or the Board established under sections (3) for carrying out the provisions of this Act.

(2) The State Government may give directions to the State Board for carrying out the provisions of this Act.

39. The appropriate Government may, if it considers necessary, amend, by notification, the Schedule by including therein or excluding therefrom any employment.

40. (1) The appropriate Government may, after previous publication, by notification, make rules to carry out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

- (a) the manner in which the members may be appointed under clauses (c), (d), (e) and (f) of sub-section (1) of section 5;
- (b) the allowances and remunerations payable to the members under sub-section (5) of section 6;
- (c) the procedure to be followed in the meetings of the Board under sub-section (1) of section 10;
- (d) the allowances and remunerations payable to the officers and employees of the Board under sub-section (3) of section 12;
- (e) form of accounts, records and annual statement of accounts to be maintained under sub-section (1) of section 17;
- (h) the form and the time of preparation of annual report under section 18;
- (i) the allowances and remuneration payable to the members of the Workers Facilitation Centres and other employees under section 21;
- (j) the form of application for registration under sub-section (1) of section 22;
- (k) the form of identity card, social security number and benefits for which a worker may be entitled under sub-section (2) of section 22.
- (l) the form and the manner of contribution by the employer and registered worker under section 26;

(3) Every rule made by the appropriate Government under sub-section (1) and every scheme notified under section 23, shall be laid, as soon as may be after it is made, before each House of Parliament, or the State legislature, as the case may be, while it is in session for a total period of

thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses, or the State legislature, as the case may be, agree in making any modification in the rule or scheme, or both Houses, or the State legislature, as the case may be, agree that the rule or scheme should not be made, the rule or scheme shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or scheme, as the case may be.

41. Nothing contained in this Act shall affect the operation of any other Act or Acts providing for the regulation of the conditions of service or work, welfare and social security measures which are more beneficial to the workers than those provided for them by or under this Act.

Annexure

Schedule of Employment

| Sr.No. | Employment |
|--------|---|
| 1. | agriculture and allied activities |
| 2. | construction and other works under Rural Employment schemes |
| 3. | beedi manufacture |
| 4. | brick-kiln work |
| 5. | carpet weaving |
| 6. | cine service |
| 7. | coir processing/manufacture |
| 8. | domestic work |
| 9. | electronics and electrical goods repairs |
| 10. | fire work/crackers production |
| 11. | fishing and allied activities |
| 12. | garment manufacture |
| 13. | gem cutting and gold smithy |
| 14. | glassware manufacturing including bangles making |
| 15. | hair dressing |
| 16. | handloom weaving |
| 17. | hawking and Vending |
| 18. | headload work including coolies/porters |
| 19. | laundry work |
| 20. | leather works |
| 21. | matches manufacture |
| 22. | manufactured of locks/brass ware and other metal works |
| 23. | petrol bunk/pump and allied services |
| 24. | plantation (other than those covered under Plantations Labour Act, 19 (Act No. 69 of 1951). |
| 25. | plastic manufacture |
| 26. | pottery |
| 27. | powerloom weaving |

| | |
|-----|--|
| 28. | printing press work |
| 29. | rag picking |
| 30. | rickshaw Pulling |
| 31. | salt pan work |
| 32. | security services |
| 33. | shops & establishments service |
| 34. | stone and sand quarries and allied activities |
| 35. | tailoring. |
| 36. | timber Industry (furniture manufacturing, etc.) |
| 37. | toddy tapping |
| 38. | transport services (driving, conducting, cleaning, etc.) |
| 39. | wayside Mechanics and workshop services |
| 40. | weavers |

THE UNORGANIZED SECTOR WORKERS' SOCIAL SECURITY BILL, 2005

STATEMENT OF OBJECTS AND REASONS

The National Common Minimum Programme of the Government of India states that "The UPA Government is firmly committed to ensure the Welfare and well-being of all Workers, particularly those in the Unorganized Sector who constitute 93% of our Workforce". Earlier, the Second National Commission on Labour submitted its report to the Government in June 2002, which inter-alia, contained elements of legislation to ensure a minimum level of protection to the Workers in the Unorganized Sector. This Bill draws upon these recommendations and has given Statutory shape to National Common Minimum Programme's commitments.

THE UNORGANIZED SECTOR WORKERS' SOCIAL SECURITY BILL, 2005

To provide for social security and welfare of unorganized sector workers and to provide for other matters connected therewith or incidental thereto.

BE it enacted by Parliament in the fifty-fifth year of the Republic of India as follows: -

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement

- (a) This Act may be called "**The Unorganized Sector Workers' Social Security Act, 2005**"
- (b) It extends to the whole of India.
- (c) It shall come into force on the date of publication by Union Government in the Official Gazette.

2. Definitions

In this Act, unless the context otherwise requires: -

- (a) "National Social Security Authority for the Unorganized Sector" means an authority constituted by Union Government for the purpose of this Act under section 3(a).
- (b) "Directors" means the persons appointed by Union Government under Section 8(a).
- (c) "Employer" means a company or a person, for whom any unorganized worker is working or association of employers or traders who engage unorganized workers.
- (d) "Existing Acts" means the Acts enacted by the Central and State Governments, which are for the time being in force.

- (e) “Facilitating agencies” means the agency notified by the Authority to run the worker’s facilitation centre under the section 9 of the Act.
- (f) “Family” in relation to that of a worker means and includes the spouse, minor legitimate and adopted children, unmarried daughters and dependent parents.
- (g) “Fund” means the Unorganized Sector Workers’ Welfare fund constituted under sub-section (a) of section 19 of the Act.
- (h) “Identity Card” means the identification document containing the unique identification social security number given to a worker on registration as a member under sub-section (a) of section 13 of the Act.
- (i) “Member” in relation to a welfare funds constituted under this Act means an unorganized worker registered as a member under sub section (a) of Section 13.
- (j) “Notification” means notification published in the official Gazette.
- (k) “Prescribed” means prescribed by rule or scheme made under the Act.
- (l) “Scheme” means a scheme made under the Act.
- (m) “Supervisory Board” means a board constituted under section 4.
- (n) “Unique identification Social Security Number” means the number given to a worker on registration as a member under sub-section (a) of Section 13 under the Act. .
- (o) “Unorganized Sector Worker” means a person who works for wages or income; directly or through any agency or contractor; or who works on his own or her own account or is self employed; in any place of work including his or her home, field or any public place; and who is not availing of benefits under the ESIC Act and the P.F Act, individual insurance and pension schemes of LIC, private insurance companies, or other benefits as decided by the Authority from time to time.
- (p) “Workers’ Facilitation Centre” means Centre constituted under section 10 for registration of workers of unorganized sector implementing social security benefits.

CHAPTER II

NATIONAL SOCIAL SECURITY AUTHORITY FOR THE UNORGANIZED SECTOR, WORKERS’ FACILITATION CENTRES AND FACILITATING AGENCIES

3. Constitution of National Social Security Authority for the Unorganized Sector

- (a) With effect from such date as the Union Government may notify, an Authority, to be called as National Social Security Authority for the Unorganized Sector (The Authority), shall be constituted for the purposes of this Act
- (b) The Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal with power, subject to the provisions of this Act, to

acquire, hold and dispose property, both movable and immovable, and to contract and shall by the said name sue or be sued.

- (c) The Authority shall consist of a Supervisory Board and an Executive Office.
- (d) The Authority shall formulate policy and undertake any and all activities to deliver the intent of this Act all over the nation in coordination with various State Governments, Welfare Boards and other agencies responsible for serving workers in the unorganized sector as required in order to ensure effective implementation of the Act.

4. Appointment of Supervisory Board

The Authority shall have a Supervisory Board to be appointed by the Union Government.

- (a) The Union Government shall appoint a Chairperson of the Supervisory Board, who shall be the non-executive Chairperson of the Authority whose normal term shall be of three years.
- (b) The Supervisory Board shall consist of at least fifty percent of members who are representatives of workers in the unorganized sector and at least one third women members in addition to professionals with background in areas of expertise such as finance, insurance, and systems-operations and representatives of Central and State Government
- (c) The normal term of the Supervisory Board shall be three years.

5. Disqualification, removal and resignation of non-official members of Supervisory Board

- (a) No person shall be chosen as or continue to be, a non-official member of the Supervisory Board, who-
 - (i) is or at any time has been adjudged insolvent; or
 - (ii) is found to be a lunatic or of unsound mind, or
 - (iii) is or has been convicted of any offence involving moral turpitude
- (b) Any non-official member of the Supervisory Board may at any time resign, by writing under his hand, addressed to the Chairperson of the Supervisory Board and on acceptance of the resignation by the Chairperson. Such member shall cease to be member of the Supervisory Board.

6. Filling up of vacancies of Supervisory Board

In the event of a vacancy in the office of a non-official member on account of death, resignation, disqualification, removal or otherwise, the Supervisory Board shall forthwith communicate it to the Union Government and a person shall be nominated by the Union Government to fill the vacancy, who shall hold the office for the residuary term of the member on account of whom the vacancy has occurred.

7. Executive Office of the Authority

- (a) The Executive office of the Authority shall have a Managing Director, and two Executive Directors who will be appointed directly by the Union Government.
- (b) The Union Government shall provide for the recurring and non-recurring expenditures to be incurred for the functioning of the Authority on recommendation of the Managing Director in consultation with the Supervisory Board.

8. Functions of the Directors and the Supervisory Board:

- (a) The Directors appointed by the Union Government shall be responsible for framing policies, schemes, and procedures for the functioning of the Authority in consultation with the Supervisory Board.
- (b) The Supervisory Board shall advise the Directors on matters of policy and receive quarterly reports from the Managing Director. The Chairman of the Supervisory Board shall send comments and reports regarding the functioning of the Authority and the Directors to the Union Government.
- (c) In the event of a discord between the Directors and the Supervisory Board, the Union Government shall appoint a Special Committee to recommend resolution of the discord and take appropriate action upon considering the opinions of the Committee. The decision of the Union Government will be final in this regard.

9. The Functioning and the Structure of the Authority:

- (a) The Directors will appoint “Facilitating Agencies” to conduct the activities of the Authority in the specifically designated geographical areas or a particular industry in a particular region. The Facilitating Agency will in turn set up, administer, and supervise Worker’s Facilitation Centres, which will provide direct service to the worker members of the Facilitation Centre.
- (b) The Facilitating Agency, for all practical purposes shall represent the Authority in the designated area, region, or industry and carry out all executive functions on behalf of the Authority under a specific contract with the Authority.
- (c) The Facilitating Agency shall work wherever necessary with other Welfare Boards, and Departments of the Governments, State or Union or Panchayati Raj institutions in a manner that is prescribed by the Directors.
- (d) The following may be appointed as the Facilitating Agencies by the Directors, or officers appointed by them for the purpose, after inviting proposals from organizations and institutions provided they agree to abide by terms of the contract determined by the Authority:
 - (i) Self Help Groups or their Associations
 - (ii) Post offices
 - (iii) All types of Co-operative societies
 - (iv) Micro-Finance Institutions
 - (v) Trade Unions
 - (vi) District Panchayat
 - (vii) Village Panchayat

- (viii) Existing Welfare Boards
- (ix) Urban local body
- (x) Any other organization or agency dealing directly with unorganized workers as may be prescribed by the Authority.

10. Workers' Facilitation Centres

The Worker Facilitation Centres shall be set up by the Facilitating Agency and shall be operated under its control and supervision.

The core functions of the Centres shall be: -

- (a) Registration of workers and giving them unique identification social security numbers and identity cards.
- (b) Mobilization of workers to become members of the Scheme.
- (c) Securing the contribution of members to the funds.
- (d) Assuring delivery of benefits to the members.

In addition, the centres may undertake the following activities.

- (e) Maintaining a database of members in such form as may be prescribed showing the details of employment of members registered with it.
- (f) Skill upgradation training to increase the skill of workers.
- (g) To maintain and provide information related to employment and marketing opportunities workers. Training and assisting workers to form themselves into cooperatives, unions, federations and into any other appropriate form of organization.
- (h) To constitute employment exchanges for unorganized sector.
- (i) To create public awareness about schemes available for workers.
- (j) To collect statistics and information of workers engaged in the employments of the unorganized sector.
- (k) Other activities as may be prescribed by the Authority.

The financing of the Workers Facilitation Centres shall be through implementation of appropriate schemes. The Workers Facilitation Centres may, with the approval of Facilitating Agencies charge user-fees for specific services that the Workers Facilitation Centres may offer to individual workers or groups or organizations of workers, or it may accept donations or grants for purposes of its objects.

11. Criteria for Appointing Facilitating agencies:

The following criteria shall be observed by the Authority during appointment of Facilitating agencies:

- (a) Registration under an Act of the Union of India or any State Government
- (b) Be in existence for more than three years
- (c) Be directly working with unorganized sector workers or their families
- (d) Produce audited accounts
- (e) Have a track record of effective implementation of welfare schemes
- (f) And any other criteria decided by the Authority.

12. Delegation of powers

The Authority may, by general or special order, delegate to any member of the board or any director or any other officer or employee of the Authority, such of its power and duties under this Act as it may deem necessary for the proper administration of this Act, or any scheme made there under.

CHAPTER III

REGISTRATION OF WORKERS AS MEMBERS

13. Registration of workers as members and for Unique Identification Social Security Number

- (a) Every unorganized sector worker as defined in 2 (o) who has completed eighteen years of age shall on the payment of prescribed fee become eligible for registration as a member and for the purpose, get a Unique Identification Social Security Number and identity card under this Act. No worker shall be eligible for getting more than one social security number. Worker shall be registered as a member once and this registration shall be periodically renewed and updated as decided by the Authority.
- (b) Registration of workers as members shall be done by Workers' Facilitation Centre following such procedures as may be prescribed.

14. Cessation as a member

- (a) An unorganized sector worker who has been registered as a member for more than ten years under this Act shall not be required to pay any membership dues when he attains the age of sixty years excepting for old age benefit including pension. The social security number of a retired or deceased worker shall not be given to any new or other member.
- (b) Notwithstanding anything contained in sub-section (a), if a person had been a member for at least three years continuously immediately before attaining the age of sixty years, he shall be eligible to get such benefits as may be specified under the concerned fund.

CHAPTER IV

SOCIAL SECURITY SCHEMES

15. Framing of Schemes

The Directors will formulate one or more schemes as may be considered necessary for the welfare, health, safety and social security of the unorganized worker or any class of workers in any employment of unorganized sector and seek advice of the Supervisory Board in formulating the same.

Provided that the Authority, while framing schemes under this sub-section, ensure that they are not in contravention of any of the provision of the existing Acts or schemes.

16. Disputes regarding application of schemes

If any question arises regarding the applicability of any scheme to any class or classes or workers in any employment of unorganized sector, the matter shall be referred by the Authority to the Union Government whose decision shall be final.

17. Social Security benefits and welfare measures

The Authority may notify the schemes as under, subject to sustainability of the Fund :

- (a) Medical Care or sickness benefit scheme
 - (b) Employment injury benefit scheme
 - (c) Maternity benefit scheme
 - (d) Old age benefit including pension
 - (e) Survivor's benefit scheme
 - (f) Integrated Insurance Scheme
 - (g) Schemes for Conservation of natural resources on which workers depend for livelihood,
 - (h) Housing schemes
 - (i) Educational schemes
 - (j) Any other schemes to enhance the quality of life of the unorganized worker or her family.
- 18.**
- (a) There shall be a floor level scheme to be funded by the Union Government directly or through cess or through contribution or through any other means.
 - (b) This floor level scheme shall include (i) health, life and permanent disability insurance; and maternity benefits without contribution from the member, and (ii) a contributory old age benefit scheme including pension.
 - (c) In case of industries where separate Welfare Boards have been created and/or a cess is being collected for welfare schemes of the workers, the Authority shall function in collaboration with the existing Welfare Boards in order to ensure that the workers registered at the Worker Facilitation Centre receive benefits of the schemes created by the Authority or those of the concerned Welfare Boards, whichever may be more beneficial to the worker.

CHAPTER V

WELFARE FUNDS

19. Constitution of Welfare Funds

- (a) National Social Security Authority shall constitute one or more Welfare Funds consisting of following sources:
 - (i) Levy and collection of cess, tax or fees as it may be specified from time to time by notification in the official gazette.
 - (ii) Grants and loans made to the Authority by the Union or State government.
 - (iii) All contribution made by the members and employers;
 - (iv) All sums received by the Authority from such other sources as may be decided by Union Government, including donations.
 - (v) Income generated by registration of member.
 - (vi) All other income as may specified time to time
- (b) The resources referred to in sub-section 19(a) shall be applied for meeting the;

- (i) Expenses on objects and for purposes authorized by this Act.
 - (ii) Expenses of the concerned Authority and/or its agents in the discharge of its function;
- (c) The Authority shall not, in any financial year, incur expenses towards salaries, allowances /and other remuneration to its members, officers and other employees and for meeting other administrative expenses exceeding a limited per cent of its total expenses during that financial year, the limit to be fixed by the Supervisory Board in consultation with the Directors
- (d) All the contributions to the funds shall be exempted from the Income tax.

20. Grants and Loans by the Government

The union or state government may, after due appropriation made by parliament or state legislature, as the case may be, by law in this behalf, make to the Authority or its agents grants and loans of such sum of money, as the appropriate Government may consider fit for being utilized for the purposes of this Act.

21. Contribution to the fund/ schemes

(a) Contribution of workers:

The contributions to the funds shall consist of;

- (i) Registration and renewal fees as decided by the Authority. .
- (ii) Contribution towards schemes as decided by the Authority.
- (iii) Any other contribution as decided by the Authority.

(b) Contribution of employers:

- (i) The Union Government may levy a cess or an appropriate tax, or create an appropriate mechanism for collection of contribution from individual employers (or their contractors wherever applicable) or a class of employers or an industry as a whole in order to partly finance the schemes, programs and projects undertaken by the Authority.
- (ii) The Union or State government may, on the recommendation of the Authority, levy and collect cess, tax or fees, on any goods produced or processed or manufactured or sold or on service rendered, for the purposes of this Act as it may specify from time to time by notification in the official gazette.
- (iv) The Authority, may in specific circumstances levy a contribution on individual employers at a rate decided by it.

22. Effect of non-payment of contribution

(a) Workers' contribution:

When a worker has not paid his/her contribution for a continuous period of not less than one year, he/she shall cease to be eligible for future benefits.

Provided that if the Workers' Facilitation Centres or an authority specified by it is satisfied that the non-payment of contribution was for a reasonable ground and that the worker may be allowed to deposit the contribution in arrears and, on such deposit being made, eligibility for future shall be restored.

(b) Employers' contribution:

An employer or an industry found not to be paying its contribution to the cess or an appropriate tax will be liable for action under the appropriate Act. In case an employer is found defaulting in individual contributions levied by the Authority, the appropriate action will be decided by the Authority in consultation with the Union Government.

23. Budget

The Authority shall prepare, in such form and at such time each financial year as may be prescribed, their budgets for the next financial year showing their estimated receipts and expenditure. The authority shall forward to the Union Government the consolidated budget of itself and the funds constituted by it.

24. Annual Reports and Periodic Reports

- (a) The Directors, Facilitating Agencies, and Workers' Facilitation Centres shall prepare, in such form and at such time each financial year as may be prescribed, their reports, giving an account of their activities during the applicable period.
- (b) The Authority shall submit its periodic reports, within one month of the end of the period to which they pertain, to the Union and the State governments and it shall be mandatory to make all such reports public.
- (c) Each facilitating agency will generate its periodic reports as prescribed by the Authority and it shall be mandatory to make these reports public.

25. Accounts and audit

- (a) The Authority, Facilitating Agency and Workers' Facilitation Centre shall maintain proper accounts and other relevant records and prepare annual statements of accounts in such form as may be prescribed.
- (b) The accounts of each facilitation centre shall be audited separately and the audit of the facilitating agency shall include audit reports of all the facilitating centres it is responsible for in addition to its own accounts pertaining to the activities associated with the Authority.
- (c) The Authority shall furnish to the Union Governments, before such date as may be prescribed, the audited copy of the consolidated account of itself and the Funds together with the auditor's report.

26. Investment of the funds

All moneys belonging to the Funds shall be deposited in a Scheduled Bank or any Government securities, or as may be approved by the Supervisory Board.

27. Existing Welfare Board and Fund

- (a) The Authority shall recognize the fact that various Welfare Boards and such other agencies are in existence for a number of industries, and that there are cess and such other provisions for funding the activities for social security and other services for workers in certain industries and certain states. The Authority may, in consultation with appropriate governments responsible for these Welfare Boards, consider appointing such Welfare Boards as Facilitating Agencies for those particular industries within the limits of the rules and regulations created by the Authority.
- (b) The appropriate governments responsible for the concerned welfare boards, may, with the approval of the Authority, choose to merge or bring under the supervision, direction, and control of the Authority any existing schemes and Welfare Boards and funds that are consistent with the aims and objects of the Authority.

CHAPTER VI

FRAMING OF RULES, DELEGATION OF POWER, EXEMPTIONS, ETC.

28. Power to make Rules

- (a) The Authority may, make rules to carry out the provisions of this Act.
- (b) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely-
 - (i) Form of register of members to be maintained.
 - (ii) Rates of registration payable by the members to the Fund.
 - (iii) Forms of accounts and other relevant records to be maintained by the Authority and Fund.
 - (iv) Form for preparation of the annual reports of the concerned Board and Fund and stipulation of dates for submission of the same to the Union government.
 - (v) Form for preparation of annual budgets..
 - (vi) Procedure and power to audit the expenditure incurred by and review the functioning of Workers' Facilitation Centre and Facilitating Agency.
 - (vii) Any other matter, including disqualification of facilitating agencies and centres for non-performance, which has to be, or may be, prescribed by rules under this Act.

29. Exemptions

- (a) The Union government may, in consultation with the Authority, by notification and subject to such condition and for such period as may be specified in the notification, exempt from the operation of all or any of the provisions of this Act or any schemes made there under, all or any class or classes of workers, in any establishment or part of any establishment: -

If in the opinion of the Union government, all the workers or such class or classes of workers, are in enjoyment of benefits which are on the whole not less favorable to such workers than the benefits provided by or under this Act or any scheme framed there under.

- (b) The Union government may by notification, at any time, cancel the exemption granted under sub-section (a), if it feels that the conditions mentioned therein, are not satisfied, after recording reasons and after providing an opportunity of being heard to such establishment.

30. Rights and privileges under other more beneficial laws not affected

Nothing contained in this Act shall affect the operation of any corresponding law, contract, custom, usage, award, settlement or agreement, regulating the employment and conditions of service of the workers and providing for welfare measures or schemes which are more beneficial to the workers than those provided for them by or under this Act.

31. Power to remove difficulties

- (a) If any difficulty arises in giving effect to the provisions of this Act, the Union Government may, by order published in the official Gazette, make such provisions, not inconsistent with the provisions of this Act, as appears to it to be necessary or expedient for removing the difficulty;

Provided that no such order shall be made after the expiry of two years from the date of commencement of this Act.

- (b) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

32. Members of Boards and Officers to be Public Servants

Every Member of the Supervisory Board, the Directors and every officer appointed under this Act shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code (45 of 1860).

33. Protection for action taken in good faith

No suit, prosecution or other legal proceeding lie against Union Government or any Member of the Board or the directors or any officer appointed under this Act for anything, which is in good faith done or intended to be done under this Act or any scheme or rule made thereunder.

34. Bar on civil courts

No civil court shall have jurisdiction in respect of any matter to which any provision of this Act applies and no injunction shall be granted by any civil court in respect of anything, which is done or intended to be done by or under this Act.

UNORGANISED SECTOR WORKERS SOCIAL SECURITY BILL, 2005.

Statement of objects and reasons

**Chapter I
PRELIMINARY**

1. Short title, extent, commencement and application
2. Definitions
3. Rules of evidence

**Chapter II
SOCIAL SECURITY BENEFITS**

4. Framing of schemes.

**Chapter III
NATIONAL SOCIAL SECURITY FUND FOR UNORGANISED SECTOR WORKERS**

5. Constitution of a National fund
6. Existing Welfare Boards/Funds
7. Exemption from Income Tax
8. Utilisation of the National Fund

**Chapter IV
NATIONAL SOCIAL SECURITY BOARD FOR UNORGANISED SECTOR WORKERS**

9. Establishment and incorporation
10. Functions of the Board
11. Composition of the Board
12. General Council
13. Executive Council
14. Secretariat of the Board

**Chapter V
STATE SOCIAL SECURITY BOARDS FOR UNORGANISED SECTOR WORKERS**

15. Establishment of State Boards
16. State Funds
17. Functions
18. General Council
19. Executive Council
20. Secretariat of the Board

Chapter VI
REGISTRATION OF UNORGANISED SECTOR WORKERS

21. Eligibility for registration and for social security benefits
22. Unique Identification Social Security Number
23. District Committee for registration of workers
24. Identity card
25. Portability of registration
26. Cessation of registration

Chapter VII
DELIVERY OF SOCIAL SECURITY BENEFITS

27. Implementation Machinery
28. Workers' Facilitation Centres
29. Premium and Compensation/Benefits

Chapter VIII
DISPUTE RESOLUTION BODIES AND THEIR CONSTITUTION

30. Resolution of Disputes
31. Reference of disputes
32. Consequences of contravention of provisions of this Act

Chapter IX
MISCELLANEOUS

33. Accounts and audit
34. Power to make Rules
35. Savings

Statement of objects and reasons

The unorganised sector of the economy in India is the largest sector in terms of employment of the workforce. It consists of agriculture and such related activities as forestry, livestock and fishing as well as non-agriculture. The workers may be broadly divided into self-employed and wage workers. Wage workers may be sub-divided into those (a) working in the unorganised sector, and (b) working in the organised sector without any social security cover. Around ninety percent of the workers in India are neither covered by any formal system of social security nor regulation of conditions of work. This Bill is intended to provide a measure of social security to the workers in the unorganised sector. This Bill proposes a model that will be inclusive in nature and provide for clearly demarcated division of responsibilities between the Central and State Governments. It mandates the Central and State Governments to implement a National Social Security Scheme.

UNORGANISED SECTOR WORKERS SOCIAL SECURITY BILL, 2005.

A BILL

to provide for social security and welfare of unorganized sector workers and to provide for other matters connected therewith or incidental thereto.

BE it enacted by Parliament in the fifty-fifth year of the Republic of India as follows:-

Chapter I PRELIMINARY

1. Short title, extent, commencement and application:

- (1) This Act may be called Unorganised Sector Workers Social security Act, 2005.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

2. Definitions:

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

- a) **"Agriculture"** would include the following occupations:
 - a. Farming, including the cultivation and tillage of soil etc;
 - b. Dairy farming;
 - c. Production, cultivation, growing and harvesting of any horticultural commodity;
 - d. Raising of livestock, bee-keeping or poultry;
 - e. Fishing and/ or fish farming;
 - f. 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);
 - g. Growing fodder or thatching grass or for grazing cattle.
- b) **"Central Government"** means the Government of India;
- c) **"Employer"** means a natural or juridical person, or an association of such persons, by whom any unorganised sector worker is engaged or employed either directly or otherwise, for any remuneration;
- d) **"Home based worker"** means a person involved in the production of goods or services for 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;
- e) **"Identity card"** means a card issued to a worker carrying unique social security number issued by the authorised agency of the State Board;

- f) **“National Board”** means the National Social Security Board for unorganised sector workers;
- g) **“Registered Worker”** means an unorganised sector worker registered for social security under this Act;
- h) **“State Government”** means the Government of a State in the Indian Union;
- i) **“State Board”** means the (name of the State) State Social Security Board for unorganised sector workers;
- j) **“Self employed worker”** means any person who is not employed by an employer, but directly engages himself / herself in any occupation in the unorganised sector, subject to a monthly earning of Rs.5,000/- or such limits as may be notified from time to time, or, subject to such ceiling on land cultivated as may be notified from time to time by the State Government;
- k) **“Unorganised Sector”** means all private unincorporated enterprises including own-account enterprises engaged in any agriculture, industry, trade and/or business;
- l) **“Unorganised sector worker”** means a self employed worker or a wage worker in the unorganised sector and includes wage workers in the organised sector without any social security cover;
- m) **“Wage worker”** means a person employed for a remuneration in the unorganised sector or in the organised sector without any social security cover, directly by an employer or through any agency or contractor, irrespective of place of work, 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 home based worker, or as a temporary or casual worker, or as a migrant worker, or as a outworker, or, workers employed by households including domestic workers, with a monthly wage of not more than Rs 5000/- or such limits as may be notified from time to time, but does not include an unpaid family worker.

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 of the burden of proof from the workers 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
SOCIAL SECURITY BENEFITS

4. Framing of Schemes

(1) By this Act, the Central Government shall formulate a scheme to be called National Social Security Scheme for the unorganised sector workers consisting of the following national minimum social security benefits:

- (i) Old age pension to all workers above the age of 60 years;
- (ii) Health insurance for self, spouse and children below the age of 18 years;
- (iii) Maternity benefits for women workers or spouse of men workers; and
- (iv) Insurance to cover death and disability arising out of accidents.

(2) In addition to the national minimum, the Central Government may frame such schemes as it may deem necessary or finance such schemes of the State Governments as it may find appropriate subject to availability of finance by such means as mentioned in Section 5 and may include those listed under (3) below.

(3) The State Government may formulate such unorganised sector worker based schemes 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 workers;
- e) Skill up gradation of workers;
- f) Funeral assistance;
- g) Marriage of daughters; and
- h) Any other schemes to enhance the socio economic security of unorganised sector worker.
- i)

Chapter III
NATIONAL SOCIAL SECURITY FUND FOR UNORGANISED SECTOR WORKERS

5. Constitution of a National Fund

The Central Government shall create a National Social Security Fund to which contributions shall accrue from the following sources:

- a) Grants and loans from the Central Government;
- b) Contributions from workers, employers and Governments for the specified national minimum social security shall be as under:

- (i) Re. 1/- per day by the worker, provided that for those below the poverty line the contribution shall be made by the Central government;
- (ii) Re. 1/- per day, per worker, by the employer, provided that where the employer is not identifiable, the contribution shall be shared by the Central Government and the respective State Governments in the ratio of 3:1;
- (iii) Re. 0.75 per worker, per day, by the Central Government, and Re. 0.25. per worker, per day by the State Government.

[Explanatory note: The contribution of Central and State Governments in (iii) above is in accordance with the practice of Government contribution to social security schemes in the organised sector]

- c) Any tax or cess that the Central Government may impose for the purpose of providing social security for unorganised sector workers;
- d) Any tax or cess that the Central Government may impose on commodities and/or services in lieu of employers' contributions (which are either difficult to collect or appropriate employers in the unorganised sector are not directly identifiable).

In addition to the above, contributions may also accrue from the following sources:

- e) Contributions from the national financial/developmental institutions; and
- f) Any voluntary contribution from individuals or institutions.

6. Existing Welfare Boards:

All eligible unorganised sector workers shall be entitled to register and obtain benefits under the national minimum social security scheme, which shall be in addition to the social security benefits provided by the existing Welfare Boards created by the Central or State Governments, if any. Schemes which are in existence and operated through the Welfare Boards may be continued by the respective Governments in the existing form or in any other way as they deem fit.

7. Exemption from Income Tax

All financial contributions made by individuals and institutions to the National Social Security Fund will be exempted from the payment of income tax under the Income Tax Act.

8. Utilisation of the National Fund

All contributions accruing to the National Board shall be credited to the Fund, which shall be applied for meeting the following:

- a) Expenses on social security schemes of the Central Government;
- b) Grants to the State Boards, including for the purposes of the functioning of the Workers' Facilitation Centres;
- c) Expenses on the administration of the scheme, subject to a ceiling of 5% of the contribution of the Central and State Governments as specified in section 5;
- d) Investment in permitted schemes;
- e) Any other item in connection with the administration of this Act.

Chapter IV
NATIONAL SOCIAL SECURITY BOARD FOR UNORGANISED SECTOR WORKERS

9. 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 Board for unorganised sector workers.

10. Functions of the Board

The National Board shall provide the following functions:

- a) administration of this Act and formulation of policies at the national level, and shall have such powers as may be laid down to direct, co ordinate, supervise, and monitor the functioning of State Boards and the Central Welfare Boards;
- b) review the working including auditing of the State-level Social Security Boards and the Central Welfare Boards every four years and make suitable recommendations to the Government(s) concerned for further improvement;
- c) manage and maintain the National Social Security Fund and provide financial assistance to State Boards;
- d) advise the Central Government on policy matters relating to social security, health and safety and welfare of unorganised sector workers;
- e) assist in capacity building of the State Boards, and collect, compile and publish statistics relating to the unorganised sector and undertake such promotional activities as may be decided from time to time.

11. Composition of the Board

(1) The National Board for unorganised sector workers shall be constituted by the Central Government from any of the following organisations:

- a) State Boards for unorganised sector workers;
- b) Central Welfare Boards for unorganised sector workers administered by the Ministry of Labour and Employment;
- c) national-level unions of unorganised sector workers;
- d) national-level voluntary associations of unorganised sector workers including self-employed with an explicit social security scheme for its members; and
- e) national-level organizations of employers in the unorganised sector (such as organizations of tiny and small scale industries, farmers organisations) and government/public institutions with a stake in the welfare of the unorganised sector workers such as the All India Handicrafts Board, All India

Handloom Board, Central Social Welfare Board, Department of Women and Child Development, and Department of Small Scale Industries.

(2) The Central Government shall decide the number and names of such organisations to be represented on the National Board.

(3) The National Board shall work through a General Council and an Executive Council.

12. General Council

(1) The Union Minister for Labour and Employment shall be the Chairperson of the General Council.

(2) The Secretary to the Government of India, Ministry of Labour and Employment, shall be the Member-Secretary of the General Council.

(3) There shall be a General Council for the Board consisting of one representative from each of the member-organisations.

(4) The General Council shall meet once a year within six months of the last day of the previous financial year.

(5) The General Council shall discuss and review the functioning of the National Board in the light of the annual report for the preceding year. It shall also provide a platform for members to articulate their views, ideas and problems with regard to the unorganised sector in general and social security issues in particular and shall give broad policy directions to the Executive Council.

13. Executive Council

(1) The Board shall have an Executive Council with the Secretary to the Government of India, Ministry of Labour and Employment, as its Chairperson and a full time Chief Executive Officer to be designated by the Central Government as its *ex-officio* Member-Secretary. In addition, the Central Government shall nominate the members to the Executive Council as per the following:

a) Two representatives of the organisations of waged workers in the unorganised sector, which are members of the National Board;

b) Two representatives of organisations of self-employed workers in the unorganised sector workers, which are members of the National Board;

c) Two representatives of organisations of employers in the unorganised sector that are members of the National Board;

- d) One representative from any one of the Central Welfare Boards;
- e) One representative each of the Government of India from the Ministry of Agriculture, Finance, Health and Small Scale Industries;
- f) Six representatives of the State Boards;
- g) One expert in the management of insurance products and services;
- h) One experts in the area of social security and related issues in the unorganised sector; and
- i) One expert in the management of finances.

(2) The tenure of the members shall be for a period of three years. The Executive Council shall meet as often as required but not less than twice a year.

[a, b, c, and f may be based on the principle of rotation amongst the member-organisations.]

14. Secretariat of the Board

The National Board shall have a secretariat with adequate professional and other staff. The staff of the National Board shall be governed by the Central Government rules and regulations existing from time to time. The annual budget of the National Board shall be prepared by the Secretariat and placed before the Executive Council for approval.

Chapter V

STATE SOCIAL SECURITY BOARDS FOR UNORGANISED SECTOR WORKERS

15. Establishment of State Boards

(1) Each State shall have a State Board to implement the national minimum social security as well as design and implement state level social security and welfare programmes for unorganised sector workers. The State Governments shall constitute the State Boards within one year of the date of commencement of this Act. The State Boards shall have the following as its members:

- a) Workers Welfare Boards (both existing and newly designed) providing social security and welfare to the unorganised sector workers;
- b) Organisations which are registered as trade unions/cooperatives/charitable societies, engaged in the provision of social security for unorganised sector workers subject to such qualifying criteria as the State Government may lay down;
- c) Departments or agencies of the State Government acting as employers of the unorganised sector workers (e.g. Public Works department, forest department, or those employing anganwadi workers, khadi workers, etc.); and
- d) Representatives of organisations of self employed unorganised sector workers;
- e) Representatives of employers organisations in the unorganised sector;

(2) The State Government shall decide the number and names of such organisations to be represented on the State Board.

(3) The State Board shall work through a General Council and an Executive Council.

16. State Fund:

(1) The State Government shall create a State Social Security Fund to which contributions shall accrue from the following sources:

- (i) Grants and loans from National Board and the State Government;
 - (ii) Any tax or cess that the State Government may impose on commodities and/or services in lieu of employers' contributions (which are either difficult to collect or appropriate employers in the unorganised sector are not directly identifiable);
 - (iii) Contribution toward additional social security scheme (if any) formulated by the State Board;
 - (iv) Contributions from the national financial/developmental institutions; and
 - (v) Any voluntary contribution from individuals or institutions;
- (2) All financial contributions made by individuals and institutions to the State Social Security Fund will be exempted from the payment of income tax under the Income Tax Act.

(3) All contributions accruing to the State Boards shall be credited to the State Social Security Fund which shall be applied for meeting the following:

- (i) Expenses on the implementation of the national minimum social security and additional social security schemes of the State Government;
- (ii) Grants to the Welfare Boards and the Workers' Facilitation Centres;
- (iii) Expenses on the administration of the State Board as per the annual budget approved by the Executive Council;
- (iv) Investment in permitted schemes;
- (v) Any other item in connection with the administration of this Act.

17. Functions

The State Boards will have the following functions:

- a) administration of this Act at the state level including ensuring maintenance of individual accounts of the registered workers and records of receipt of contribution from individual employers;
- b) implement the national minimum social security for unorganised sector workers through appropriate organisational arrangements, and to stipulate norms for the evaluation of the work done by the Workers' Facilitation Centres;
- c) To collect the contribution from the registered worker and the employer and to credit it to the account(s) as directed by the National Board;

- d) implement social security schemes, in addition to the National Social Security Scheme, that the State Board may design in consultation with the State Government;
- e) provide financial assistance to other member-organisations implementing social security programmes;
- f) advise the State Government on policy matters relating to social security, health and safety and welfare of workers;
- g) create awareness among the unorganised sector workers about the need for social security registration and the existence of various social security schemes;
- h) collect, compile and publish statistics, with the help of statistical organisations, regarding workers and their conditions of work, and employers who engage
- i) these workers at the Panchayat/Municipal, District, State levels with such details as gender and age, nature of occupation, level of earnings, etc.;
- j) review the working of the Welfare Boards and other implementing agencies on the basis of annual reports and statements of audited accounts or specially commissioned reports and make suitable recommendations to the government(s) concerned for further improvement;
- k) assist in capacity building of Workers Welfare Boards and Workers' Facilitation Centres;
- l) initiate innovative approaches, through interaction across sectors and constituencies, for the enhancement of welfare, working conditions and productivity of unorganised sector workers; and
- m) Submission of annual report to the National Board within four months from the last day of the previous financial year along with an audited statement of accounts.

18. General Council:

(1) There shall be a General Council for the State Board consisting of one representative from each of the member-organisations. The Minister for Labour in the State concerned shall be the Chairperson of the General Council. The Secretary to the State Government concerned, Department of Labour, shall be the Member-Secretary.

(2) The General Council shall meet once a year within six months of the last day of the previous financial year.

(3) The General Council shall discuss and review the functioning of the State Board in the light of the annual report for the preceding year. It will also provide a platform for members to articulate their views, ideas and problems with regard to the unorganised sector in general and social security issues in particular and shall give broad policy directions to the Executive Council.

19. Executive Council:

(1) The State Board shall have an Executive Council with the Secretary of the State Government concerned, Department of Labour, as Chairperson and an official designated by the State Government as Chief Executive Officer, who shall be the ex-officio Member-Secretary, after taking the view of the

General Council of the State Board concerned. In addition, the State Government shall nominate the members to the Executive Council as per the following:

- a) Two representatives of the organisations of wageworkers in the unorganised sector, that are members of the State Board;
- b) Two representatives of organisations of self-employed workers in the unorganised sector, that are members of the State Board;
- c) Two representatives of organisations of employers in the unorganized sector that are members of the State Board;
- d) One representative from the National Board nominated by it;
- e) One representative each from the Departments of Agriculture, Finance, Health and Small Scale Industries of the State government;
- f) Not more than six representatives of the state level Workers Welfare Boards or organizations providing social security to the unorganized sector workers that are members of the state Board;
- g) One expert in the management of insurance products and services;
- h) One expert in the area of social security and related issues in the unorganized sector; and
- i) One expert in the management of finances.

(2) The tenure of the members shall be for a period of three years. The Executive Council shall meet as often as required but not less than twice a year.

[a, b, c, and f may be based on the principle of rotation amongst the member-organisations.]

(3) Appropriate rules for appointment and removal from office of the chief executive shall be framed by the State Government.

20. Secretariat of the Board:

The State Board shall have a secretariat with adequate professional and other staff. . The staff of the State Board shall be governed by the State Government rules and regulations existing from time to time.

Chapter VI
REGISTRATION OF UNORGANISED SECTOR WORKERS

21. Eligibility for registration and for social security benefits:

(1) Every unorganised sector worker shall be eligible for registration subject to the following conditions:

- a) He/she should have completed 18 years of age; and
- b) a self declaration confirming that he/she is an unorganised sector worker.

(2) Every registered worker shall be eligible for national minimum social security benefits only if payments of regular contributions have been made.

22. Unique Identification Social Security Number

Each registered worker shall be eligible for receiving a Unique Identification Social Security Number in the form of an Identity Card issued in the name of the State Board. With a view to prevent duplication of identity, the Identity Card shall also carry the registration number of the ration card of the worker. In the absence of a ration card, the registration number on the voter's card shall be entered in the Identity Card.

23. District Committee for registration of workers:

A district-level committee shall be constituted as the registering authority for the National Social Security Scheme. The District Committee will have the District Collector/Magistrate as the Chairman and the District Labour Officer as its Convenor and Nodal Officer. The District Committee shall include:

- a) Two representatives of workers' organisations such as unions, associations or co-operatives in the unorganised sector;
- b) Two representatives of organisations working among the unorganised sector workers who do not have organisations of their own;
- c) Two representatives of employers' organisations in the unorganised sector;
- d) One representative of the Zillah Parishad and one from amongst the Nagar Palikas ; and
- e) A representative of the State Board.

24. Identity card:

This Identity Card shall be issued under the authority of the District Committee based on a formal application for registration from workers and forwarded by the Workers' Facilitation Centre with its recommendation. The District Committee shall send the Identity Cards to the Workers' Facilitation Centre for distribution to the workers concerned.

25. Portability of registration

The Identity Card issued by the District Committee to workers shall remain valid even in the case of migration to another district in the country and the new address can be changed on application to the District Committee concerned.

26. Cessation of registration

(1) The validity of the Identity Card shall be for a period of three years from the date of registration and can be renewed. If it is not renewed within one year of expiry, the worker will cease to be eligible for the benefits of the scheme. Renewals would be allowed on payment of arrears of contribution, if any.

(2) In the event of death, the Identify Card shall become invalid after the settlement of claims and the name of the worker shall be removed from the list of registered workers.

Chapter VII DELIVERY OF SOCIAL SECURITY BENEFITS

27. Implementation Machinery

(1) The member-organisations of the State Boards shall be responsible for the delivery of mandatory social security benefits as decided by the State and National Boards. If adequate member-organisations do not exist, the State Boards shall decide the manner in which social security benefits shall have to be delivered to the registered workers.

(2) The State Boards may decide on such delivery mechanism as may be feasible under local conditions. This may include existing delivery mechanisms as Welfare Boards or through tie-ups with local organisations like banks, post-offices and insurance companies.

28. Workers' Facilitation Centres:

(1) In order to extend coverage and reach the unorganised sector workers in remote areas the State Boards may designate any one or more of the following at the local level as Workers' Facilitation Centres (WFC) for purposes of facilitating registration of workers:

- a) Existing Worker Welfare Boards and their local offices;
- b) Local Panchayati Raj Institutions (PRI) or urban local bodies;
- c) Organisations of workers including trade unions, associations and cooperatives in the unorganised sector;
- d) Self-Help Groups; and
- e) Non-profit organisations working among the unorganised sector workers.

(2) Such designated Workers' Facilitation Centres shall perform the following functions:

- a) Disseminate information on available social security schemes for the workers;

- b) Facilitate the filling, processing and forwarding of application forms for registration of workers;
- c) Obtain registration from the District Committee and deliver the Identity Cards to the registered workers;
- d) Facilitate the registered workers to enrol in social security schemes;
- e) Act as an authorized intermediary in collecting contributions from the workers and employers to the social security schemes and remit them with the designated institutions;
- f) Ensure the delivery of social security benefits in cooperation with institutions designated to deliver such social security (insurance companies, Post Offices, Departments of the State/Central Government and other institutions concerned).

(3) The Workers' Facilitation Centres shall be entitled to charge such fees as may be decided by the State Board for the performance of its functions. Wherever required, it may also receive personnel recruited or deputed by the State Board for purposes of administration.

29. Premium and Compensation/Benefits:

(1) The National Board shall decide the amount and manner of payment of contribution by the workers to the National Social Security Schemes. It shall however be the responsibility of the State Boards to remit the contributions of registered workers and employers to the National Board.

(2) For schemes initiated by the State Boards, the State Board concerned shall decide the contributions of workers and employers.

(3) The claim of registered workers for social security benefits shall lie solely against the State Board and it shall be the responsibility of the State Board to settle the dues, if any.

Chapter VIII
DISPUTE RESOLUTION BODIES AND THEIR CONSTITUTION

30. Resolution of Disputes:

The State Government shall constitute at least one Dispute Resolution Council in each district for resolution of disputes relating to the non observance of provisions of this Act, arising amongst the unorganised sector workers, employers, Workers' Facilitation Centres and State Boards.

31. Reference of disputes:

- (1) Any unorganised sector worker or employer or organisation representing such worker or Workers' Facilitation Centres or State Boards may raise a dispute relating to the non-observance of provisions of this Act by filing a complaint before the Dispute Resolution Council in the manner prescribed by the State Government.
- (2) Upon reference of such dispute, the Dispute Resolution Council shall at the first instance proceed to arrive at a conciliated settlement to the satisfaction of all parties. Upon failure of such conciliation proceedings, the Dispute Resolution Council shall adjudicate on the matter as expeditiously as possible.
- (3) Where the dispute pertains to any matter covered by any other existing law, the Dispute Resolution Council shall forward the complaint to the appropriate authority created under the relevant Act for adjudication and such reference shall be treated as a valid complaint under such Act.
- (4) The Dispute Resolution Council shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (of 1908).

32. Consequences of contravention of provisions of this Act:

Whoever contravenes any provisions of this Act or the rules made there under, other than those made punishable under any other law, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both, and in case of continuing contravention, with additional fine which may extend upto one hundred rupees for every day during which such contravention continues. The Dispute Resolution Council shall be authorised to give the fine so collected either in whole or in part to the aggrieved party.

**Chapter IX
MISCELLANEOUS**

33. Accounts and Audit:

- (a) The National Board and the State Boards shall maintain proper accounts and other relevant records and prepare annual statements of accounts in such form as may be prescribed.
- (b) The National Board shall furnish to the Central Government, before such date as may be prescribed, the audited copy of the consolidated account of itself and the Funds together with the auditor's report.

34. Power to make Rules:

The Central and the State Government shall have the power to make rules for the purposes of carrying out the objects of the Act.

35. Savings:

This law shall not affect the functioning of any other State or Central Acts providing for substantially similar or superior benefits to the unorganised sector workers.

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UNORGANISED SECTOR WORKERS (CONDITIONS OF WORK & LIVELIHOOD PROMOTION) BILL, 2005.

Statement of objects and reasons

**Chapter I
PRELIMINARY**

1. Short title, extent, commencement and application
2. Definitions
3. Rules of evidence

Part-1

**Chapter II
CONDITIONS OF WORK TO BE ENSURED FOR THE UNORGANISED SECTOR WAGE WORKER**

PART-A: Agricultural

4. Conditions of work of the unorganised sector wage worker (agricultural)

PART-B: Non- Agricultural

5. Conditions of work of the unorganised sector wage worker (non-agricultural)

**Chapter III
DISPUTE RESOLUTION BODIES AND THEIR CONSTITUTION**

6. Resolution of Disputes
7. Reference of disputes
8. Contravention of provisions regarding employment of unorganised sector workers

Part-2

**Chapter IV
PROTECTION AND PROMOTION OF LIVELIHOOD OF SELF EMPLOYED WORKERS IN THE UNORGANISED SECTOR**

9. Measures for protection and promotion of livelihood of Self employed workers

Part-3

**Chapter V
STATE ADVISORY COMMITTEE**

- i. Constitution
- ii. Functions of the State Advisory Committee
- iii. Composition of the State Advisory Committee
- iv. Duration

**Chapter VI
MISCELLANEOUS**

14. Power to make Rules
15. Savings

Statement of objects and reasons

The unorganised sector of the Indian economy, accounting for more than 90 per cent of employment covers a variety of employments. The workers in this sector may be broadly divided into self-employed and wage workers. This Bill is intended to provide minimum conditions of work, protection and promotion of livelihoods and a mechanism for dispute resolution. Both the agricultural and non agricultural unorganised sector workers are covered under this bill.

UNORGANISED SECTOR WORKERS (CONDITIONS OF WORK & LIVELIHOOD PROMOTION) BILL, 2005.

A

BILL

to provide for minimum labour standards , dispute resolution mechanism and protection and promotion of livelihood system for unorganized sector workers (agricultural and non agricultural) and to provide for other matters connected therewith or incidental thereto.

BE it enacted by Parliament in the fifty-fifth year of the Republic of India as follows:-

Chapter I PRELIMINARY

1. Short title, extent and commencement and application:

- (1) The Act may be called Unorganised Sector Workers (Conditions of Work & Livelihood Promotion) Act, 2005.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

2. Definitions:

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

- a) **"Agriculture"** would include 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;

- (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.
- b) **"Child"** means a person who has not completed 15 years of age;
- c) **"Employer"** means a natural or juridical person, or an association of such persons, by whom any unorganised sector worker is engaged or employed either directly or otherwise, for any remuneration;
- d) **"Government"** means either Central Government, or State Government, or Union Territory administration;
- e) **"Home based worker"** means a person involved in the production of goods or services for 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;
- f) **"Self employed worker"** means any person who is not employed by an employer, but directly engages himself / herself in any occupation in the unorganised sector, subject to a monthly earning of Rs.5,000/- or such limits as may be notified from time to time, or, subject to such ceiling on land cultivated as may be notified from time to time by the State Government;
- g) **"Unorganised sector"** means all private unincorporated enterprises including own-account enterprises engaged in agriculture, industry, trade and/or business;
- h) **"Unorganised sector workers"** means a self employed worker or a wage worker;
- i) **"Wage worker"** means a person employed for a remuneration in the unorganised sector, directly by an employer or through any agency or contractor or under putting out system, 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 home based worker, or as a temporary or casual worker, or as a migrant worker, or as a outworker, or, workers employed by households including domestic workers, with a monthly wage of not more than Rs 5000/- or such limits as may be notified from time to time but does not include an unpaid family worker.

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 has been effected will be entirely on the employer wherever applicable.

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

Part -1

Chapter II
CONDITIONS OF WORK TO BE ENSURED FOR THE UNORGANISED SECTOR WAGE WORKER

PART-A: Agricultural

4. Conditions of work of the unorganised sector wage worker (agricultural):

The State Government shall ensure to every unorganised sector wage worker (agricultural), the following conditions of work:

a) No employer shall employ any unorganised sector wage worker (agricultural), in contravention of the following Acts:

- (i) Bonded Labour System (Abolition) Act, 1976;
- (ii) Child Labour (Prohibition and Regulation) Act, 1986;
- (iii) The Employment of Manual scavengers and Construction of Dry Latrines (Prohibition) Act, 1993; and
- (iv) Minimum Wages Act, 1948.

b) The normal hours of work shall be limited to eight hours a day beyond which a worker shall be appropriately compensated;

Provided that nothing contained in this section shall be deemed to prohibit an agreement between the employer and the wage workers 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 wage worker engaged in agriculture is required to work for less than eight hours.

c) Where the wages are determined by a piece rate system, the earnings of a worker working diligently for 8 hours should be at least equal to the time rated minimum wages fixed for that category of work in the state concerned;

d) All unorganised sector workers (agricultural), shall have the right to organise for collective bargaining;

e) No employer shall discriminate against any unorganised sector wage worker (agricultural), on the grounds of sex, caste, religion, place of origin in the payment of wages and conditions of work as laid down in this Act;

f) Every employer shall provide the unorganised sector wage worker (agricultural), with adequate safety equipment while handling hazardous substances and equipments;

g) The employer shall ensure that there is no sexual harassment at the workplace;

h) An employer engaged in agriculture shall give preference in employment to an unorganised sector wage worker (agricultural), who has worked on the same land during the previous agricultural season;

PART-B: Non-Agricultural

5. Conditions of work of the unorganised sector wage worker (non-agricultural):

The State Government shall ensure to every unorganised sector wage worker (non-agricultural), the following conditions of work:

- a) No employer shall employ any unorganised sector wage worker (non-agricultural), in contravention of the following Acts:
 - (i) Bonded Labour System (Abolition) Act, 1976;
 - (ii) Child Labour (Prohibition and Regulation) Act, 1986;
 - (iii) The Employment of Manual scavengers and Construction of Dry Latrines (Prohibition) Act, 1993; and
 - (iv) Minimum Wages Act, 1948.
- b) The normal hours of work shall be limited to eight hours a day beyond which a worker shall be appropriately compensated;
- c) Where the wages are determined by a piece rate system, the earnings of a worker working diligently for 8 hours should be at least equal to the time rated minimum wages fixed for that category of work in the state concerned;
- d) All unorganised sector workers (non-agricultural), shall have the right to organise for collective bargaining;
- e) No employer shall discriminate against any unorganised sector wage worker (non-agricultural), on the grounds of sex, caste, religion, place of origin in the payment of wages and conditions of work as laid down in this Act;
- f) Every employer shall provide the unorganised sector wage worker (non-agricultural), with adequate safety equipment while handling hazardous substances and equipments;
- g) The employer shall ensure that there is no sexual harassment at the workplace;

Chapter III
DISPUTE RESOLUTION BODIES AND THEIR CONSTITUTION

6. Resolution of Disputes:

The State Government shall constitute at least one Dispute Resolution Council in each district for resolution of disputes relating to the non observance of provisions of this Act arising amongst the unorganised sector wage workers and employers.

7. Reference of disputes:

1. Any unorganised sector wage worker or employer, or, organisation representing such worker may raise a dispute relating to the non-observance of conditions of work as specified in this Act by filing a complaint before the Dispute Resolution Council in the manner prescribed by the State Government.
2. Upon reference of such dispute, the Dispute Resolution Council shall at the first instance proceed to arrive at a conciliated settlement to the satisfaction of both parties. Upon failure of such conciliation proceedings, the Dispute Resolution Council shall adjudicate on the matter as expeditiously as possible.
3. Where the dispute pertains to any matter covered by any other existing law, the Dispute Resolution Council shall forward the complaint to the appropriate authority created under the relevant Act for adjudication and such reference shall be treated as a valid complaint under such Act.
4. The Dispute Resolution Council shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (of 1908).

8. Contravention of provisions regarding employment of unorganised sector workers:

Whoever contravenes any provisions of this Act or the rules made thereunder, other than those made punishable under any other law, regarding the employment of unorganised sector workers, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both, and in case of continuing contravention, with additional fine which may extend upto one hundred rupees for every day during which such contravention continues. The Dispute Resolution Council shall be authorised to give the fine so collected either in whole or in part to the aggrieved party.

Part-2

Chapter IV

PROTECTION AND PROMOTION OF LIVELIHOOD OF SELF EMPLOYED WORKERS IN THE UNORGANISED SECTOR

9. Measures for protection and promotion of livelihood of Self employed workers:

The appropriate State Government shall seek to safeguard and promote the livelihood of the self employed workers in the unorganised sector through the following measures:

- (i) Provision of credit, adequate raw material (input) supply and adequate marketing facilities for the goods and services produced;
- (ii) Ensuring access to Banking Institutions, in the State or co-operative Sector and / or such appropriate arrangement for the purpose of affordable credit facilities;
- (iii) Ensuring the right to livelihood including the right over common properties and natural resources in the following manner:
 - a) Ensuring the traditional rights of all types of unorganised sector workers having traditional access to common property resources for their livelihood ;
 - b) Ensuring the right of unorganised sector workers to share public space to engage in economic activities;
- (iv) Ensuring that city plans and rural development plans pay adequate regard to the concerns of self employed workers such as street vendors, and protection and promotion of their livelihood;
- (v) Encourage the promotion of associations of self employed workers with a view to articulation of their problems and such organisation would have standing to raise grievance before the State Advisory Committee.

Part-3

Chapter V

STATE ADVISORY COMMITTEE

10. Constitution:

A State Advisory Committee shall be constituted by every State Govt. or Govt of the Union Territory for self employed as well as wage worker in the unorganised sector.

11. Functions of the State Advisory Committee

Every State Advisory Committee shall have the following functions:

- (i) to advise the Government regarding the promotion of gainful employment opportunities for unorganised sector workers;

- (ii) to advise and develop plans for the promotion of livelihood options available for self employed workers in the unorganised sector;
- (iii) to identify skill and training requirements for both self employed workers and wage workers in the unorganised sector and to advise the government accordingly;
- (iv) collect, compile and publish statistics with the help of statistical organisation regarding the unorganised sector and the possibilities and challenges facing the unorganised sector in terms of employment opportunities;
- (v) to assess and advise the government on the credit requirements and banking needs of this sector;
- (vi) to carry out periodic surveys on the condition of work in the unorganised sector and to make suitable recommendations to the government; and
- (vii) to encourage the promotion of labour cooperation to secure gainful employment and dignified conditions of work;
- (viii) To hold public hearings to entertain petitions submitted by the unorganised sector workers and to explain the efforts made to address the grievances of unorganised sector workers.

12. Composition of the State Advisory Committee

A State Advisory Committee shall consist of the Minister of Labour who shall be Chairperson and the Secretary, Ministry of Labour who shall be the Member-Secretary. In addition the Committee shall consist of the following:

- (i) Four representatives of unions of unorganised sector wage workers;
- (ii) Four representatives of organisations of self employed workers in the unorganised sector;
- (iii) One representative each from the Ministries of Agriculture, Labour, Industry, Banking, Panchayats, Rural development and Health of the State Government ; and
- (iv) Appropriate number of experts in the area of skill formation, finance, marketing, technology and natural resource management.

13. Duration:

The tenure of the members shall be for a period of three years. The State Advisory Committee shall meet as often as required but not less than twice a year.

Chapter VI MISCELLANEOUS

14. Power to make Rules:

The Central and State Government shall have the power to make rules for the purposes of carrying out the objects of the Act.

15. Savings:

This law will not affect the functioning of any other State or Central Acts providing for substantially similar or superior benefits to the unorganised sector workers.

* * * * *

ITEM II : AMENDMENT OF LABOUR LAWS

SECTION-1: AMENDMENT OF WAGE RELATED LABOUR LAWS

Presently, there are about fifty different labour laws which, to an outsider appear difficult to comprehend and too much to digest. The Second National Commission on Labour (2nd NCL) which submitted its Report in June,2002, had recommended that the existing set of labour laws should be broadly clubbed into four or five groups of laws pertaining to Industrial Relations, Wages, Social Security, Health & Safety, Welfare and working conditions etc. The Commission, inter-alia also suggested an indicative draft law on Wages amalgamating Minimum Wages Act, 1948, Payment of Wages Act, 1936, and Payment of Bonus Act, 1965 besides Equal Remuneration Act, 1976.

The issue of amalgamation of the above Acts was referred to Shri S.Gopalan, former Labour Secretary who was engaged by the Ministry of Labour and Employment as Consultant. His recommendations in gist are as under:

“The provisions of the existing laws are rather precise and compact. While integration of these laws is theoretically and technically feasible, it does not result in any simplification.”

Ministry also agreed to above opinion and finally it decided to go ahead with amendments in individual Acts. The present position and proposed amendments in respect of wage related acts is as follows:

(i) The Payment of Wages Act, 1936

The Payment of Wages Act is a labour friendly Central legislation which ensures that wages payable to employed persons are timely disbursed and no unauthorized deductions are made from their wages. The Act has a principal clause of wage ceiling which decides the coverage of the Act. Till now, it covered only those employees whose wage ceilings are less than Rs.1600 p.m. Accordingly, a Bill namely *The Payment of Wages (Amendment) Bill, 2005* to enhance the wage ceiling from Rs.1600/- to Rs.6500/- per month and enhancement in penal provisions etc. has been passed by Lok Sabha on 17.8.2005 and by Rajya Sabha on 24.8.2005. The Payment of Wages (Amendment) Act, 2005 has received the assent of the President on 5th September, 2005 and has been notified by Ministry of Law

and Justice on 6th September, 2005. The effective date of its implementation is being notified by the Ministry of Labour and Employment.

In view of the facts stated above, the Payment of wages (Amendment) Bill 2005 (Now Act 41 of 2005) has been kept outside the purview of the discussion in ensuring ILC. The amendment proposals in respect of Payment of Bonus Act, 1965 and Minimum Wages Act, 1948 are presented as below:

(ii) The Payment of Bonus Act, 1965:

A proposal to amend the Payment of Bonus Act, 1965 so as to enhance the eligibility limit from Rs.3500/- to RS.7500/- and calculation ceiling from Rs.2500/- to Rs.3500/- as per the recommendations of Second National Commission on Labour (NCL) is under consideration in consultation with all concerned.

(iii) The Minimum Wages Act, 1948

The Minimum Wages Act was enacted in the year 1948 to safeguard the interests of the workers in the unorganized sector who are vulnerable to exploitation due to illiteracy, lack of bargaining power and institutional backup. The Act binds employers to pay the minimum wages to the workers engaged in the scheduled employments and provides for fixation of number of working hours constituting a normal working day, weekly rest, overtime, to secure enforcement of the Act, filing of claims before the claim authority, legal and penal provisions against the defaulting employers etc. Under the Act both Central and State Governments are the appropriate government to fix, revise and enforce minimum wages in the scheduled employments under their respective jurisdiction.

In order to protect the wage against inflation, the concept of Variable Dearness Allowance has been floated linking the minimum wage to the Consumer Price Index. The enforcement of the Act is secured at two levels. In the Central sphere, the implementation is ensured through the office of Chief Labour Commissioner (Central) while in the State sphere it is through State Enforcement Machinery.

The Minimum Wages Act, 1948 was last amended in the year 1986 and at present a comprehensive amendment is under consideration of the Government. As per direction of the Cabinet, draft proposals were circulated on 2.7.2001 to all the State Governments/UT administrators for obtaining approval of the respective Labour Ministers. The comments received there from are being examined in the Ministry. The proposed amendments alongwith the present provisions in the Minimum Wages Act, 1948, as annexed, are open for discussion.

EXISTING PROVISIONS AND AMENDMENT PROPOSALS TO THE MINIMUM WAGES ACT, 1948

| Sl. No. | Section (1) | Existing Provision (2) | Amendment under Discussion (3) |
|---------|---------------|--|--|
| 1 | 3(1) (a) | The appropriate Government shall, in the manner hereinafter provided,- Fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either Part by notification under Section 27: | The appropriate Government shall, in the manner hereinafter provided,- Fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either Part by notification under Section 27: The Minimum rate of Wages fixed by the appropriate Government will also be applicable to "Other Employments not covered in the Schedule". |
| 2. | 3(1)(b) | Review/revision of minimum rates of wages at intervals not exceeding 5 years. | To reduce the period of review/revision from 5 years to 2 years unless the minimum wage has a component of VDA linked to CPI in which case it shall continue to be 5 years. |
| 3 | 3(2-A) | During the pendency of an industrial dispute regarding payment of minimum wages before a Tribunal etc. under the ID Act, if the minimum wages are revised in any manner, then the revised rates will not be payable to such employees. | To ensure the payment of wages to such workers at revised rates during the pendency of the wage dispute which would be payable from the date of such revision. |
| 4 | 3(3)(a) (iii) | Fixation of different rates of wages for adults, adolescents, children and apprentices. | To delete this provision relating to differential wages. |
| 5. | 8(2) and 9 | The Central Advisory Board and various Committees of Minimum Wages must have representatives inter alia from the scheduled employments. | To add the following proviso "provided that all scheduled employments need not be individually; represented in the Advisory Boards/Committees/ Sub-Committees." |
| 6 | 11(2) | The appropriate Government may authorize payment of minimum wages either wholly or partly in kind. | The wages may be paid in cash except agricultural operations where it can be wholly in kind as decided |

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| | | | by the appropriate Governments. |
| 7 | 18(3) | The appropriate Government may, by rules made under this Act, provide for issue of wages books or wage slips to employees employed in any scheduled employment in respect of which minimum rates of wages have been fixed and prescribed, the manner in which entries shall be made and authenticated in such wage books or wage slips by the employer or his agent. | The appropriate Government may, by rules made under this Act, provide for issue of employment cards, wage books or wage slips to employees employed in any scheduled employment in respect of which minimum rates of wages have been fixed and prescribed, the manner in which entries shall be made and authenticated in such employment cards, wage books or wage slips by the employer or his agent. |
| 8. | 20(1) | Regional Labour commissioners/State Labour Commissioners are competent authorities for adjudicating the wage claims. | To empower the appropriate Government to appoint Assistant/Regional Labour Commissioners, as claim authority at the Central level and the Labour Officer, Commissioner at the State level provided the officer as appointed has at least two years experience in the related field. Also, the term "Stipendiary Magistrates" will be substituted by "Executive or Judicial Magistrates". To also add a provision to enable aggrieved employee or his heir or a registered voluntary organization or a registered trade union of which the employee is a member to file a claim. |
| 9. | 20(2) | Period of limitation for submission of claim applications is 6 months from the day it becomes due. | To enhance this period to two years. |
| 10. | 20 (3)(ii) | When a claim is entertained, the Claims Authority may inter-alia direct the payment of compensation not exceeding Rs. 10/-. | To enhance the amount of compensation in cases other than short payment of wages to a maximum of 10 times of the amount due to a worker. |
| 11 | 20(5)(b) | The Claim Authority has to approach the magistrate in case the Claim Authority himself is not a magistrate to recover the awarded amount from the delinquent employer as if the awarded amount is a fine imposed by such magistrate. | The claim authority to recover the amount by issuing a certificate to the District Collector or any other Officer authorized on his behalf who shall proceed to recover it as arrears of land revenue. |

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| 12 | 20(7) | | Amendment of a technical nature to replace the words "Chapter XXXV" of the Code of Criminal Procedure, 1898 by "Chapter XXVI" of the Code of Criminal Procedure, 1973 (2 of 1974). |
| 13 | 20(8) | To add a new provision 20(8) | To empower the Claims Authority to direct an employer to deposit with the authority an amount not exceeding 50% of the claim during the pendency of claim case and in case of failure of an employer in depositing the amount, the Claim Authority to recover the amount by issuing a certificate to the District Collector or any other officer authorized on his behalf who shall proceed to recover it as arrears of land revenue. |
| 14 | 21(1) | Single application in respect of a number of employees (Subject to such rules as may be prescribed, a single application) may be presented under Section 20 on behalf or in respect of any number of employees employed in the scheduled employment in respect of which minimum rates of wages have been fixed and in such cases the maximum compensation which may be awarded under sub-section (3) of Section 20 shall not exceed 10 times the aggregate amount of such excess (or Rs. 10 per head as the case may be). | Single application in respect of a number of employees (Subject to such rules as may be prescribed, a single application) may be presented under Section 20 on behalf or in respect of any number of employees employed in the scheduled employment in respect of which minimum rates of wages have been fixed and in such cases the maximum compensation which may be awarded under sub-section (3) of Section 20 shall not exceed 10 times the aggregate amount of such excess (or Rs. 100 per head as the case may be). |
| 15 | 21 | New provision under Section 21(3) | To provide for disposal of claim cases by the authority within 6 months. This period may, however, be extended further by the authority if both parties to the dispute agree for such extension of time or for any other reason to be recorded by the authority deciding the claim cases. |
| 16 | 22 | Penalty of a fine upon Rs. 500/- or imprisonment upto 6 months or both for contravention of provision of Section 12 relating to payment of | To enhance fine upto Rs. 2000/- or imprisonment upto 6 months or both on first conviction. For the second and subsequent contraventions, |

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| | | minimum wages and under section 13 relating to rules/orders fixing hours for a normal working day etc. | penalty shall be imprisonment upto one year or a fine of Rs.5,000/- to Rs.10,000/ or both. |
| 17 | 22 A | For non-maintenance of registers and non- display of notice etc., a fine upto Rs.500/- | To enhance fine upto Rs. 1000 for the first conviction and for the second and subsequent contraventions, a fine of Rs.5000/-. |
| 18 | 22 AA | New Provision 22AA for compounding of offences | The appropriate Government is empowered to prescribe the officers or authorities, by a separate notification, who shall be authorized to compound any offence punishable under Section 22 and 22A. The offences should be compoundable with fine only either before or after institution of the prosecution with an amount of composition fee which shall not exceed the maximum amount of fine for the offence and on the payment of wages and any other payment as mutually settled by the employer and the employee. The notification shall also specify the manner and the amount of fine and composition fee to be imposed for each category of contravention. |
| 19 | 27 | The appropriate Government, after giving by notification in the official gazette not less than 3 months notice of its intention to do so, may, by like notification, add to either part of the Schedule any employment in respect of which it is of opinion that minimum rates of wages should be fixed under this Act, and thereupon the Schedule shall in its application to the (State) be deemed to be amended accordingly. | The appropriate Government, after giving by notification in the official gazette not less than 3 months notice of its intention to do so, may, by like notification, add or alter or delete or modify to either part of the Schedule any employment in respect of which it is of the opinion that minimum rates of wages should be fixed under this Act, and thereupon the Schedule shall in its application to the (State) be deemed to be amended accordingly. |
| 20. | | A new Section to be added. | Delegation of powers by the Central Govt. to the State Governments. |

SECTION-II: INDUSTRIAL DISPUTES ACT, 1947

The Industrial Disputes Act 1947 provides a framework for investigation and settlement of the industrial disputes. The Act also seeks to regulate illegal strikes and lockouts, and provides protection to the workmen in case of lay-off, retrenchment and closure of establishments.

2. The Second National Commission on Labour had submitted its Report to the Government in June 2002. These recommendations were discussed in the Indian Labour Conference (ILC) held in September 2002 and October 2003. A national seminar involving the social partners was also held at V.V.Giri National Labour Institute, Noida, in February 2003 to discuss these recommendations. So far, there has been no consensus on rationalisation of labour laws.

3. Economic reforms, particularly liberalisation of industrial and trade policies have accentuated a demand for amending the Industrial Disputes Act 1947 so as to reorient it towards securing greater industrial harmony enhancing production and productivity, creating an environment to stimulate growth, attracting both domestic and foreign investment, while ensuring the dignity of labour and a fair deal to the workmen as per the National Common Minimum Programme of the Government. To achieve these objectives, some amendments are required to the Industrial Disputes Act, 1947 which was last amended in 1982. The National Common Minimum Programme reads as follows:

“The UPA rejects the idea of automatic hire and fire. It recognises that some changes in labour laws may be required but such changes must fully protect the interests of workers and families and must take place after full consultation with trade unions. The UPA will pursue a dialogue with industry and trade unions on this issue before coming up with specific proposals. However, labour laws other than the Industrial Disputes Act that create an Inspector Raj will be re-examined and procedures harmonised and streamlined”.

Keeping in view the spirit of Common Minimum Programme and protecting the interest of the workers and their families, the following amendments may be considered by the social partners.

Grievance Redressal Authority

4(i). In order to promote better industrial relations at the industrial establishment level, there is a long-felt need to provide for an internal grievance redressal machinery. The Bipartite Committee on new Industrial Relations Law (Ramanujam Committee) in its report had stated in regard to the disputes affecting individual employees that every establishment employing 50 or more persons must have a grievance redressal procedure. This recommendation of the Committee has been examined and it is proposed to provide an elaborate grievance ventilation and redressal machinery within an establishment having 20 or more workmen with two stage appeal. The decision taking authority on the grievance will be at the level of the person who supervises the workmen. The first appeal will be at the next higher level, which could be the plant level. The second appeal will be at the level of head of the industrial establishment. The details of the internal grievance redressal machinery proposed are given in **Annexure-I**.

2nd NCL had recommended (Para 6.80) that every establishment shall establish a Grievance Redressal Committee consisting of equal number of workers' and employer's representatives.

Appropriate Government – Section 2(a)

(ii) The present definition of the 'appropriate government' given in section 2(a) of the I.D. Act, 1947, as interpreted by the Hon'ble Supreme Court in the Judgement delivered on 30.08.2001 in the case of Steel Authority of India Ltd. & Others Vs. National Union Water Front Workers & Others does not give the powers of 'appropriate government' to the Central Govt. for all Central Public Sector Undertakings (CPSUs) although under Chapter-VB of the I.D. Act for purposes of lay-off, retrenchment and closure, the Central Government is the "appropriate government". As a result, for reference of industrial disputes to Tribunals under section-10 of the Act, in some cases State Governments will be the 'appropriate government' for CPSUs. This has created certain anomalies and therefore it is proposed to change the definition as under:

The Central Government in addition to continuing as the "appropriate government" in respect of categories listed in Section 2(a)(i) of the I.D. Act (**Annexure –II**) would be the appropriate government in relation to :

- (i) All Central Public Sector Undertakings or corporation or Boards or authorities established or constituted by an Act of Parliament;
- (ii) Disputes of national importance or disputes, which have repercussion in more than one State.

2nd NCL has recommended (Para 6.24) that the Central Govt. should be the 'appropriate Govt.' in respect of Central Government Establishments, Railways, Posts, Telecommunications, Major Ports, Lighthouses, Food Corporation of India, Central Warehousing Corporation, banks (other than Cooperative banks, insurance, financial institutions, mines, stock exchanges, shipping, mints, security printing presses, air transport industry, petroleum industry, atomic energy, space, broadcasting and television, defence establishments, Cantonment Boards, Central social security institutions and institutions such as those belonging to CSIR, ICAR, ICMR, NCERT and in respect of industrial disputes between the contractor and the contract labour engaged in these enterprises/establishments. In respect of all others, the concerned State Government/Union Territory administrations should be the appropriate government. In case of dispute, the matter will be determined by the National Labour Relations Commission that we want to be set up.

Repeal of Section 2(c) of the I.D.(Amendment) Act, 1982.

(iii). It is also proposed to repeal section 2(c) and section 24 of the ID (Amendment) Act, 1982, which have not been enforced as yet. (**Annexure III**).

Reasons for not enforcing Section 2(c) of the I.D. (Amendment) Act, 1982:

In this regard the question of notification of Section 2(c) of the Industrial Disputes (Amendment) Act, 1982, GOM took note of the following:

- (i) At the time of introduction of the Amendment Bill in Parliament a commitment had been given in the Statement of Objects and Reasons that a separate law for the settlement of grievances/disputes of workmen in respect of institutions proposed to be excluded from the definition of the term "industry" would be put in place. This commitment has not yet been fulfilled.
- (ii) A case is pending in the Hon'ble Supreme Court on section 2(j) in which the Government of India filed a writ petition by way of special leave appeal (civil) No.3712/95 from the Judgement of the High Court of Bombay at Nagpur in Shri Gajanan Maharaj Sanstha, Shegaon, Distt. Buldhana Vs. union of India, where the Government has informed the Hon'ble Apex Court that it has not been able to notify section 2(c) for want of an alternative grievance redressal machinery for the workmen of the excluded category of activities from the purview of the I.D. Act. The Hon'ble Supreme Court, vide their Orders dated 02.02.1998 granted stay in this case.
- (iii) In reply to a Starred Question in the Lok Sabha on 12th March, 2001 it had been stated that notification of section 2(c) of the I.D. (Amendment) Act, 1982 will have to await finalisation of the alternative grievance redressal machinery and until then the existing definition of 'industry' under the I.D. Act, 1947 would continue to prevail.

The GOM also noted that the Group of Secretaries had given the recommendation that notification of section 2(c) at this stage without creation of alternative grievance redressal machinery would create controversy and should not be considered.

Public Utility Services

- (iv) Section 2 (n) (vi) of the Industrial Disputes Act, 1947 stipulates that any industry specified in the First Schedule, may be declared by the appropriate Government, by a notification in the Official Gazette, to be a public utility service. The period specified for such public utility service will not exceed six months in the first instance. This period, however, could be extended by the appropriate Government from time to time, by any period not exceeding six months, at any one time. It is proposed that the period of six months provided for validity of a notification for the first instance and for subsequent extensions, may be extended to three years to avoid unnecessary paper work and for administrative convenience.

The Ministry of Commerce have suggested that industries in Special Economic Zones, Export Processing Zones and 100% Export-Oriented Undertakings be declared permanent public utility service for improving the investment scenario in this sector. It is, therefore, proposed to insert a new entry to section-2(n)(v)(a): Industries in Special Economic Zones/Export Processing Zones and 100% Export-Oriented Undertakings.

Relaxation of Qualification of Presiding Officers, CGIT.

- (v). At present serving/retired High Court/District Judges are eligible to work as Presiding Officers in the Central Government Industrial Tribunals. This is creating considerable problems in the

availability of officers willing to serve as Presiding Officers in the Central Government Industrial Tribunals.

It is proposed to make officers of the Central Labour Service in Grade-III or State Labour Service of the rank of Joint Labour Commissioner with five years experience, Indian Legal Service in Grade-II with three years of experience eligible for the post of Presiding Officer in the Central Govt. Industrial Tribunals.

2nd NCL has recommended (Para 6.95) that Dy. Labour Commissioner/RLC with 10 years experience in the labour deptt. and a degree in law may be eligible for being appointed as P.O. of Labour Court.

Power to enforce Decree by Tribunals

(vi) At present there are no powers given to Tribunals under the I.D. Act to enforce the award/order given by them. As a result, the enforcement machinery finds it extremely difficult to enforce the awards.

It is proposed to provide that any award, order or settlement made or issued or arrived at by or before a Tribunal or National Tribunal shall be executable as a decree of Civil Court and also to provide for transmitting any award, order or settlement to a Civil Court having civil jurisdiction and such Civil Court shall execute the same as if it were a decree.

2nd NCL has recommended (Para 6.95) that the Labour Court shall be empowered to enforce their own award as well as the awards of Labour Relations Commissions.

Salaries and allowances and other terms and conditions of service of Presiding Officers of Industrial Tribunals

(vii) At present no specific provision has been made in the I.D. Act with regard to salaries and allowances and other terms and conditions of service of Presiding Officers. It is, therefore, necessary to make the matter more explicit by framing rules by the appropriate Government.

It is proposed to make a specific provision in the Act that the Government has the right to decide the terms and conditions for appointment of Presiding Officers.

It is, therefore, proposed to substitute section-7A of the Industrial Disputes Act, 1947 relating to Tribunals to provide for the above.

Notice of Change (Section 9-A)

(viii) The Fourth Schedule of the ID Act (**Annexure-IV**) mentions certain conditions of service for change for which notice is to be given. It has been represented to the Government that such provisions bring in rigidity and come in the way of effecting rationalisation measures, promoting diversification and reinvestment, thereby affecting the overall performance of the industry.

It is, therefore, proposed that in addition to provisos (a) & (b) of section 9 A (**Annexure-IV**) where no notice is required for effecting any such change in the condition of service, an additional proviso (c) be included on the following lines:

'Involving rationalisation, standardization or improvement of plant or technique which is likely to lead to retrenchment of workers and for which the employer has provided a Voluntary Retirement Scheme (VRS)'.

At present any increase or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department or shift is treated as a change in service conditions under item No. 11 of the Fourth Schedule (**Annexure-IV**) of the Industrial Disputes Act, 1947 and a notice to the workmen is to be served. As a result of this provision, the employer is not able to re-deploy man-power very easily to enhance productivity and efficiency of the establishment. It is therefore proposed to delete item No.11 from the Fourth Schedule of the I.D.Act, 1947.

2nd NCL has recommended (para 6.82) that there need be no statutory obligation for employer to give prior notice in regard to item 11 of the Fourth Schedule. Notice of Change issued under Section 9A should not operate as stay under Section 33.

Direct Reference of Disputes connected with Termination/ Dismissal/ Retrenchment/ Discharge to Industrial Tribunals

(ix) It is proposed that reference under section 10 of the Industrial Disputes Act to an Industrial Tribunal shall be made with respect to a dispute referred to in this section, only after grievance has been referred to the Grievance Redressal Authority within an establishment and the decision of the Grievance Redressal Authority is not acceptable to any of the parties to the grievance. Disputes arising out of dismissal, discharge and retrenchment or otherwise termination of services would be provided direct access to Industrial Tribunals for all individual workmen, after exhausting the process of grievance redressal authority. These cases need not be sent to the appropriate Government by the conciliation machinery for reference to the Industrial Tribunals.

2nd NCL has recommended (para 6.96) that all matters pertaining to individual workers, be it termination of employment or transfer or any other matter be determined by recourse to Grievance Redressal Committee, Conciliation and arbitration/adjudication by the Labour Court.

Special provisions relating to lay-off, retrenchment and closure

(x) Chapter V-B of the Industrial Disputes Act 1947 is concerning special provisions relating to lay-off, retrenchment and closure. This chapter applies to industrial establishments of factories, mines and plantations employing not less than 100 workmen. These provisions, inter alia, stipulate that the employers, before effecting lay-off, retrenchment or closure, must obtain prior approval of the appropriate government after following the prescribed procedure. The existing provisions do not encourage small employers to engage workmen due to the apprehension that they would not be in a position to reduce the number of workmen when they do not have sufficient order or demand in the market for their goods or services. This provision also discourages domestic as well as foreign interment in the industrial sector. Lay-off, retrenchment and closure of establishments, therefore, need to be made less cumbersome in the interest of the employers as well as the workers.

The Hon'ble Finance Minister, in his speech while presenting the Union budget for 2001-02, observed that some of the existing provisions in the Industrial Disputes Act 1947, particularly those

stipulating prior approval of the appropriate government for effecting lay-off, retrenchment and closure, had made it almost impossible for the industrial firms to exercise any labour flexibility, and announced that it was proposed that the provisions of Chapter V-B might then apply to industrial establishments employing not less than 1000 workers instead of 100. The Second National Commission on Labour also recommended that industrial establishments employing less than 300 workmen should be free from the hassles of getting permission of the appropriate government for lay-off, retrenchment and closure.

Amendment of the provisions of Chapter V-B to raise the number filter to 300 workmen, instead of 100, is under wide discussion. This amendment, if carried out, will lead to higher investment which will in turn result in growth of employment opportunities. Simultaneously, it will also attract foreign companies to invest more in India.

2nd NCL has recommended (Para 6.43) that the term retrenchment should be defined precisely to cover only termination of employment arising out of reduction of surplus workers.

(Para 6.88) No prior permission is required for lay-off and retrenchment. Chapter VB provisions pertaining to permission for closure should be made applicable to all establishments to protect the interest of workers employing 300 or more workers.

(Para 6.91) The provision for permission to close down an establishment employing 300 or more workmen should be made a part of Chapter VA and Chapter VB should be repealed. Sixty days notice will be required to be given for retrenchment and closure.

Retrenchment compensation

(xi) At present, under Section 25F, a retrenchment compensation of 15 days' average pay for every completed year of service or any part thereof in excess of six months is admissible to the workmen. The Hon'ble Finance Minister, in his speech while presenting the Central budget for 2001-02, announced that the separation compensation would be increased from 15 days' to 45 days' average pay for every completed year of service, and that the enhancement of compensation would not only help the workmen to sustain him during the period of unemployment but also act as a deterrent on employers to take recourse to retrenchment in a routine manner. It is, therefore, proposed to increase the retrenchment compensation to workmen from 15 days' to 45 days' average pay for every completed year of service.

2nd NCL has recommended that (Para 6.88) that all dues of workers have to be first settled as a precondition to retrenchment or closure. In case of closure (a) profit making unit 45 days wages (b) loss making unit 30 days wages as compensation. Units employing less than 100 workers will have to pay 50 per cent of amount mentioned above as compensation for retrenchment and closure. In case of running sick units 45 days and profit making organizations 45 days retrenchment compensation to become viable.

Power to exempt (Section 36-B)

(xii) At present the appropriate Government has power to exempt only industrial establishment or undertaking carried on by a department of that Government from the purview of the I.D. Act. However, for granting such exemption the pre-requisite is that there should be adequate provisions for the investigation and settlement of industrial disputes in respect of workmen employed in such establishment or undertaking or class of establishment or undertaking. It has been observed that many other establishments, over a period of time, have made adequate

provisions for the investigation and settlement of industrial disputes in respect of workmen employed in such establishments.

It is, therefore, proposed to give adequate power to the appropriate Government to exempt, subject to the existence of a machinery for investigation and settlement of disputes, any industrial establishment or a class of industries such as in Export Promotion Zones/Special Economic Zones, Information Technology Parks, etc. from the purview of this Act.

Details of the Internal Grievance Redressal Machinery

Individual Grievance - The grievance redressal procedure may provide for the following:

1) Grievance Redressal Authority :

- (i) The employer shall provide a Grievance Redressal Authority for the settlement of disputes connected with an individual workman employed in the establishment. The employer may provide for more than one Authority considering the number of employees and disputes specifying the jurisdiction of the Authority.
- (ii) The concerned workman or his authorised representative may refer such dispute to Grievance Redressal Authority appointed by the employer.
- (iii) The Grievance Redressal Authority shall investigate into the dispute and complete the proceedings within three months and submit his report to the Head of the establishment with a copy to the concerned parties.

2) Appellate Authority :-

The workman or his authorised representative may apply to Appellate Authority aggrieved by the decision of the Grievance Redressal Authority duly appointed by the employer. Any appeal against the decision of Grievance Redressal Authority shall be disposed of within one month and submit his report to head of establishment with a copy to the concerned workman.

3) Final Appellate Authority :-

There shall be a Final Appellate Authority duly appointed by the employer, who will hear and decide the matter within 15 days after receiving the application against the decision of Appellate Authority and submit his report to the employer with a copy to the concerned workman.

Establishments for which the Central Government is the Appropriate Government - Section 2(a)(i) of the I.D. Act.

- (a) "appropriate Government" means-
- (i) in relation to any industrial disputes concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any such controlled industry as may be specified in this behalf by the Central Government or in relation to an industrial dispute concerning a Dock Labour Board established under Section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948), or the Industrial Finance Corporation of India Ltd. formed and registered under the Companies Act, 1956 (1 of 1956) or the or the Employees' State Insurance Corporation established under section 3 of the Employees' State Insurance Act, 1948 (34 of 1948), or the Board of Trustees constituted under section 3-A of the Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 (45 of 1948), or the Central Board of Trustees and the State Boards of Trustees constituted under section 5-A and section 5-B, respectively, of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (19 of 1952), or the Life Insurance Corporation of India established under section 3 of the Life Insurance Corporation Act, 1956 (31 of 1956), or the Oil and Natural Gas Corporation Ltd. registered under the Companies Act, 1956 (1 of 1956) or the Deposit Insurance and Credit Guarantee Corporation established under section 3 of the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (47 of 1961), or the Central Warehousing Corporation established under section 3 of the Warehousing Corporations Act, 1962 (58 of 1962), or the Unit Trust of India established under section 3 of the Unit Trust of India Act, 1963 (52 of 1963), or the Food Corporation of India established under section 3, or a Board of Management established for two or more contiguous States under section 16 of the Food Corporations Act, 1964 (37 of 1964), or the Airport Authority of India constituted under section 3 of the Airports Authority of India Act, 1994 (55 of 1994), or a Regional Rural Bank established under section 3 of the Regional Rural Banks Act, 1976 (21 of 1976), or the Export Credit and Guarantee Corporation Ltd; or the Industrial Reconstruction Bank of India Ltd. , the National Housing Bank established under section 3 of the National Housing Bank Act, 1987 (53 of 1987), or an air transport service, or a banking or an insurance company, a mine, an oilfield, a Cantonment Board, or a major port, the Central Government.

Section 2(c) of the Industrial Disputes (Amendment) Act, 1982

2(c), for clause (j), the following clause shall be substituted, namely:-

- (i) "Industry" means any systematic activity carried on by cooperation between an employer and his workman (whether such workman are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services, with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not
- (ii) any capital has been invested for the purpose of carrying on such activity; or
- (iii) Such activity is carried on with a motive to make any gain or profit, and includes-
 - (a) any activity of the Dock Labour Board established under Section 5-A of the Dock Workers (Regulation of Employment) Act, 1948 (9 of 1948);
 - (b) any activity relating to the promotion of sales or business or both carried on by an establishment but does not include-
 - (1) any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one.

Explanation - For the purpose of this sub-clause, "agricultural operation" does not include any activity carried on in a plantation as defined in clause (f) of Section 2 of the Plantations Labour Act, 1951; (69 of 1951); or

- (2) hospitals or dispensaries; or
- (3) educational, scientific research or training institutions; or
- (4) institutions owned or managed by organisations - wholly or substantially engaged in any charitable, social or philanthropic service; or
- (5) Khadi Village Industries; or
- (6) any activity of the Government relating to the sovereign functions of the Government, including all the activities carried on by the departments of Central Government dealing with defence research, atomic energy and space;
- (7) any domestic service; or
- (8) any activity, being a profession practised by an individual or body of individuals, if the number of persons employed by the individuals or body of individuals in relation to such profession is less than ten; or

- (9) any activity, being an activity carried on by a cooperative society or a club or any other like body of individuals, if the number of persons employed by the cooperative society, club or other like body of individuals in relation to such activity is less than ten.

Section 9A of I.D.Act, 1947

NOTICE OF CHANGE

9A. Notice of change - No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change, -

- (a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or
- (b) within twenty-one days of giving such notice;

Provided that no notice shall be required for effecting any such change -

- (a) where the change is effected in pursuance of any settlement or award; or
- (b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Service (Clarification, Control and Appeal) Rules, Civil Service (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.

THE FOURTH SCHEDULE

(See Section 9-A)

CONDITIONS OF SERVICE FOR CHANGE FOR WHICH NOTICE IS TO BE GIVEN

1. Wages, including the period and mode of payment;
2. Contribution paid, or payable, by the employer to any Provident Fund or Pension Fund or for the benefit of the workmen under any law for the time being in force;
3. Compensatory and other allowances;
4. Hours of work and rest intervals;
5. Leave with wages and holidays;
6. Starting, alteration or discontinuance of shift working otherwise than in accordance with standing orders;
7. Classification of grades;

8. Withdrawal of any customary concession or privilege or change in usage;
9. Introduction of new rules of discipline, or alteration of existing rules except in so far as they are provided in standing orders;
10. Rationalisation, standardisation or improvement of plant or technique which is likely to lead to retrenchment of workmen;
11. Any increase or reduction (other than casual) in the number of persons employed or to be employed in any occupation or process or department of shift (not occasioned by circumstances over which the employer has no control).
