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**An analysis of various Laws meant for Informal Sector Workers in India**

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**Abstract:**

The term informal sector was first used in the socio-anthropological studies during the 1950s. Informal sector workers were defined, although indirectly, as “traditional sector workers, the petty traders like newspaper hawkers, as unproductive in agricultural sector and attracted by rising urban wage-rates for unskilled workers”. The importance of informal sector can be realized by considering the employment potential and its role in promoting economic development. The ILO definition (1972), incorporated the idea that informal sector had immense development potential because of its flexibility and potential for creative response to economic change. At the same time, this sector is characterized by absence of worker’s rights and social security provisions. The current paper aims to discuss various legislations meant for informal sector workers in India, their weaknesses and challenges being faced.

**Key words:**

**Development, Informal, Social Security, Unproductive, Unskilled**

## **Introduction:**

National Commission for Enterprises in Unorganized Sector (NCEUS), established by Government of India (2004) has defined the informal sector as: *“an unorganized sector consists of all unincorporated private enterprises owned by individuals or households engaged in the sale and production of goods and services operated on a proprietary or partnership basis and with less than ten workers.” (GOI, 2007)*

The term informal sector was first used in the socio-anthropological studies during the 1950s. Informal sector workers were defined, although indirectly, as “traditional sector workers, the petty traders like newspaper hawkers, as unproductive in agricultural sector and attracted by rising urban wage-rates for unskilled workers” (Lewis, 1954). The importance of informal sector can be realized by considering the employment potential and its role in promoting economic development. The ILO definition (1972), incorporated the idea that informal sector had immense development potential because of its flexibility and potential for creative response to economic change. At the same time, this sector is characterized by absence of worker’s rights and social security provisions.

## **Review of literature:**

**Kundu (1999)** in a paper suggested that the existing database for unorganized industries clearly brings out serious gaps, anomalies and discrepancies. The aim of the paper was to observe, the changing character of informal sector, its problem and prospect in future for designing the right kind of policy environment at the macro level and launching specific schemes at the micro level. The overview of macro-data showed, decline in the share of informal manufacturing employment due to decrease in industrial base in urban areas. Moreover, changing nature of production relations, sub-contracting of jobs, ambiguity of contracts, growth of self-employed and casual workers etc. have contracted manufacturing sector and expanded jobs in tertiary sector, exposing workers to more exploitation. There was also absence of ample laws to protect these workers. Study had also pointed out that decline in growth of workforce in informal sector during late eighties, in urban areas was due to low productivity syndrome for unorganized sector in urban areas. It had adversely affected the rate of rural to urban migration. At micro level also low production, low wage rates, underemployment, poor working and living conditions, absence of skill formation, insecurity and absence of formal registration, discouraged the informal sector. Finally, the author suggested for selective assistance to the informal sector entrepreneurs, in terms of provision of technical guidance, subsidized credit, scarce raw materials, marketing support etc. Steps must be taken to make fruits of economic liberalization of 1990s available to informal sector. Targeting of benefits via linking resale of output,

to allocation of scarce raw material must be done. Moreover, efficiently organized co-operatives should be the prime concern of the support system, for promoting the informal sector along the desired lines.

**Usha (2001)** brought out the consequences and determinants of workers in the informal sector. Study found that workers in textile sales sector were working with very lower wage than the minimum wage fixed. They were not getting any service benefits such as increments, leave, pension, provident fund and insurance. They were all coming from the lower class family and were exploited in many ways. Engagement of women in this field was very high because of less skill and easy accessibility. Wage patterns were also irregular and comparatively less than other unorganized workers like, contract, self-employed, construction workers etc. The author, to improve the conditions of these workers engaged in textile sector, has suggested proper policy intervention.

**Bhattacharya (2002)** in a study discussed some of the major issues surrounding the process of urbanization in developing countries. Findings suggested that attitude needed to be changed about the informal sector, which include a large number of female workers also. These workers produced many goods and services efficiently and at lower cost. Study showed that the share of the urban labour force, engaged in informal sector activities was growing. The informal sector enjoyed a largely symbiotic relationship with formal sector and contributed significantly to national output. Lack of adequate credit facilities was a major barrier to the growth of many informal sector firms. Loan programs, training, reduction of regulation among others could be used to encourage a vibrant informal sector. Management of urban system was a big challenge, but with appropriate policies & institutions, the challenge could be met.

#### **Objectives of the study:**

The objectives of the current study is:

- a) To throw detailed light on various legislations formed in India to promote the social security of informal sector workers.
- b) To discuss their weaknesses
- c) To discuss challenges

#### **Findings:**

Various legislations have been formed in India from time to time to promote social security. Following are the details of some main legislations:

##### **❖ The Factories Act, 1948**

The Factories Act, 1948, is meant to protect workers in the factories. Since, its inception, it has experienced various amendments and was last updated in 1987. The main aim of the act was to ensure ample safety and the promotion of health of the workers employed in the factories. Various sections

of the Act therefore, deal with the welfare facilities such as health, safety and hygiene conditions of the workers, working inside the factory premises.

Provisions regarding health of the workers are associated with cleanliness, disposal of wastes, ventilation, control of temperature, elimination of dust and fumes, artificial humidification, overcrowding, lighting, drinking water facilities, latrines, urinals and spittoons. Besides, every factory has to make effective arrangements for providing a sufficient supply of wholesome drinking water, for all those workers who are employed therein; and where 250 or more workers are working, employers have to provide cool drinking water in hot weather.

Provisions regarding safety of workers relate to the fencing of machinery, easing of new machinery, testing and examination of appliances and plants, supply of safety appliances to workers, precautions against dangerous fumes and in case of fire etc. The Act also lays down the conditions under which women and children are to be employed at work.

Provision regarding welfare facilities covers such items, as washing facilities for storing and drying clothes, facilities for sitting, first aid appliances, canteens in case of factories employing over 250 workers, suitable shelters or rest rooms, lunchrooms etc. The Act also grants power to State Governments to make rules, requiring the representatives of workers in any factory to be associated with management about welfare arrangements of the workers.

The implementation of the Act is under the jurisdiction of the State Governments. It is enforced through the factory Inspectorates. Any worker can complain to the Inspector about conditions inside the factory, and the source from which the complaint has come is not supposed to be disclosed. Unfortunately, the implementation mechanism of the Act is unsatisfactory. Each factory inspector has more than a thousand factories under him. Thus, infrastructural facilities available to him are very inadequate.

This Act in its updated form has a very broad definition of worker. However, contract and ad hoc workers do not get the benefits given to permanent workers. It imposes restrictions on employment of women during the night, especially the period between 7:00 p.m. to 6:00 a.m. There are also restrictions of daily working hours for men and women in factories. Section 23 and 27 of the factories act prohibit women from handling dangerous devices. However, not all these provisions are applied in practice for a section of the workers. Moreover, the Act is applicable only to manufacturing units, organized as factories. The provisions of this act do not apply to the vast masses of workers in the unorganized sector employed in smaller manufacturing units and other sectors.

#### ❖ **Contract Labour (Regulation and Abolition) Act, 1970**

Contract labour (regulation and abolition) Act, 1970, regulates the employment of contract labour in certain establishments and provides for its abolition in certain circumstances. This act is applicable if the main employer engages 20 or more contract workers in establishment. By doing so, his contract work will be covered under mentioned Act. The Act lays down for the provision of registration of all

the establishment of principle employers and licensing of all contractors. There is also a special provision for the abolition of the contract system if certain conditions are met, like the nature of jobs being of perennial nature and connected with the core business of the principle employer.

In this Act, there are various provisions for the welfare and safety of contract labour. These provisions need to be provided and maintained by the contractor and made readily available during all working hours. For example, a first aid box equipped with prescribed contents should be available at every place, where the contractor employs contract labour. For regulating efficient implementation of the Act, certain registers, record, returns etc. are to be maintained by the principle employers and the contractors.

Law also provides provision for penalties for those who violate it. This Act is meant for unorganized labour, but with a very limited scope. The limitations in the law are such that the contractor stands to gain if he engages less than 20 workers. This provision provides a loophole for all types of manipulations by employers and contractors. Therefore, it can be said that the coverage that this act provides is far from satisfactory.

❖ **Building and Other Construction Workers (regulation of employment and conditions of service) Act, 1996:**

This Act is meant to control the employment and conditions of service of building and other construction workers and to provide them with safety, health and other welfare-oriented matters. The Act applies to every building or construction site, where 10 or more workers are employed. It covers all the central and the State Government and private establishments. The notable feature of the Act is that it covers all private residential buildings if the cost of construction happens to be more than Rs. 10 lakhs.

However, registration of establishment is inevitable and no establishment without registration can employ any construction worker. The Act provides that a worker between the ages of 18-60 years becomes eligible for registration and thus benefits associated with the mentioned Act. He/She must fulfill the condition of working at least 90 days in the previous year to acquire eligibility for registration. Every registered worker gets an identity card, and work entries are made in the card. The worker remains a beneficiary up to the age of 50 and for the year when he/she puts in at least 90 days of work.

A fund needs to be created with the revenue from cess collected from employers, and contributions by the workers. Benefits include assistance in case of accident, payment of pension, house-building loans, assistance for group insurance schemes, education of children, and maternity benefit for female beneficiaries and so on. There are also provisions for regulating working hours, welfare measures, safety and health measures and other conditions of service, non-fulfillment of which can lead to penalties.

In actual practice, the Act is beneficial but only to the skilled workers and those who work continuously in the industry. However, unskilled workers who do not work with a construction establishment continuously may not get the benefits available under the Act, because these unskilled, uneducated and purely casual workers will not be able to make regular and timely contributions to fund as per the provisions of the law.

❖ **Minimum Wages Act, 1948 :**

This Act is the most important legislation that has been enacted for the benefit of unorganized sector labour. It was formed for fixing, reviewing and revising the minimum rates of wages in the scheduled employments for workers engaged in the unorganized sector. Under section 3 of the Act, the concerned government has been empowered to fix the minimum rates of wages payable to employees in the scheduled employment.

This Act is meant to ensure that market forces of demand and supply are not allowed to determine the wages of workers in industries, where these workers are working in poor, vulnerable situations, without any bargaining power. The minimum rates of wages are fixed keeping in view the requirements of a family and wages at these rates are to be paid by all employers, no matter whether they are capable to do the same or not.

The concerned government is empowered under section 13 of the Act to fix number of hours per day. Not only this, provisions have also been made for weekly holidays and payment of overtime wages etc. about any scheduled employment, where minimum rates of wages have already been fixed as per Act.

The Act helps unorganized workers who are working in scheduled employments. However, matter of the fact is that approximately 60% of the workforce in the unorganized sector is either self-employed or home-based. Therefore, they remain outside the preview of Minimum Wages Act, 1948.

❖ **Inter-State Migrant Workmen (regulating of employment and conditions of service) Act, 1979 :**

This law is for a vast majority of the migrant workers, who fall under the preview of unorganized sector. Workers from various parts of a state are hired through contractors or agents. Such workers usually work outside the state , wherever construction projects are available. However, this system has various problems, as promises made by contractor at the time of recruitment regarding wages and timely payments, are not usually kept. This results in, the absence of fixed working hours, where workers are forced to work, all days in the week under extremely bad and dangerous working conditions. The provisions of various labour laws are not observed, and migrant workers are often subjected to various forms of malpractices. Keeping this in view, the inter-state migrant workers (regulating of employment and conditions of service) Act, 1979 was enacted to regulate the employment and conditions of service of inter-state migrant workers.

This act provides for non-discrimination in wage rates, holidays, hours of work and other conditions of work for inter-state migrant workers in relation to local workers. Not only this, these workers are eligible for a non-refundable displacement allowances equal to 50% of their monthly wages in addition to the wages. Other provisions include regular payment of wages, equal pay for equal work to both men and women workers and provisions for suitable condition of work, suitable residential accommodation, adequate medical facilities and adequate protective clothing and equipment. In case, if some worker meets with an accident, provision is there to intimate to the authorities of home states and host states and to the kin.

As per the definition of this Act, all migrant workers are not included as inter-state migrant workers and hence cannot enjoy the benefits of the ISMW act. Moreover, the Act is only of very limited benefit to workers in the unorganized sector, as none of these labour laws can provide protection to the vast majority of unorganized workers, who are self-employed or home-based or to other workers who are employed in enterprises where the number of employees does not reach the threshold prescribed by the Acts.

#### ❖ **The Unorganized Sector Workers (Employment and Welfare) Bill, 2003:**

The unorganized sector workers bill, cover approximately 90% of our workforce and this percentage is likely to increase in future. Workers belonging to unorganized sector are often described as unprivileged as they are denied to protection and security that workers in organized sector enjoy. It is, therefore, mandatory to enact new legislation to cover workers in this sector. There is a wide variety of employment opportunities available in this sector, that is why conditions and levels of organization, nature of relations with employer of such workers vary. Moreover, there is growing sector of those who are either self employed or home-based. It is a very difficult task to have separate laws for each employment, as this will result in endless multiplication of laws. That is why the solution lies in an umbrella legislation covering whatever is basic and common, and leaving room for supplementary legislations. Such Umbrella legislation for the unorganized sector must aim at the growth of the economy, improvement of the quality of the employment, provision for decent life to the worker etc.

The unorganized sector workers bill, 2003 aims to provide such shelter. The bill is the logical outcome of the second national labour commission's recommendations. Its aim is to consolidate and amend the laws relating to the regulation of employment and to uplift the workers engaged in unorganized sector, by providing them protection and social security.

The objectives of the Act are:

- To obtain recognition of all workers in the unorganized sector
- To ensure a minimum level of economic security,
- To ensure a minimum level of social security,

- To expedite removal of the poverty of these workers through their work, protecting their means of employment and income,
- To ensure future opportunities for children by progressive elimination of child labour,
- To ensure equal opportunities of work, for men and women workers.

The mentioned bill is divided into seven parts with first part dealing with title, extent etc. Second part deals with constitution of boards, functioning of board through worker facilitation centers, functions of the central board, state board, and employment based boards, district boards, and state board in relation to self-employed workers. Third part deals with the functions of WFC's and registration, Identity card, funds, investment of funds, ceiling on administrative costs. Fourth part deals with workers organizations. Fifth part provide provisions relating to minimum wages, allowances, social security, health and safety, holidays and general provisions. Sixth part deals with education, training and skill developments. Seventh part deals with provisions relating to registers and records, grievance redressal, framing of rules and schemes.

Section 4(1) of the bill provides that “Unorganized Sector Worker’s Central Board” is the central level apex board, which is being constituted by the Central Government for the effective implementation of provisions of the Act and to coordinate its functions at national level. Section 4(2) provides that “State Board” constituting State Level Apex Body meant to coordinate the functioning of the law at the state or union territory level. The Central Board and the State Boards shall plan management of funds efficiently, meant for unorganized workers.

Section 12 of the bill gives provision that each worker on registration will be given a registration number and a permanent identification number with identity card, on payment of a registration fee. The mentioned identity card shall have the details of the concerned person, name, address, work wages/income, social security entitlements and his photographs. The permanent identification number will be valid all over India.

Section 17 of the Bill gives provisions relating to minimum wages that include (1) the worker shall receive minimum economic returns or minimum wages for his work as prescribed by law. (2) The State Board shall have the right to recommend, to the State Government of that state, minimum wages of the operations and avocations not covered under other laws, and where there is employer-employee relationship. (3) There shall be fixed minimum wage. (4) There shall be no gender discrimination in deciding wages or benefits. (5) The central or state boards and their appointed machinery shall perform the implementation of minimum wage. (6) Non-payment of minimum wage shall be punishable.

Section 19 of the Bill provides for provisions relating to the social security. These include (1) Workers who are covered by social protection measures as may be prescribed by the Central or the State Government. (2) The worker shall be eligible to social security protection, namely, old age, invalidity, group insurance, sickness, medical and employment injury benefits. (3) The women

worker shall be eligible for maternity benefits and childcare/daycare facility while on work. (4) The central or the state board through its machinery or schemes visualized for workers in all sectors, will implement the social security services. (5) The State Board may frame schemes for grants to workers and loans for housing, drinking water, sanitation and other infrastructural facilities. (6) The local authorities will create and invest their resources to develop better living conditions for the workers by providing amenities like housing, safe drinking water and sanitation etc. (7) The state board shall encourage alternate insurance for employment injury to cover employer's liability under workmen's compensation act.

Section 20 of the Bill provides that work shall be permitted only in safe and healthy environment and working places. Section 21 of the bill provides provision relating to working hours, holidays etc. It lays down that maximum working hours per day shall be nine hours a day and 48 hours a week. It also demands that workers shall be given one holiday in each week and workers shall be paid overtime wages in respect of extra hours of work put in by them on and above the hours of work.

Section 22 of the Bill lays for various general provisions, like existence of any written employment contract, prohibition of working of child under the age of 14 years and protection of unorganized sector labour from unfair labour practices etc. Further, section 23 (1) provides that it will be worker's duty and right to undergo skill development and on the job training, upgrading training, literacy and workers education sessions.

In nutshell, the Bill 2003 has helped in extending the existing laws, which have never been implemented properly. However, it does not deal with the regulation of employment, protection of jobs, and any uniform national level limit of minimum wages for unorganized workers. The provisions and promises of social security are not mentioned precisely, so they are merely eyewash. The Bill contain only an elaborate structure of boards from central to panchayat level, registration of the unorganized workers and issue of identity cards. It contained nothing concrete to ensure job protection, minimum wages and social security to unorganized sector. That is why it needs to be modified, in order to give more protection to the unorganized workers.

#### ❖ **The unorganized sector workers Bill, 2004:**

The unorganized sector worker's bill, 2004, has been drafted as a broad legislation with an aim to cover scattered workers throughout the length and breadth of the country. Still, it lays stress on workers working for employer, so, it has ignored self-employed professionals. Infact, self employed worker ,who work more than eight hours a day in very difficult conditions are not ensured even a minimum wage in this bill. So, hawkers, rickshaw pullers, street vendor, who form a major chunk of unorganized sector, are avoided.

So far as, registration system of workers is concerned, bill has proposed to create worker's facilitation centers for it. However, the need is to include NGOs, Union Representatives and other group

concerned with unorganized sector along with Govt. Officials in these centers. Finally, the bill's national policy of workers in informal sector gives every reason to fear that self-employed and other workers both, from small and big cities, would get excluded.

❖ **The unorganized sector workers' social security Bill, 2005:**

After examining the Unorganized Sector Worker's Bill, 2004 and draft of The Unorganized Sector Worker's Social Security Bill, the National Commission for Enterprises in the Unorganized Sector has proposed a universal coverage for unorganized workers by drafting The Unorganized Sector Worker's Social Security Bill, 2005.

Bill covers vast area as all as workers in unorganized sector with a monthly income of `5000/- and below. These workers included self employed workers, wage workers and home based workers also. Bill also provides for clear demarcation of responsibilities of the Central and the State Governments. It stresses the need for a national minimum social security for all eligible workers covering four things: (a) health insurance, (b) maternity benefits, (c) life insurance, and (d) old age pension. Every unorganized sector worker is eligible for registration. The registered worker will get a unique social security card. The existing welfare programmes will continue as before.

Further, it advocates the creation of National Social Security Fund, which will be financed from the contribution at the rate of `1/- a day each by workers, employer and Govt. The Government contribution will be divided between Central and State Government in ratio of 3:1. In order to attain its motive, the bill has suggested an elaborate institutional set up with National Social Security Board at the Central Level, State Social Security Board at the State level and District Committee supported by Worker's Facilitation Centers at the ground level. The Bill further states that every unorganized sector worker above 18 years of age will be eligible for registration and he/she will get a unique social security number and an identity card which can be used any where in the country.

However, Bill faces certain problems amongst which the first one is heterogeneous character of the unorganized sector. Due to this factor, the sector differs in terms of technology, productivity, wages and profits. Hence, a uniform package will not be valid for the different categories of workers.

Secondly, the costs of providing health insurance and old age pension for unorganized sector workers have not been discussed in the Bill. Thirdly, the Bill faces problem in identifying beneficiaries. This may lead to targeting error. Fourthly, role of Panchayati Raj institutions in implementing machinery has been ignored. Fifthly, the working and problems of existing Welfare Boards have been ignored.

In nutshell, the Unorganized Sector Workers Social Security Bill, 2005 needs to be modified to support the progress of social security movement in India. For this purpose, Spending has to be increased at grass root level for better delivery system. The success of the bill will largely depend on whether it addresses the needs and priorities of different categories of workers, the commitment and efficiency of administration, effective monitoring and workers' involvement in the implementation of the Act.

❖ **The unorganized sector workers (conditions of work and livelihood promotion) Bill, 2007:**

National Commission for Enterprises in the Unorganized Sector has recently drafted this bill, after examining the unorganized sector workers bill, 2004. The aim of the bill was to ensure the smooth and effective implementations of social security schemes for the unorganized sector workers.

To attain its motive, the bill is concerned with providing a basic minimum standard, defined hours of work, payment of minimum wages, abolition of child labour etc. For self-employed workers, the draft bill proposes various measures for protection and promotion of livelihood. These relate to the provision of credit, right to common property and natural resources, use of public space to engage in economic activities and encourage the promotion of associations of self-employed workers. The Bill also recognizes some minimum entitlements of the workers such as the right to organize, non-discrimination in the payment of wages and conditions of work, safety at work place, and absence of sexual harassment.

Finally, the bill advocates the effective implementation of existing laws in order to improve the wage rates for unorganized sector workers.

❖ **Unorganized Sector Social Security Act, 2008:**

This act has been passed by Parliament of India. The act aims at attaining social security for Home Based Workers, Self Employed Workers and Daily Wage Workers. Based on its recommendation, National Social Security Board was set up in 2009.

**Weaknesses:**

There are many times when a worker cannot economically active. Due to biological circumstances such as modernity, sickness or old age; on account of personal calamities such as widowhood, or an accident; social or natural calamities such as unemployment, flood, fire drought or high unemployment or closure of an industry. During these spells of risk the worker needs support, in the form of some social insurance to survive the crisis and resume work after it. Above mentioned Social security legislations are indispensable for unorganised workers to protect them from contingencies and deprivation. The existing social security legislations are not applicable to most of the unorganised sectors. The mentioned social security measures have not been effective to provide risks coverage and ensure maintenance of basic living standards at times of crises such as unemployment or health issues.

## **Challenges:**

- **Target Beneficiaries**

The definition under the Unorganised Workers Social security Act, 2008 provides a broad sense of an 'unorganised worker' and hence, the true challenge is on the ground will revolve around the identification of these unorganised sector workers. The state Governments acting through a representative on the State Social Security Administration (SSSA) should be given the authority to determine targeted beneficiaries and the eligibility criteria for the scheme. While the scheme will be open to all unorganised sectorworkers, State Governments should decide the target groups in their particular state in order to avoid overlap between the national scheme and state provided schemes.

- **Lack of Awareness**

The another important challenge is regarding lack of awareness and knowledge which is a significant barrier to most currently sponsored government social security schemes. Awareness and the level of understanding ensure the beneficiaries to know about the existence of the schemes and the benefits which they are entitled. In this regard, states should take responsibility of creating awareness about the schemes and the delivery system with a view to facilitate proper implementation of programmes.

- **To Design Simple and Easily Accessible Schemes**

The purpose of the plans or schemes is to provide immediate and automatic delivery of benefits to the targeted groups. There has been a lot of complaints with regard to accessibility to social security schemes such as the old age pension schemes, schemes for the widows, or social assistance in case of death of the breadwinner of the family. The presence of large number of schemes for the same cause creates lots of confusion at the level of beneficiaries as what exactly they are entitled to. Hence, the challenge has been to design simple and easily accessible social security schemes for target groups under one umbrella. Further, With regard to extended opportunities of employment in addition to Mahatma Gandhi Rural Employment Programme, the challenge is also to extend employment opportunities by generating employments as the informal sector workers are exposed to additional threats such as seasonal nature of work to exit poverty and vulnerability with regard to fiscal stress. Instead of survival benefit scheme or minimum pension, appropriate programmes also needed for groups like young widows by linking them to training or employment programmes to fulfil the economic needs of bereaved family.

- **Convergence of Social Security Schemes**

There is multiplicity of social welfare schemes run by different Government units at central and state level which is bound to be some amount of confusion and involves the problem of duplication of

efforts, record keeping and there is also a possibility of double or multiple benefits reaching the same person under different schemes by way of manipulation. Administration of each scheme involves huge administrative cost.

### **Conclusion:**

From the above discussion, it can be concluded that the unorganised workers lack social security and hence they are exploited in many ways. This is due to their seasonal intermittent nature of work, low level irregular patterns of earning and employment, absence of employer-employee relationship and weak administrative structure. The Indian judiciary for the attainment of social justice should focus attention to give effect to the rights of workers with the aim of protecting the unorganised labour and thereby reducing the huge gap in coverage of the unorganised sector by establishing social security and dignity of the workers.

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