

NEO- UNIONISM: ORGANIZING THE UNORGANISED

Author 1: **Aishwarya Singh**

National Law Institute University, Bhopal, India

Email: aishwarya.law@gmail.com

Author 2: **Vinay Tyagi**

National Law Institute University, Bhopal, India

Email: vinaytyagiadv@gmail.com

Introduction

The onset of globalization has brought about variations in the levels of organization and the nature of employee relations within. The need for representation is now greater than in the past, especially for the vulnerable and the weak. Even the better paid workers desperately need their voices to be heard within institutions and mechanisms. One such medium of representation is the trade union. We know that it serves the organized sector but leaves the unorganized sector hapless. The term 'unorganized labor' has been defined as those workers who have not been able to organize themselves in pursuit of their common interests due to certain constraints like the casual nature of employment, ignorance and illiteracy, the small and scattered size of establishments, etc. As per the survey carried out by the National Sample Survey Organization in the year 1999-2000, the total employment in both organized and unorganized sector in the country was of the order of 39.7 crore. Out of this, about 2.8 crore were in the organized sector and the balance 36.9 crore in the unorganized sector.¹ This includes workers in all types of occupations including agriculture.² Though the majority of workers are in the unorganized sector there is hardly any legal protection available to them. This is in spite of the fact that they contribute towards over 60% of the country's GDP.³ They are subjected to this horrid and unequal treatment because the informal sector was generally perceived as a transitory phenomenon that would, through development, be eventually absorbed into the formal sector.⁴ However, this approach has given birth to drastic consequences. Workers are not organized and hence have no bargaining power, therefore even when laws exist workers are too weak, too disorganized to demand them. Secondly, no social security system has been devised which would meet the needs of these workers. For example, many of these workers are migratory and have no fixed income. Thirdly, the laws are supposed to be implemented through the bureaucracy that has neither the manpower nor the know-how to reach the scattered masses of workers.⁵ The ethical and social case against unions is that they work for a minority often at the cost of the majority and ignore vulnerable sections which in fact need more protection.⁶ Going beyond

¹ National Sample Survey Organization in the year 1999-2000.

² Chapter 1, Unorganized Sector Worker's Social Security Bill.

³ Note on Unorganized Sector Worker's Social Security Bill, available at http://pmindia.nic.in/nac/communication/Note_on_Unorganized_Sector_Workers.pdf (last visited on 10.10.2008).

⁴ Gallin, (2001a), 'Propositions on trade unions and informal employment in times of globalization', in P. Waterman and J. Wills (eds.).

⁵ Supra note 3.

⁶ K.R. Shyam Sunder, Organizing the Unorganized, Available at <http://www.india-seminar.com/2003/531/531%20k.r.%20shyam%20sundar.htm> (last visited on 9.10.2008).

tedious research, this paper accentuates upon the needs and mechanisms that ensure protection of the neglected working class.

Witnessing The Distress Signal

It is an irony that India was the profounder of International Labor Organization in 1919. Despite such an august beginning, it refuses to follow ILO's basic principles of social protection. It is a member of the Labor Administration Convention, 1978 (No. 150), and the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), which helps deepen and widen the use of social dialogue as a means of building consensus, managing change and promoting good governance.⁷ However, it seems as if India is oblivious to its duties and continues to ridicule the unorganized workers by giving them no representation or voice in the Indian economy. It was the Karnataka High Court which first witnessed the distressful situation of the unorganized sector. In *Srirama Babu v. The Chief Secretary to the Government of Karnataka, Bangalore and Others*⁸, the Court espoused the cause of unorganized sector and of those who have been left to fend for themselves uncared for. Notice in this case was also taken of the exploitation and deprivation of the basic amenities of life and other constitutional and statutory safeguards guaranteed to a citizen of India which they are also entitled to enjoy like any other. In 1999, the National Commission Law Report explained why it is important to have new legislation to cover various categories of unorganized workers, and the scope and aims of such legislation. Furthermore, it was put forth that the laws in the statute book that relate to some sectors of the unorganized sector are too inadequate to provide protection or welfare for the vast majority of workers in the unorganized sector.⁹ In 2005, in the Bombay High Court through *Maharashtra Agro Industries Development Corporation Ltd. and Ors. v. State of Maharashtra and Anr*¹⁰, it was argued that:

“Due to globalization, the condition of the Indian economy in the past decade has steadily improved. We cannot be oblivious to the fact that in the past decade, India's per capita income has reached at highest level in the country's history but the condition of the workers from the unorganized sectors, who come from the lowest strata of the society, is ignored”.

Finally in 2005, answering the desperate calls of the informal workers, the Government enacted the Unorganized Sector Worker's Social Security Bill, 2005¹¹.

⁷ International Labour Organization, Implementation of the Brussels Programme of Action for Least Developed Countries : Contribution to the Annual Report of the Secretary-general and to the Mid-term of the Brussels Programme of Action, 2006.

⁸ ILR 1997 KAR 2269, 1998 (1) Kar LJ 191

⁹ Give Unorganized Sector Workers a Fair Deal, available at <http://www.mainstreamweekly.net/article310.html> (last visited on 5.10.2008).

¹⁰ (2006) 3 LLJ 102 Bom.

¹¹ Available at http://pmindia.nic.in/nac/communication/Draft_Unorganized_Sector_Workers_Bill.pdf (last visited on 10.10.2008).

Carrying The Flame Forward: A Pragmatic Solution

We must learn our lessons from the west. As a matter of fact, the organization of unorganized workers continues to be a major objective of the American labor movement. At least three-fourths of all NLRB¹² representation elections were held in unorganized units. The proportion of elections in unorganized units declined slightly from 1951 to 1955, but increased to 87 percent in 1957 and, although lower in 1959, it still remained at 82 percent.¹³In fact, in America, the Committee on Industrial Organization already had organized workers in unskilled steel and automobile production from 1936-1940.¹⁴ Even India needs to cater to the needs of the unorganized sector by allowing them representation through trade unions and by passing the Unorganized Sector Worker's Social Security Bill, 2005, thus, granting it nationwide enforceability. In addition, the Trade Union Act, 1941 in United Kingdom provides for the establishment of a 'trade union tribunal', a legal concept to which India appears completely ignorant. We too must have a separate tribunal to gratify the grievances of the unorganized sector. As was once said by James Connolly, without the power of the industrial union behind it, democracy can only enter the State as the victim enters the gullet of the serpent. We must rise to the occasion and ensure that the unorganized sector is not quashed in this gluttonous pursuit of globalization. For the same, it is inevitably important for us to convert the Unorganized Sector Workers Social Security Bill, 2005 into an act. As a consequence, the bill shall be blessed with the force of law. Its second chapter provides for National Social Security Authority for the unorganized sector, worker's facilitation centers and facilitating agencies. They shall ensure that the workers in unorganized sector have a say in the economic policies of the nation and conglomerate all the activities in all areas of society and give them a unified force. The third chapter introduces what has never been done before. It requires registration of unorganized workers assigning them a unique social security identification number. In addition, the fourth chapter paves the path for social security schemes in which the aforementioned authority shall enact schemes benefiting the informal workers. For instance, there is provision for a Medical Care or sickness benefit scheme; Employment injury benefit scheme ; maternity benefit scheme ; old age benefit including pension ; survivor's benefit scheme ; integrated insurance scheme; schemes for conservation of natural resources on which workers depend for livelihood ; housing schemes ; and educational schemes. Additionally, the fifth chapter provides for welfare funds for which money shall be collected through grants by central and state government and also through taxation. Lastly, through the sixth chapter, it advocates that the National Social Security Authority shall make rules and regulations in consultation with the central government benefiting the unorganized sector workers. The authors, through this abstract, want to assert on the need and importance of the Unorganized Sector Workers Social Security Bill, 2005 which deserves enactment. It is exigent for our nation to accept its responsibility towards the unorganized workers and save them from the unethical tenets of globalization.

¹² National Labour Relations Board in USA.

¹³ Joseph Krislov, "New Organizing by the Unions During the 1950's", 83 Monthly Lab. Rev. 922, 926 (1960).

¹⁴ Available at http://en.wikipedia.org/wiki/Congress_of_Industrial_Organizations (last visited on 11.10.2008).