

sector is not in a position to offer any jobs.

7.253 The Prime Minister recently intervened to help the rickshaw pullers of Delhi and wrote to the Lt. Governor of Delhi stressing 'it (policy) should recognize street hawking and cycle rickshaw pulling as legitimate occupations which help reduce poverty and facilitate their integration into the formal economy.' The note from the PMO highlighted the following issues:

- (i) existing license system with quantitative limits must be scrapped.
- (ii) The metropolis must be divided into green, amber and red zones signifying free access, fee based access and prohibited access, respectively.

Any person who wishes to be a street hawker or cycle rickshaw puller may do so by a simple act of registration. The sole purpose of registration would be to provide identification.

7.254 Unorganised workers depending on common property resources: A good number of workers depend on natural resources for their

livelihood. Natural resources include forests, water bodies and mineral/stone deposits. Forest workers including adivasis, graziers, fisher-people, cultivators, miners, potters and quarry workers depend on these resources. The State has taken over the ownership of some of these resources through legislation. This appropriation of ownership has made a change in the status of these resources, like forests, etc from common property to State or Government property. Those who lived in forest villages or tribal habitats or those who lived in the proximity of common grazing land, had access to these since they were the base on which their livelihood depended. Thus, fishermen on the banks of rivers, lakes, seas, and so on had the right of access to these common property resources for purposes of earning their livelihood. In other words, these were commonly owned, but were the means of livelihood for individuals living in them (forests) or beside them (lakes etc). With the new legislation, the State has inhibited this right of access, and in some cases totally taken away this right of access, thus denuding the poor, unorganised subsistence workers of their means of livelihood.

The case of mineral deposits and fisheries is not very different. Panchayats now own the water tanks where any leaseholder can do fishing. The leaseholder does not have to be a fisher-person. This development leads to two results: One, the new players from outside do not depend on these resources for their livelihood, and therefore, do not mind exploiting these resources to their exhaustion and at the cost of the social assets in fish and water resources. Two, the natural stakeholder is pushed out totally, or subjected to serious jeopardy of subsistence.

7.255 As resources, these are open resources. As property, these belong to the State or public domain. Regulated tapping is the way to sustain open resources or common property. Private individual tapping of an open or common resource brings in the question of ownership of the community or the question of communal property. Communal property is a domain that stands between individual property and public property. In fact, the take over of open access to resources like forests and fisheries through legislation from practically the communal hold of adivasis and fisher people or village

communities, has led to private leasing of public property, effecting a transfer of ownership. We feel that society, and the state will have to give thought to the remedial strategies advocated by the affected people, including involvement of the communities in the sustenance of these resources. Village commons, grazing land and the source of wood, fuel and other food items, are also on the decline, pushing people who are dependent on these into further degrees of impoverishment, and poverty. Let us examine the state of some of these common property based workers.

7.256 For the fishing communities, fish harvesting is a traditional source of livelihood solely dependent on the natural fish resources in the seas, rivers, lakes, lagoons, canals, dams, reservoirs and other water bodies. Damage and destruction done to these water bodies due to industrial, agricultural or civic pollution, reclamation, etc., or any other activity affecting their natural state or status, cause depletion of the natural fish stock. To ensure fuller employment of the fish-workers there should be sufficient provision in the law to protect water bodies as well as aquatic resources.

7.257 Although fish harvesting is the only occupation of the traditional fisher-folk since ages, law does not protect their right over water bodies and fish resources. Practically an open access regime prevails in the fisheries sector. As a result, merchants, mafia and other profiteering interests enter into the fisheries, taking advantage of modern fishing technologies. This causes serious threat to the sustainability of the resources, and displaces the traditional fisher folk from their only source of livelihood.

7.258 A study by Abhijit Guha estimates the range of decline of the area under common property resources (CPRs) at 31-55% (period not mentioned). The same study points out that before 1952, the CPR products ranged from 27 to 46. Because of reduced bio-diversity, these products now range only from 8 to 22. Use of inorganic fertilisers and insecticides, population load, encroachment on the commons and the takeover by the state have reduced the area and bio-diversity of the village commons (Guha, 1998).

7.259 What is said about CPRs is also true of forests. The adivasis and other pastoral groups who depend on

forests are increasingly losing their livelihood or getting displaced because of (i) the lopsided policies of the state and (ii) the depleting forest cover.

7.260 Meanwhile, there are encouraging people's efforts to share resources like water on mutually agreed principles. The stories of the success of water panchayats among farmers in villages (about which we have referred elsewhere in this report) also are well known, and do not need to be retold in detail.

7.261 Agricultural lands are also being 'developed' for other purposes or submerged by 'projects.' These developments are the result of policy shifts. Given the considerations of food security and unemployment among agricultural workers, positive steps should be taken to conserve agricultural lands and promote agriculture. The input-output imbalance in agriculture is working against farmers. Over and above this, the input of self-labour and family labour is not even getting accounted. Besides effecting changes in policy orientation, new legislation should take steps to insure crops against damage and incurring loss from market fluctuations.

7.262 OTHER COMMON PROPERTY RESOURCES BASED WORKERS:

Traditional artisans such as basket weavers and rope makers depend on a number of resources taken from forests and village commons. Village forests offer various varieties of grasses, canes and bamboo. The '*bann*' workers of Saharanpur produce ropes from the *bhabhar* grass, abundant in the Shivalik hills of Saharanpur district of Uttar Pradesh. Village commons are the source of food, fodder and fuel for the poor villagers.

7.263 All these workers depending on common property resources, whether employed or self-employed, have low earnings for a number of reasons such as depletion of resources and lack of work. Debt bondage is prevalent among them. It is obvious that they belong to the unorganised sector.

7.264 Artisans: Artisans are persons with some skill or craft with which they produce products of every day use, ornamental goods or other tools for their livelihood. Like the home-based workers, some among the artisans are self-employed while some are employed under others. As

in many cases raw materials are supplied, the products become linked, and a sort of chain gets established. For employed artisans as well as the self-employed artisans, wages and earnings are low.

7.265 'Unskilled workers': Manual workers and a number of other workers in the unorganised sector performing diverse activities are considered unskilled workers. As specific skills are acquired through formal or informal training, untrained hands performing all kinds of jobs that do not need substantial specialization are treated as unskilled workers. Unskilled workers who are not employed in the organised sector, come in the category of workers in the unorganised sector. The majority of agricultural workers and construction workers belong to this category. Helper category of jobs in all sectors, the manual workers, roadside workers available for all kind of petty jobs, head load workers/porters, etc. come under this category. It should be noted that they possess some skills that other persons in the skilled categories do not have. But since their wages are fixed low, these unorganised workers get only subsistence wages.

7.266 Piece-rate Workers: Piece-rate workers do not constitute a separate category of employment, but consists of workers who are paid on a per-piece-basis. The piece-rate issue is an extremely important, but has not been adequately addressed. Piece-rates are rampant in the unorganised sector. Many among the home based workers, contract workers, earth diggers, brick workers, etc. fall in this category. Piece-rates are fixed in such a way that the wages earned are very low. The Minimum Wages Act, 1948 has provisions for both time-rates and piece-rates. But the mechanism for fixing piece-rates is not clearly spelt out. The Act also has provision for a 'guaranteed time-rate' for piecework [section 3(2) (c)]. But we find that this Section has not been invoked adequately.

7.267 Unorganised workers in the organised sector: Casual and contract workers in the organised sector are more or less equal to unorganised workers as far as benefits are concerned, though they are eligible for most of the benefits under law. Regular and permanent workers are mostly eligible for, and receive legislative benefits. There is a section of workers on the official waitlist in

most of the enterprises. They are the casual workers who are often called *badli* workers, daily-wage workers and so on. The present trend is one of increasing casualisation where even regular workers in the organised sector are losing their work security. This section of labour, even though in the organised sector, has to be considered part of the unorganised sector. This is also the case with contract workers. Public Sector Undertakings (PSUs) engage contract labour. Most of the large-scale factories are engaging an increasing number of contract labour, in some cases more than 50% of the workforce in the enterprise. Often, these contract workers are not properly educated, not fully trained to handle machines, chemicals, electricity etc. Yet, they are employed to work on dangerous machines and dangerous processes. Contractualised and casualised labour has to be considered part of the unorganised sector.

7.268 AGRICULTURAL WORKERS, MARGINAL FARMERS AND SHARECROPPERS: The Annual Report of the Ministry of Labour, 1999-2000 considers cultivators, sharecroppers and agricultural labourers as

unorganised workers. In fact, the agricultural sector constitutes the largest segment of workers in the unorganised sector. Inadequacy of employment opportunities, poor security of tenure, low incomes, and inadequate diversification of economic activities are the main problems for the workers in this sector. Agricultural labour gets employment for less than six months in the year, and they have often to migrate to other avenues of employment, like construction and similar occupations during the off-season. Circumstances force most agricultural workers to borrow money from time to time from private sources, either for needs of consumption or for meeting social obligations like marriages (Ministry of Labour, 2000b: 106-107). The cost of inputs needed in farming and the amount of family labour put in by farmers is not recovered in agriculture because of the existing price system. There is a mechanism to fix the minimum wages in certain occupations; however, there is no system to fix the minimum prices for crops, and farmers have no say in the pricing of their agricultural products. This has had its effect on the wages of agricultural workers as well as attitudes to the fixation, quantum,

and payment of minimum wages to agricultural labour.

7.269 AGRICULTURAL LABOUR: Agriculture is the single largest contributor to the GDP, and also the biggest sector for employment. According to latest estimates, out of 369 million workers in the unorganised sector, 237 million workers are in activities that relate to agriculture. Agricultural labourers constitute a distinct section in the peasantry. Yet, their total strength, community allegiance, comparative socio-economic status and political position in agrarian society have been overlooked because they belong to a poorly organized, badly exploited and oppressed class of rural society. They work on lands that belong to others, in various capacities, without owning any means of production. They are unable to organise themselves despite being a distinct class, because they are absolutely dependent on landowners. Historically, socio-economic power has remained concentrated in the hands of powerful Zamindars and Chieftains. They often treat their agricultural labour as slaves, and pay wages in kind. In many parts of the country, a system of renting out land in return for half

or three-fourth of the produce has become established. Peasants as well as tenants work as labourers. In the social caste hierarchy, most agricultural labourers are from so called lower castes or tribes, and are considered only marginally above the lowest.

7.270 Since agricultural workers are unorganised, their bargaining capacity is marginal; this leads to ruthless exploitation by moneylenders, and rich farmers. The report of the National Commission on Rural Labour (NCRL) has made observations on the acute indebtedness of rural workers and agricultural labour households. It observed that about 16.08 million rural labour households, including those of agricultural labour, were indebted. Of these, 5.67 million were from the Scheduled Castes, and 1.79 million were from Scheduled Tribes. 8.62 millions were others. According to the Rural Labour Enquiry Report (50th Round of NSS), the per capita debt of Scheduled Castes household agricultural workers was Rs. 576, and the debt of Scheduled Tribes household agricultural workers was Rs. 484 during 1993-94. A majority of agricultural workers had to seek loans to meet their basic needs. This clearly

shows that agricultural workers did not receive the minimum wages prescribed by the States. Moreover, they did not get employment round the year. In most of the States, agricultural work extended only for four months in the year. The resultant under-employment was a cause that increased labour poverty.

7.271 It has been observed that approximately 40% of agricultural workers are migrant labourers. The migration ranges from inter-district migration to inter-state migration, and even migration to far off states like workers from Bihar migrating to Punjab and U.P., and workers from Chattisgarh migrating to Maharashtra, Gujarat and Punjab. Similarly, migration in the Southern States too is intensive. There is widespread migration to distant places and from agriculture to mining, and construction, and migration in the reverse direction. Jobs in construction and mining industries absorb workers from agriculture after the season of agricultural operations. In one way such migration offers agricultural workers jobs throughout the year. The problems of all migrant workers are very severe. Most of them work for 12 hours a day; they do not get

weekly rest. There is very scanty availability of housing or dwelling units. Employers try to continue exploiting workers by delaying and defaulting on payment of full wages so that workers may continue helplessly in the hope of receiving full payment before they leave the employer. Often, after waiting long, they leave their jobs in sheer desperation, without taking their dues from the employers. The Inter State Migrant Workmen's Act (ISMW Act) has proved ineffective because of the reluctance of State Labour Departments to cooperate with the Labour Departments of the originating State, ineffective enforcement and the ignorance of agricultural workers. Trade unions too have not given much attention to the plight of migrant workers. The most severely affected migrant agricultural workers are women and children. It is admitted that the agriculture of many prosperous states like Punjab depends on the labour of migrant workers. These states owe their prosperity to migrant workers, and it is therefore legitimate to demand that migrant workers should receive commensurately fair treatment, to assure them fair housing, adequate wages, social security and similar

benefits. They should not be subjected to discriminatory or exploitative conditions.

7.272 The Central Government and State Governments have fixed minimum wages under the Minimum Wages Act. In the year 1997-98, the wages of agricultural workers in the States ranged from Rs. 20 per day to Rs. 60 per day. This wide variation in minimum wages raises questions on the criteria that are followed in fixing minimum wages. In many states, these have not been revised since 1997-98. The enforcement of minimum wages in agriculture is a real problem because inspectors are generally reluctant to visit farms and fields, and employers are reluctant to cooperate with them whenever such visits are undertaken. The ordinary farm labourer, who is illiterate, is not aware of the law or the machinery for enforcing minimum wages. Poverty stricken, illiterate and ignorant agricultural workers appear very weak, and grow old even before they advance in age. Unhygienic living conditions and inadequate food result in many ailments.

7.273 The Agricultural Sector accounts for 60% of the total

employment in the rural sector, but it does not show any increase in employment opportunities. Under-employment and disguised unemployment is prevalent on a large scale. The impact of globalisation too is very much evident in all sub-sectors of the agricultural sector. Globalisation has underlined the concepts of cost efficiency, increase in productivity, technological improvements and competition. Besides, problems have arisen with cuts in input subsidies. The agricultural support price system is also under strain. All this has resulted in a downward trend in the prices of agricultural commodities, and this has directly hit small farmers and labourers. Many have been ruined. Quite a few cases of suicide have been reported from many states. It often appears as though poverty or starvation compels them to accept subsistence wages, half a loaf of bread, when a full bread is not available.

7.274 Our Commission believes that agriculture can offer job opportunities to lakhs of unemployed, if it is given due priority and the State does not neglect it. Countries like China, Japan and USA could grow on a strong

base, and at a faster growth rate, only after giving priority to agriculture. In USA, agriculture was considered as the engine of growth in the early stages. In our country, areas requiring special policies and programmes include agro-based food processing industry, cash crops of medicinal plants, floriculture, aqua-culture, poultry, horticulture, natural resource management, farm management, technological improvements, bio-technology, multi-dimensional research, development of agriculture financing network, development of markets, etc. There is urgent need for a vocational training network for agricultural workers. The overall improvement in agriculture will, and can create a large number of jobs in the primary and secondary allied sectors. The improvement in agriculture would generate jobs in agricultural machinery production, fertilizer distribution and marketing, and construction, food-processing, and other small-scale industries. This is all the more urgent, because globalisation has reduced job opportunities in the organised secondary sector of the economy, and particularly in industries and mining. Agriculture, being the only sector

capable of generating more and more employment opportunities commensurate with India's population, it demands concentrated attention on a war footing. Agricultural labour must become the central point, along with rural industries and crafts, for evolving a suitable labour policy, for the vast rural areas of the country.

7.275 The existing labour laws which are applicable to, and partially safeguard the interest of agricultural workers are: i) The Workmen's Compensation Act, 1923; ii) The Minimum Wages Act, 1948; iii) The Maternity Benefit Act, 1961; iv) The Contract Labour (Regulation and Abolition) Act, 1970; v) The Personal Injuries (Compensation Insurance) Act, 1973; vi) The Bonded Labour System (Abolition) Act, 1976; vii) The Inter-State Migrant Workmen (RE & CS) Act, 1979; viii) The Child Labour (Prohibition and Regulation) Act, 1986 and; ix) Payment of Wages Act, 1936. The main legislation dealing with aspect of safety is: i) Insecticides Act, 1968, and ii) Dangerous Machines (Regulation) Act, 1983. The Government also implements several schemes and programmes for the

welfare of rural workers including agricultural workers such as the Employment Assurance Scheme, Jawahar Gram Samridhi Yojana, Swarnajayanti Gram Swarojgar Yojana, etc. However, considering the inadequacy of these legislative measures and welfare schemes, attempts have been made to enact a separate comprehensive legislation for agricultural workers. A draft Bill, 'The Agricultural Workers (Employment, Conditions of Service and Welfare Measures) Bill, 1997' was prepared by the Central Government. The proposed bill incorporated provisions relating to registration of land-owners and agricultural workers, working conditions, creation of a welfare fund, implementation of welfare schemes, setting up a dispute resolution mechanism, etc. However, the efforts of the Central Government have not succeeded so far because of opposition from some States that were opposed to Central legislation, and wanted the states to be left free to deal with the question, at a time, and in a way that they considered appropriate.

7.276 An agricultural worker has often been defined in Government

statements as 'a person who follows one or more of the following agricultural occupations either as a smaller marginal land holder who part of the time offers himself for wage employment or a landless labourer who offers himself full time on hire, whether he is paid in cash or kind or partly in cash and partly in kind in any of the following activities: a) farming b) dairy farming c) production, cultivation, growing and harvesting of any horticultural commodity d) raising of livestock, bee-keeping or poultry farming e) fishing and f) any practice performed on a farm as incidental to or in conjunction with the farm operation (including spraying of chemicals, well-digging and any forestry timbering operations and the preparation for market and delivery to storage or to market or to carriage for transportation of farm products.'

7.277 The Government has recently launched a Krishi Shramik Samajik Suraksha Yojana 2001 in 50 selected districts in the country to cover 10 lakh agricultural workers in the span of three years. We have been told that the response to this scheme is very encouraging. This is a social security scheme providing for

life-cum-accident insurance, money back and superannuation benefits. It is a contributory scheme requiring payment of Rs. 1/- per day by the worker and Rs. 2/- per day by the Government. If this is to be extended to cover about 200 million agricultural workers, as was announced, the Government exchequer will have to contribute Rs. 400 million per day. That will amount to Rs. 14,600 crores per year.

7.278 Unlike workers in the organised sector, agricultural workers do not have access to a system of social security or laws that provide for security of jobs, adequate minimum wages, and healthy and safe working conditions. Even where minimum wages are fixed, workers do not receive these wages in full, in most states. The procedure to enforce payment of wages, even where the machinery is available, is too cumbersome and time consuming. As has been stated earlier, the social milieu from which they come is often the lowest rung in the traditional hierarchy. They are the most vulnerable victims of natural calamities like floods or drought. They need protection from such disasters.

7.279 We have neglected the agricultural sector of the economy and agricultural labour during the last 50 years, although agriculture has been the backbone of our society and economy. It still holds the promise of prosperity. It is time that an effective framework of laws and social security was put in place for workers in this unorganised sector.

7.280 FOREST CULTIVATORS: Traditional forest based agriculturists, mostly Adivasis, are facing a livelihood crisis following the legislation on forests that has vested monopoly rights over forests in the state. Numerous national parks, sanctuaries and the forest department are very often in conflict with these subsistence-farming people who are the traditional residents of the forests. Today, the forest people do not have property rights over their traditional habitat in the forest. Forest villages are not considered legal entities. There is no definition of a 'forest village' in either the Indian Forest Act or the Wild life (the Protection) Act (Krishnan, 1996). *Rabhas* are one such people who live in the buffer zone of the Buxa (West Bengal) tiger reserve. Through eco-development committees, they have been

officially made partners in wildlife conservation. But their situation is often worse than that of their livestock, and their rights of cultivation and crops are in danger (Karlsonn, 1999). These cultivators are also unorganised workers like the other cultivators that we have referred to.

7.281 Gatherers of Forest produces: Forests provide a large number of non-timber products. Gathering and selling of these produces like firewood, *tendu* leaves, fruits, *saal* seeds, *mahua* petals, gum, tamarind, *amla* (gooseberry), medicinal herbs and roots, and honey provide livelihood for millions of people. Though the trading of these items is big business, the collectors do not get adequately or commensurately paid for the labour they put in because networks of mafia- traders control the market price. In some cases, state sponsored bodies like forest development corporations work as buyers. They too buy at prices that are kept inordinately low.

7.282 The problems of forest workers are manifold. The limitation of State sector activity in a seasonal

operation like forestry, coupled with the budgetary constraints in creating employment on a more or less regular basis in the vast expanses covered by forests needs to be recognized, although it is an important component in providing employment in those areas. The restrictions on traditional rights of forest dwellers and surrounding people in reserved forests, and the curtailment of such rights in protected forests have adverse implications on their monetised and non-monetised income levels, increasing the incentive for engaging in illegal activities of felling timber, poaching etc. These impact on the lives of 100 million forest dwellers in and around the country, and another 275 million for whom forests constitute an important source of livelihood support. This is particularly so, in respect of tribal people and women who have either been dispossessed or who do not have any property rights in land, and have meagre income producing assets. Forest products and common property resources provide the only source of income for them. The importance of this sector in the rural energy supply chain is also enormous. Studies have indicated that in the northern hilly areas of H.P. and the tribal areas of

Chattisgarh, about 15 to 20% of cash incomes at village level are derived from the collection and sale of Non-Timber Forest Produce (NTFP). Besides, NTFP has huge potential in processing industries, particularly for women, mostly at the cottage and household levels. Studies have also shown that non-monetised consumption from forest products is often 10% of the per capita income, and inclusive of firewood and grazing facilities, the benefits tend to equal the per capita income levels. It is in this context that the process of globalisation and continued initiatives in the sphere of deregulation, liberalisation and public expenditure reforms and their impact on the forestry sector workers and people dependent on forests need to be looked at. Conceptually speaking, globalisation does have some positive potential on forestry and forest dependent people. These can be by way of curbing the imbalance between agriculture and forest in favour of the latter, by redirecting the surplus and often unviable subsidies in power, water etc. which tend to push agriculture into marginal and forest lands, by creating alternative livelihood in the manufacturing and service sectors thereby reducing

excessive biotic interference on forests, and by development of affordable substitutes. By redirecting the State initiative, it can also induce positive influences by arresting the harmful features of ineffective protection and disincentives to investments in afforestation and protecting the long-term interests of forest dependent communities, encouraging the incentives for the dependent communities to protect diverse multi-production systems through restored community and individual rights for non-timber forest products (consequently reducing degradation via intensive fuel wood extraction and grazing once the NTFPs are partially or fully denationalised), review of the policies of supply of cheap raw material to industries thereby arresting extensive cutting down of waste and by opening of imports through reduction of tariff and non-tariff barriers thus reducing load on domestic forests. However, there is scope for exercising caution in any abrupt or wholesale withdrawal of the State initiative in the forestry sector. It is worth noting that the State initiatives have increased forest cover in the country and reversed the earlier trend. However, in some quarters, like State monopoly of non-

timber forest produce etc. which have led to monopoly of State operations in collection and sale, necessarily involving a large complement of Government/Public Sector staff and huge overheads on this account, there is scope for reducing the grip and opening up the sector to private initiatives, specially for the forest people and those dependent on forests like tribals and women-folk. Again, some State presence may be required in the near future to prevent monopolisation and exploitation by traders and middlemen, as was existing prior to the times of nationalisation, so that these instruments of State initiatives can play a role in ensuring proper competition alongwith the private players.

7.283 Taungya Workers: We have already made some reference to the plight and problems of thousands of workers who work in the forests of our country. These workers include those who are employed by the forest departments or their contractors to work on 'coupes' or on programmes in their working plans; those who are on construction projects within the forests; those who are engaged in the collection of fuel wood or minor forest

produce, tendu leaves and so on; the inhabitants of forest villages – mainly tribals – who have been living in the forest from time immemorial, whose habitats are the forests, and whose lives are interwoven with the forests. Much is not known about the lives or working conditions and employment related problems of many of these categories of workers. Many of them live in such inaccessible areas that they do not get enumerated even in the countrywide census operations.

7.284 One such group to whom we want to refer is the 'Taungya' planters or labourers of Gorakhpur in Eastern Uttar Pradesh. We refer to them since they are a little more known than some other groups about whom even so much is not known. According to a census of taungya workers in Gorakhpur, the number of inhabitants in their settlements came to approximately 30,000 in 1999.

7.285 They are the descendents of worker-planters whom the British Government settled in these forests of Eastern UP to grow trees in relatively thinly wooded areas. It may not be possible here to go into the 'forest policy' that the British Government forged to plunder the wealth of our

forests, firstly by claiming sovereign rights over all forest land, and particularly over some species of trees wherever they were found – even in the residential plots of citizens, and secondly, by felling and selling and exporting timber, cutting down forests to develop 'coupes' to cultivate timber yielding trees like teak, etc. Nor may we be able to describe how, even after freedom, some of these policies persisted, and how forest dwellers were ousted from their habitats to provide land for dam-sites or sites for other projects including heavy industries, or in later days, for the setting up of sanctuaries for wild life. By ousting these forest dwellers and workers from their traditional and natural habitats, lakhs, perhaps millions, of people of tribal origin were uprooted and cast into uncertainty and privation. For centuries, their lives had been interwoven with the forest. They had no acquaintance with the kind of employments one finds in urban areas. Yet, many of them were ousted or wrenched from their habitats without compensation, without provision of alternative habitats, or occupations, to float or drown in strange and distant waters.

7.286 The taungya population which we refer to here, falls in a slightly different category. The taungya scheme was built on the allocation of patches of degraded forestlands or clear-felled woods to resident labourers for planting and growing trees. In return for their work, the labourers were permitted to grow food-crops in three meter wide strips between the rows of tree-saplings. The selection of trees and the food-crops to be raised, as well as the entire process of plantation was monitored by the Government which had appropriated the ownership of the forest.

7.287 The necessary weeding and tending of the seedlings were to be carried out by the taungya cultivators simultaneously with the tilling of food-crops. After a few (usually 5) years the tree seedlings grow up and become independent. The cultivators would then be ordered to abandon the nurseries they had developed and protected, and march to an adjoining part of the forest, sometimes, to distant areas, to repeat the process.

7.288 The taungya method is believed to have been in vogue in Myanmar, and it is believed that after

the conquest of Myanmar (Burma), the British introduced the system in many areas of their Empire. The colonial powers apparently devised the taungya system to establish monopoly control over the forest resources of their colonies, as also to change the character of the natural forests through clear felling and artificial monoculture regeneration, more precisely through raising commercially valuable species of trees.

7.289 The taungya method was introduced between 1920 and 1923, chiefly for the plantation of Sal trees. This method was essential for guaranteeing early regeneration of sal trees. The method not only involved planting seedlings of the tree, but also nurturing and protecting the young trees against animals. It demanded twenty-four hours' vigilance. The taungya method was a kind of *Begar*, (forced labour) as the labourers were given a temporary lease to cultivate the strips between the rows of seedlings, at their own cost and in lieu of any wage or payments made for raising and protecting the plantation. They had to function under severe restrictions. They could raise only short duration

crops that did not draw many nutrients from the soil adjoining the saplings.

7. 290 The exploitative nature of the taungya technique did not change even after the country gained Independence. In the post-Independence era a male adult taungya labourer was assigned a plot of about 0.2 hectare in area on which he was expected to work along with his family. The work increased considerably under this new arrangement. By the end of every fifth year, after nurturing the sal seedlings in the allotted areas, these labourers had to move their huts to the newly assigned plots. More and more parts of forests were put under the taungya scheme.

7.291 The taungya system is characterised by cheap and captive labour. The labourers are out of the mainstream, and are exposed to many hazards in the forest. They have no alternative means to earn livelihood, and are compelled to survive on the taungya technique. They are prone to frequent attacks of malaria and other ailments due to the virtual absence of protection in the forests. Most of the taungya workers are at least 8 km. away from any primary health centre or a primary school and even a

market. The taungya settlements are approachable only through narrow footpaths, which are under constant threat from wild animals. The process of taungya cultivation is hazardous, and often led to casualties and abnormal deaths, through the falling of trees, snake bites and the like. In this situation the condition of their women folk is far worse than that of the ordinary lower class peasant women. They have to walk for long hours to reach health centres, and even markets, to purchase articles for their basic needs. The muddy and lonely forest tracks make it difficult for them to travel independently. This is especially so for young girls.

7.292 Although the land holdings of the taungya families are near their huts, they are not consolidated. Each taungya family, generally, occupied four small plots scattered across a radius of one kilometre. Generally, all the taungya workers are marginal farmers cultivating one-acre land or less, and supplementing their livelihood by tending cattle.

7.293 Some NGOs have tried to improve the conditions of these workers but the dimensions of their problem are well beyond the means

available to voluntary organisations. At best they have been able to improve the literacy of the taungya workers' children. They have started schools and also supported poor cultivators with credit to buy high yielding seeds and pumps for small irrigation. But the poor numerical strength of these workers and dispersal over a number of assembly constituencies have denied them an available political voice.

7.294 Even decades after independence, the taungya workers do not see any hope of permanent settlement. The problem worsened in the 80's when the Forest Department insisted on a written agreement which denied hereditary transfer of taungya plots, as was conventional in the past. There was even a proposal prepared by higher range officials for the closure of the schools of the taungya children. The literate taungya workers realised that such an agreement would render their future bleak. In 1982, workers began to organise themselves with the formation of a trade union named Vantangiya Mazdoor Sangathan but that was not very successful. By 1983, taungya programmes ran into trouble, and when the Forest Department did not

lease land to workers who had not accepted the agreement, the workers decided to distribute the forestland for themselves for planting sal seedlings as well as food crops. This led to physical conflicts between forest officials and the taungya workers, and police firing in which two workers died in 1985.

7.295 There have been periodic informal attempts to forcibly evict these workers. Even after the local judiciary of Gorakhpur issued a stay order against all eviction in 1983 on a petition from workers, the taungya workers continued to live under constant threat of eviction. The Uttar Pradesh Government changed their strategy. They declared a large part of the forest in the Gorakhpur region as a Wild Life Sanctuary in 1987, and a public eviction notice was issued. Many taungya workers appealed for resettlement, and, in course of time, obtained stay orders against eviction. While the District Administration of Maharaj Ganj tried to help these workers by initiating steps to declare their settlements as revenue villages, this move was opposed and halted by the Forest Department. In 1992, an organisation called the Vantaungya Vikas Samiti was constituted which

spearheaded a resistance movement on behalf of taungya workers. The major demand of the taungya workers has been ownership titles for the plots they possess, and recognition of their settlements as revenue villages so that they might enjoy the benefits of local self Government through village panchayats. The Forest Department, however, has been alleging that the taungya cultivators have become rebellious, that they are involved in smuggling of forest properties, that they have anti-social elements among them, that they have become a vote bank, and that they have illegally occupied forestland. But facts do not substantiate these allegations. Forcible eviction continued till the Allahabad High Court issued a stay order in 1997.

7.296 We feel that these workers are entitled to considerate treatment and should be rehabilitated with alternative jobs/land, and their villages should be treated as revenue villages. No rehabilitation policy or programme has as yet been formulated for taungya workers.

7.297 There are, no doubt, other forest communities with a similar or worse plight elsewhere in the country.

We have cited the case of the taungya workers as an example of an exploited and neglected category of workers as told to us during our interaction with different social groups.

7. 298 Pastoral toilers: Shepherds, nomads who depend on domestic animal herds, and animal graziers, utilising village commons and forestlands, are another category of self-employed groups who often live at below subsistence level.

7.299 One of the characteristics of the new economy is the speed with which technology is changing, and the consequent need for new skills that keep emerging. In earlier days, a specialisation in one skill was usually enough for lifetime employment. Today, there is need to continually adapt or acquire new skills.

7.300 A NEW KIND OF BONDEDNESS: When earnings and wages are below the statutory minimum wage, and workers have to live by borrowing, conditions of workers slide into bondage. When the worker is paid below the dignified wage and the farmer does not get a justifiable price for his produce, it attracts Article 23 of the Constitution.

The Bonded Labour System (Abolition) Act, 1976 and the Asiad worker's case (People's Union for Democratic Rights Vs. Union of India, AIR 1982 SC 1473) together point out that the prevailing situation in some sub-sectors of the unorganised sector is equivalent to bondedness.

7.301 Section 2 of the Bonded Labour System (Abolition) Act, 1976 defines the 'bonded labour system' as the system of forced, or partly forced labour, under which a debtor enters, or has, or is presumed to have, entered, into an agreement with the creditor to the effect that:

- a) in consideration of an advance obtained by him or by any of his lineal ascendants or descendants (whether or not such advance is evidenced by any document) and in consideration of the interest, if any, due on such advance, or
- b) in pursuance of any customary or social obligation, or
- c) in pursuance of an obligation developing on him by succession, or
- d) for any economic consideration

received by him or by any of his lineal ascendants or descendants, or

- e) by reason of his birth in any particular caste or community, he would:
 - render, by himself or through any member of his family, or any person dependent on him, labour or service to the creditor, or for the benefit of the creditor, for a specified period or for an unspecified period, either without wages or for nominal wages, or
 - forfeit the freedom of employment or other means of livelihood for a specified period or for an unspecified period, or
 - forfeit the right to move freely throughout the territory of India, or
 - forfeit the right to appropriate or sell at market value any of his property or product of his labour or the labour of a member of his family or any person dependent on him, and includes the system of forced, or partly forced, labour under which a surety for, a debtor enters, or has or is presumed to

have, entered, into an agreement with the creditor to the effect that in the event of the failure of the debtor to repay the debt, he would render the bonded labour on behalf of the debtor.'

7.302 Section 2 (g)(v) and sub-clause (4) of this Act guard against bondage on caste grounds and forfeiting 'the right to appropriate or sell at market value any of his property or product of his labour or the labour.' (The Bonded Labour System (Abolition) Amendment Act (1985).

7.303 Article 23 (1) of the Constitution of India, relating to Fundamental Rights, states that "traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law." The Hon'ble Supreme Court, in the People's Union for Democratic Rights Vs. Union of India (AIR 1982 SC 1473) and Bandhua Mukti Morcha Vs. Union of India (AIR 1984 SC 802), cases have redefined the scope of the Bonded Labour System (Abolition) Act 1976. In the Asiad Workers' Case the

Supreme Court pointed out that the Constitution makers decided "to give teeth to their resolve to obliterate and wipe out this evil practice by enacting constitutional prohibition against it in the Chapter on Fundamental Rights, so that the abolition of such practice may become enforceable and effective as soon as the Constitution came into force."

7.304 The Asiad workers' case (People's Union for Democratic Rights Vs. Union of India AIR 1982 SC 1473) added a very important dimension to the definition of bonded labour, when the Hon'ble Supreme Court ruled that force arising out of economic compulsions to make one volunteer to work below minimum wages, is also forced labour. The Court, basing its argument on Article 23, held that: 'This Article strikes at every form of forced labour even if it has its origin in a contract voluntarily entered into by the person obliged to provide labour or service. The reason is that it offends against human dignity to compel a person to provide labour or service to another if he does not wish to do so, even though it be in breach of the contract entered into by him.'

7.305 'Where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the scope and ambit of the words 'forced labour' under Article 23. The word 'force' must therefore be construed to include not only physical or legal force, but also force arising from the compulsion of economic circumstances which leaves no choice of alternatives to a person in want and compels him to provide labour or service even though the remuneration received for it is less than the minimum wage' (1983).

7.306 In the *Bandhua Mukti Morcha* case, the power of the Supreme Court under Article 32 was invoked to free forced labour in two stone quarries in Faridabad. In the light of these historic judgments that we have cited, when a person enters even into a willing contract by force of circumstances, if the person is paid only nominal wages or gets only nominal prices for products, the conditions of the wage attract the rigour of the interpretation that the Supreme Court gave to Article 23. Therefore, the cases of farmers who

do not get minimum prices for crops and workers who do not get minimum wages, need a correctional legislative step. In other words, both employed and self-employed workers need a guaranteed income or wage. Such a wage can be provided only through a comprehensive legislation on a National Minimum Wage.

7.307 Anganwadi and Balwadi workers are getting only nominal wages. Some health workers who are 'employed' as *Swasthya Rakshaks* by the Health Department/Ministry or by para-state organisations get insignificant remuneration, euphemistically called 'honoraria,' given for 'voluntary service.' These workers, whose working conditions are not regulated, are neither given wages nor considered employed by the institution. They are used by Governmental and Semi-Governmental wings for tasks like campaigns against malaria and polio. At the same time, the employers are not ready to own them, and since the wages are insignificantly low, they officially term them as honoraria. These, and similar workers, are considered part of the unorganised sector. They are entitled to minimum wages and other relevant social

security measures which we propose in the umbrella legislation that we are recommending.

7.308 GENDER COMPOSITION OF THE WORKFORCE: Most of the workers in the unorganised sector are women. The share of casual labour and self-employed workers among female labour is higher compared to that among male labour. As early as in 1986, it was pointed out, on the basis of three NSS rounds, that when the proportion of casual labour to wage labour increased from 64% in 1972-73 to 73% in 1983 for the males, the figure for females rose from 88 to 92%. The NSSO rounds of 1993-94 showed that while 56.8% of the female workforce were self-employed, the figure for males was only 53.7. When the figure for casual labour was 29.6 for males, it was as high as 37% for females (NCAER, 1998). Thus proportionately, the unorganised component is higher among the female workforce compared to what prevails among males. This trend of increasing women labour in the unorganised sector is growing with the casualisation of labour, and the increasing number of employments coming into the home-based sector.

7. 309 We can now recapitulate the basic facts about the dimension of the unorganised sector, and the characteristics that have been revealed by our brief survey of some of the major sub-sectors in the sector. The unorganised sector accounts for around 91% of the total workforce in the country, i.e., around one-third of India's population. 60% of unorganised workers are self-employed/home-based workers. The Annual Report 1999-2000 of the Ministry of Labour (2000b:106-107), basing its figures on the 1991 Census, gives the following information about unorganised workers (the detailed labour data based on 2001 Census is not yet out, and the Annual report 2000-2001 of the Ministry of Labour also does not provide any new data):

- a) Out of the total workforce of 314 million, 286 million are main workers and 28 million are marginal workers. Out of the 286 million main workers, 259 million are in the unorganised sector.
- b) In relative terms, unorganised labour accounts for 90.6% of the total workers.

- c) Out of 191 million workers engaged in agriculture, forestry, fishery and plantations, 190 million (99.2 %) are in the unorganised sector.
- d) Out of the 28.92 million workers in the manufacturing sector, 21.62 million (75%) are in the unorganised sector.
- e) In building and construction, 78% of workers are in the unorganised sector.
- f) In trade and commerce, 98% are unorganised workers.
- g) In transport, storage and communication, there are 4.9 million (61.5 %) unorganised workers.

7.310 We have seen that it is not possible to prepare an exhaustive list of processes and jobs in the unorganised sector. All manual and un/semi-skilled work, both piece-rated and time-rated, and all jobs that are executed in the informal/unorganised sector, should be identified as eligible to be brought under the coverage of the Umbrella Legislation for the Workers in the Unorganised Sector. If we base ourselves on the list in the Schedules

in the State and Central Minimum Wages legislation, the employments mentioned in the report of the National Commission on Self-employed Women and Women in the Informal Sector, and on the papers of the Ministry of Labour on home-based Workers, the following kinds of employments/occupations can be identified. (We reiterate that the list is not exhaustive).

- a) Employment in plantations, farms and agricultural fields: any form of farming including the cultivation and tillage of the soil; the production, cultivation, growing and harvesting of any agricultural or horticultural commodity, and any practice performed by a farmer; farm operations including any forestry or timbering operations, and the preparation for market and delivery to storage or market or to carriage for transportation to market of farm produce; employment in cleaning and sorting of onions and other incidental work; employment in sericulture, horticulture, floriculture, mushroom cultivation; cotton-picking, pod opening, unskilled and manual works.

- b) Dairy farming, animal husbandry, poultry, piggery, bee-keeping.
- c) Employment in forestry including silviculture: aligning and stacking, surveying and demarcation of forest lands, digging pits for planting, transport of seedlings and other planting materials, planting, weeding, tending, soil working, ploughing, fencing, application of fertilizers and pesticides, timber and logging operation, raising of nurseries, breaking plots, watering, collection of fertile earth or silt collecting, clearing and grading of seeds, scraping fire lines, road works, building operations, up-keep of livestock, collection of minor forest produce and other operations or occupations connected with forestry; plucking and processing of kendu/tendu leaves, forest produces and hill produces industry.
- d) Furniture, carpentry, interior decoration/ furnishing, saw mills, plywood, cardboard, paperboard, pulp and paper production, reed work, basket weaving.
- e) Elephant handling and caring.
- f) Fisheries, fish processing; packing, drying of fish; aquaculture; processing of molluscs and other shellfish, squids and shrimps.
- g) Cold storage, ice plants, fruit and vegetable preservation, canning of fish and meat, processing and export of seafood, frog legs, etc.
- h) Beverages, leaf tea factories, coffee curing, distilleries, breweries, bottling plants, toddy tapping and other related occupations, neera tapping, liquor vending.
- i) Handloom, power loom, textile, ready-mades, woollen carpet making, shawl weaving, hosiery, cotton carpet weaving, tagai-work, cotton ginning, pressing, spinning, weaving, blankets, durries, garments, knit-wear, tailoring, embroidery, charkha-spinning, knitting, lace/tilla, work, Gota, kinari, lappa establishments; zari/jari, zardozi, chikan, brocade, chindi/chandi work; kosa silk, silk industry.
- j) Rice, flour and dal mills, oil mills, sugarcane, khandsari,

- sugar mills; food processing and agro-business trades; rice workers (making of *murmura*, *chivda*, etc.); baking processes, bread/biscuit making, confectionery, *pappad* making, home-cooked food, *masala* pounding; ice cream and cold drinks, aerated syrups and drinks, fruit juices.
- k) Khadi and village industries, handicrafts and traditional crafts; cashew processing, *copra*, coir, jute, tobacco processing, *beedi* making, *supari*-cutting, lac manufacturing,, *tanneries* and leather works/leather products, shoe-embroidery, footwear, rope making, envelope making, lacquer work, *bindi* pasting, *jhadoo*, *jadi booti*, *agarbatti*, *tushar*, food packing, laundry and washing, gunny bag stitching.
- l) Construction and maintenance of roads, runways, dams, irrigation facilities, embankments and buildings; sinking of wells and tanks: earth cutting, removing, and filling and drilling activities; tube well industries.
- m) Transport and ferries.
- n) Mining, quarrying, stone crushing, slate factories.
- o) Commercial establishments, shops, saloons/salons, parlours, catering units, eateries, hotels, tourism-related jobs, clubs, canteens, restaurants; cinema stalls, motion picture industry; Small media/newspaper establishments; door-to-door selling/sales promotion; petrol and diesel pumps.
- p) Employment in religious and social institutions, co-operative establishments, NGOs, private educational institutions, pre-schooling institutions/ nursery schools, coaching and technical institutions, private hospitals, nursing homes, clinics.
- q) General engineering, workshops, garages,, printing presses, bookbinding, plumbing, wiring; laying underground cables, electric lines, water supply lines and sewerage pipelines; metal industries; tie-and-dye.
- r) Manufacturing of utensils and household articles; sports goods.

- s) Stationery industries; manufacture of articles of artistic design; packers, couriers.
- t) Electronic and electrical goods; photography, reprography, audio and video processes.
- u) Manufacture of Ayurvedic, Allopathic and Unani medicines; chemicals, pharmaceuticals, pesticides, fertilisers, feeds; sindur and rang manufacture; Cosmetics; plating; dyeing, bleaching, etc., plastic and PVC goods industry, natural and artificial rubber and rubber products; salt-pans; bone-crushing; matches, crackers/ fireworks.
- v) Kilns-tiles, bricks; potteries including crockery, sanitary-ware, refractory, jars, electrical accessories, hospital-ware, textile accessories, toys, glazed tiles, etc.; pottery-painting; Ceramics/chinaware; stoneware; hard-coke ovens and foundries; processes in glass/bangle manufacturing and glass sheet manufacturing, bead piercing; lock and trunk making, brassware, metal ware;
- w) Gem cutting and polishing bobbins.
- x) Cement industry, cement-ware, asbestos cement, cement prestressed products industries, cement concrete products, hardware and building materials.
- y) Cleaning/safai works; assistant/helper jobs; unskilled and manual works; domestic labour; loading and unloading, head load work.
- z) Persons involved in any other jobs, processes avocations or professions, not covered by any other industrial legislation, who have to be treated as workers in the unorganised sector.

Existing legislation and the unorganised sector

7.311 After this bird's eye view of the vast and undulating terrain of the unorganised sector, it is now necessary for us to look at the existing laws/schemes, to see whether they cover the entire area we have surveyed, and whether they are adequate to give even the minimum of protection, safety and social security to the vast and varied workforce in the unorganised sector. If we find that the existing laws do not cover or adequately cover the

workforce in the unorganised sector, we have no escape from concluding that more than 90% of our workforce do not enjoy the minimum protection and security that they need. This, then, will be a situation which should shame all those who talk of care and commitment to the rights and welfare of labour, as well as all those who bear responsibility for ensuring the rights and welfare of our people, in particular, the overwhelming majority of our people who are in the labour force.

7.312 We have many labour laws in our Statute book. All of them do not cover workers in the unorganised/informal sector. All of them are not applicable, and were not meant to be applicable to the employments in the unorganised sector. Some are applicable. But none of the laws that form the base of the social security system covers the whole unorganised sector. We will look at the laws that apply wholly, or partly to this sector.

7. 313 But before we do so, we have to draw attention to the questions or alternatives that arise. One is whether protection and security can be extended by amending existing Acts, *mutatis mutandis*, to employments and labour in the

unorganised sector. The other is whether to achieve the goals of assuring protection and welfare to workers in this sector, we have to enact separate laws for each employment and occupation, including a separate law for the self-employed. A third question is whether one single law can cover the needs of all the workers in the informal/unorganised sector because it does appear that one single law cannot cope with the variety of conditions in a sector, in which even the employer-employee relationship cannot be identified in many cases; where there are vast differences in the state of awareness, literacy, education, skills, degree and level of organisation means of monitoring, etc. The fourth is whether the problem of variety can be solved or addressed by enacting an Umbrella Law that provides for a minimum of protection, access to welfare or social security, and redressal of grievances, while retaining existing sub-sectoral laws and sub-sectoral welfare systems and providing for the addition of further sub-sectoral systems when and were found necessary.

7. 314 In this chapter, it is not necessary for us to examine all the

labour laws in the Statute Book. We have already done so in the chapter on 'The Review of Laws.' Here, we shall look only at laws that are germane to the unorganised sector. These laws are: The Factories Act, the Minimum Wages Act, the Equal Remuneration Act, the Payment of Wages Act, the Industrial Disputes Act, the Workmen's Compensation Act, the Payment of Gratuity Act, etc. which are applicable to the workers in the unorganised sector where there is an identifiable employer-employee relationship. In some of the employments or avocations, contractors are engaged, and this results in a situation in which the principal employer does not come into the picture, as in building/construction activity, *beedi* rolling, mining, (particularly stone mining) or quarrying, and various other occupations. These workers are sometimes covered under more than one law e.g. the Contract Labour (Regulation and Abolition) Act as well as under one specific law or another like *Beedi* and Cigar Workers (Regulation of Employment and Conditions of Service) Act, Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act etc. In spite

of the existence of these beneficial laws, the benefits and facilities prescribed under these laws are denied to them in most cases. We will examine some of these Acts and schemes in succeeding paragraphs.

7.315 THE FACTORIES ACT, 1948: The Factories Act 1948 is designed to protect workers in the factories. The Act has undergone various amendments, and was last updated in 1987. Various sections of the Act deal with benefits and welfare facilities and health, safety and hygiene, inside the factory premises. 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. The infrastructural facilities available to him are totally inadequate. (We refer to the subject in detail elsewhere.) The first schedule of the Act lists industries involving hazardous processes; the second

schedule is on the permissible levels of certain chemicals in the work environment; and the third deals with notifiable diseases.

7.316 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, i.e. not more than 9 hours in a day, and 48 hours in a week; Women cannot be engaged for extra hours of work in a factory. Sections 23 and 27 of the Factories Act prohibit women from handling dangerous devices. However, all these provisions are not applied in practice for a section of the workers. Moreover, the Act is applicable only to manufacturing units, organised as factories. The provisions of this Act do not apply to the vast masses of workers in the unorganised sector employed in smaller manufacturing units and other sectors.

7.317 INDUSTRIAL DISPUTES ACT, 1947: The Industrial Disputes Act (I.D. Act) has been enacted

mainly to provide for the investigation and settlement of industrial disputes.

7.318 MINIMUM WAGES ACT, 1948: The Minimum Wages Act, 1948 is the most important legislation that has been enacted for the benefit of unorganised labour. It was enacted for fixing, reviewing and revising the minimum rates of wages in the scheduled employments where workers are engaged in the unorganised sector. The Minimum Wages Act is meant to ensure that the market forces, and the laws of demand and supply are not allowed to determine the wages of workmen in industries where workers are poor, vulnerable, unorganised, and without bargaining power. The minimum rates of wages are fixed, keeping in view the minimum requirements of a family, and wages at these rates are to be paid by all employers irrespective of their capacity to pay. (Questions relating to Minimum Wages have been discussed in detail elsewhere.)

7.319 The Act helps unorganised workers who are working in the scheduled employments. But nearly 60% of the workforce in the unorganised sector is self-employed or home-based. Thus, they remain

outside the purview of the Minimum Wages Act, 1948, although they constitute the majority in the sector.

7.320 PAYMENT OF WAGES ACT, 1936: The Payment of Wages Act, 1936 regulates the payment of wages to certain classes of employed persons. It ensures the correct and timely payment of wages and ensures that no unauthorized or arbitrary deductions are made. This Act applies to persons employed in factories, mines, oil fields, railways and various other establishments specified in the Act. However, because of the wage limit of Rs. 1600 for the purpose of applicability of the Act, 95% of the unorganised workers are excluded from the coverage of the Act.

7.321 The Act is not applicable to self-employed/home-based workers, as they are not persons employed in the category of establishments mentioned in the Act. It does not, therefore, protect a large number of workers in the unorganised sector.

7.322 WORKMEN'S COMPENSATION ACT, 1923: The Workmen's Compensation Act, 1923 provides for the payment of compensation to workmen for injuries sustained in

accidents. After the amendments effected in 1995, the Act has 4 schedules. Schedule I provides a list of injuries with percentage of disablement (loss of earning capacity). If the injury is not a scheduled injury, the loss of earning capacity has to be proved by evidence. The majority of workers who are not insured under the ESI Scheme are covered under the Workmen's Compensation Act. The Act does not apply to those who are employed in occupations enlisted in the Schedule II. Nor is relief available if the injury has taken place when the injured worker was not actually engaged in discharging duties related to the employer's trade or business. The employer is liable to provide monetary compensation to the worker or dependant in case of death or disablement provided it occurs 'out of and in the course of employment.' An occupational disease listed in Schedule III of the Act is also accepted as an accident that occurred while on duty. The burden of proving that the accident arose out of employment is upon the worker.

7. 323 The method of claiming compensation for disability is so long and torturous that one rarely gets the

compensation to which one is entitled by law. Any qualified medical practitioner can certify the case, and the victim can file a claim in the court of the workmens compensation commissioner with a copy to the employer. The workmens compensation commissioner decides the case, and the revenue department recovers the amount of compensation. But workers who are in the unorganised sector, often find it very difficult to prove who is their employer, and as a result cases are prolonged, and often workers die without receiving any compensation.

7.324 The Workmen's Compensation (Amendment) Act, 2000 that came into effect in December 2000 provides for compensation even to casual workers. The minimum amount of compensation for death has been enhanced from Rs. 50,000 to Rs. 80,000 and for total disablement from Rs. 60,000 to Rs. 90,000. The ceiling on monthly wage / salary reckoned for determining the compensation amount has also been increased from Rs. 2000 to Rs. 4000. The amount of funeral expenses payable has also been increased to Rs. 2500 from Rs. 1000.

7.325 INTER-STATE MIGRANT WORKMEN (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) (ISMW) ACT, 1979: The vast majority of migrant workers fall in the unorganised sector. Workers are recruited from various parts of a State through contractors or agents commonly known as 'sardars,' generally for work outside the State wherever construction projects are available. This system lends itself to various abuses. The promises that contractors make at the time of recruitment about higher wages and regular and timely payments are not usually kept. No working hours are fixed for these workers and they have to work all days in the week under extremely bad, often intolerable working conditions in inhospitable environments. The provisions of various labour laws are not observed, and migrant workers are often subjected to various forms of malpractices. The Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act 1979 was enacted to regulate the employment and conditions of service of inter-State migrant workers.

7.326 The benefits include non-discrimination in wage rates, holidays,

hours of work and other conditions of work for inter-State migrant workers in relation to local workers. They are eligible for a non-refundable Displacement Allowance equal to 50% of their monthly wages in addition to the wages. A journey allowance, equal to rail fares both ways, is to be paid by the contractor with wages during the period of journeys. Other provisions include regular payment of wages, equal pay for equal work to both men and women workers, and provisions for suitable conditions of work, suitable residential accommodation, adequate medical facilities, and adequate protective clothing and equipment. In case of accidents, there is a provision to ensure intimation to the authorities of both the States (Home State and Host State) and to the next of kin.

7.327 To understand the applicability and utility of the Act, we must look at the definition of the inter-State migrant workman in the Act. It says, 'any person who is recruited by or through a contractor in one State under an agreement or other arrangement for employment in an establishment in another State, whether with or without the knowledge of the principal employer in relation to such establishment.'

7.328 According to this definition, we find that all migrant workers (who are generally unorganised workers) are not inter-State migrant workers as defined by the law, and cannot, therefore, enjoy the benefits of the ISMW Act. To prove in court that the Act is applicable is very difficult, as employers deny that workmen were recruited from another State (Home State) by any of their contractors. They often contend that the workers were recruited from nearby places within the State where the industry is located. Thus, the Act is only of very limited benefit to workers in the unorganised sector.

7.329 The Commission has, therefore, been urged by many witnesses to recommend amendments that will make the ISMW Act more effective, and cover all migrant workers. The suggestion is that the definition of 'inter-State migrant worker' be amended to mean any worker who is employed in an establishment situated in a State other than the Home State of the worker.

7.330 It was argued that this change can make the ISMW Act cover a large number of unorganised

workers, and at the same time plug some of the loopholes in the present Act. We have made recommendations about the Act in the Chapter on Review of Legislation.

7.331 BUILDING AND OTHER CONSTRUCTION WORKERS' (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) ACT, 1996: The Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 is an Act to regulate the employment and conditions of service of building and other construction workers and to provide for their safety, health and welfare and other incidental matters. The Act applies to every building or other construction work establishment, which employs or had employed ten or more workers. It covers all Central and State government establishments. The special feature of the Act is that it covers all private residential buildings if the cost of construction is more than Rupees ten lakhs.

7.332 Registration of the Establishment is compulsory, and no Establishment without Registration can employ any building or

construction worker. A worker between 18 and 60 years has to be registered to become eligible for the benefits of the Act. He/she must have put in at least 90 days of work 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 60, and for the year when he/she puts in at least 90 days of work.

7.333 A fund has to be created with the revenue from a cess collected from the employers, and contributions by the workers. Benefits include assistance in cases of accident, payment of pension, house building loans, assistance for group insurance schemes, education of children, maternity benefits for female beneficiaries and so on. There are provisions for regulating working hours, welfare measures and other conditions of service. The law also prescribes safety and health measures, and all other precautions that are required for safe working, e.g. safety devices for installation work, demolition work, excavation, underground construction, handling measures, proper ladders, ropes and

fencing, etc. Inspections and penalties are provided for. In actual practice, the provisions of this Act are beneficial only to the skilled workers and those who work continuously in the industry. Unskilled workers, who do not work with a construction establishment continuously, may not get the benefits available under the Act. It will not be possible for those unskilled, uneducated and purely casual workers to make regular, timely contributions to the fund as per the provisions of the law. The responsibility for collecting of contributions from workers and remitting the same to concerned welfare boards, requires to be entrusted to the employer. In the seminars organised at different places (e.g. Chennai, Mumbai, New Delhi) by some of the voluntary organisations (e.g. National Campaign Committee, Nirman Mazdoor Panchayat, T.N. Forces etc jointly), to which this Commission was also invited, allegations were levelled against State Governments accusing them of conniving with the builders by not notifying the rules and not setting up Boards as prescribed. It was alleged that the builders had saved several thousand crores of the cess which was to be paid under the Act.

These organisations demanded that Rules be framed by all State Governments immediately to implement the law. They further demanded inter-alia that (a) the Act should be made applicable to the construction of residential houses without limit of cost (b) the cess should be increased from 1% to 2% of the construction cost (c) there should be provision in the Act for the regulation of employment of building workers, and the welfare boards prescribed under the Act should be set up on the lines of boards constituted under the Maharashtra Mathadi and other Manual Workers Act by amending the Central Act (d) The Board should have powers to regulate natural resources and promote the rights of workers to have open access to the resources.

7.334 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. The Act is applicable if the principal employer engages twenty or more contract workers in an establishment. The contractor who

employs twenty or more workers in his contract work will be covered under the Contract Labour (R and A) Act 1970. The Act provides for the registration of all establishments of Principal Employers and licensing of all contractors. There is a special provision (Section 10) for the abolition of the contract system if certain conditions are met, like the nature of jobs being of a perennial nature and connected with the core business of the principal employer. There are a number of provisions in the Act for the welfare and safety of contract labour. For regulating its implementation, certain registers, records, returns etc. are to be maintained by the principal employers and contractors. Penalties have been prescribed for those who violate the law. This Act is meant for unorganised labour. But its scope is very limited. The limitations in the law are such that the contractor stands to gain if he engages less than twenty workers. This provision provides a loophole for all manner of manipulations by employers and contractors. Therefore, it can be seen that the coverage that this Act provides is far from satisfactory.

7.335 *BEEDI* AND CIGAR

WORKERS (CONDITIONS OF EMPLOYMENT) ACT, 1966: *Beedi and Cigar Workers* (Conditions of Employment) Act, 1966 is an Act that provides for the welfare of the workers in Beedi and Cigar establishments, and regulates the conditions of their work and related matters. The Act provides for licensing of all industrial premises where *beedi* or cigar or both are made. It provides for cleanliness, and ventilation and prohibits overcrowding of the premises. The welfare measures that it provides for include arrangements for drinking water, latrines and urinals, washing facilities, crèches, first aid and canteens. Working conditions prescribe working hours, wages for overtime, interval for rest, spread over, weekly holidays, annual leave with wages, and a ban on child labour, and night shift for women and adolescents.

7.336 The employees who are given raw material by an employer or a contractor for making *beedi* and cigars at home are covered under the Act. Persons not employed by an employer or a contractor but working with the permission of, or under agreement with the employer or contractor are also covered. Section

43 of the Act does not cover the self-employed persons in the *beedi* and cigar making industry. If the owner or occupier of the dwelling or house is not the employee of an employer, and carries on any *beedi* and cigar-making work as self-employment, the person is not covered under the Act. It looks anomalous that unorganised workers can receive the limited benefits of the existing labour laws only if they happen to work for employers, in other words, if there is an employer-employee relationship. None of these labour laws can provide protection to the vast majority of unorganised 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.

Review of the existing welfare funds and boards

7.337 SOCIAL SECURITY LEGISLATION, LABOUR WELFARE SCHEMES AND FUNDS: There are a number of legislations and other welfare schemes that provide social security to workers in the organised sector. Some of these are applicable to certain categories of workers in the unorganised sector too. We propose to deal with questions relating to

social security including existing arrangements, institutions, and improvements in the new overall structure that we are proposing, in a separate chapter on social security. We are aware that a review of the system, the existing legislation and the boards existing now in the unorganised sector, may give the impression of repetition. But we felt that a brief review of the inadequacies, and the lessons that have to be drawn from the experience and problems in the sector, was necessary to enable a proper understanding and appreciation of the proposals that we are making for social security in the unorganised sector.

7.338 The existing laws on social security include Employees State Insurance (ESI) Act, 1948, Employees Provident Fund and Miscellaneous Provisions Act, (EPF) 1952, Payment of Gratuity Act, 1972, Maternity Benefit Act, 1961 etc. The ESI Act provides medical benefits, sickness benefits, maternity benefits, disablement benefits and dependents' benefit in case of sickness, and employment injury. The Act is not applicable to the workers in the unorganised sector as it has a

threshold limit of employment of 10 persons. The EPF Act is applicable to the factories and establishments that employ 20 or more persons. A large number of workers, working in smaller units, remain out of the ambit of this Act. But the contract workers in bigger establishments, though they get covered under both the above mentioned laws, are often denied the benefits of these laws. The Payment of Gratuity Act is applicable to factories, plantations, shops and establishments, mines, oil fields, ports and railway companies, etc., which employ 10 or more employees. Moreover, a continuous service of 5 years or more with one employer is also essential to be eligible for the gratuity benefit. It is evident that a large number of workers do not meet the eligibility criteria. Similarly, the Maternity Benefit Act is applicable to the factories, mines, plantation, etc., where 10 or more persons are employed. A women employee who completes at least 80 days of work prior to delivery is entitled for benefit under the Act. In practice, this Act also does not cover women workers in the unorganised sector.

7. 339 It may be seen from what we have said that the existing labour

laws do not cover the vast majority of workers who work as home-based workers, domestic workers, self-employed workers and those working in small units.

7.340 The Government of India has set up welfare funds for workers in six classes of mines – mica, iron ore, manganese ore, chrome ore, limestone and dolomite. Welfare funds exist also for *beedi* workers, cine workers, and building and construction workers through welfare board and funds to be setup by State Governments under the Central Act. They provide mainly medical care, assistance for the education of children, housing and water supply, and recreational facilities. Among the States, Kerala has set up more than 20 welfare funds for the benefit of workers in the unorganised sector. Many of these are statutory but some are non-statutory. A statutory fund was created for financing welfare measures for plantation workers in Assam. Mathadi Boards exist for various groups of head load workers in Maharashtra.

7.341 The Central welfare funds have been set up by special Acts of Parliament. *Beedi* workers are

covered by the Beedi Workers Welfare Fund Act, 1976 (and *Beedi Workers Welfare Cess Act, 1976*). A fixed cess is levied per bundle of 1000 *beedis* manufactured. Building and Other Construction Workers' Boards are constituted under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996. As per the Building and Other Construction Workers' Welfare Cess Act, 1996 a cess is collected at the rate not exceeding 2% of the cost of the construction made. Among the Funds related to mines, for mica, the cess is collected at a certain percentage of its export value. However, the cess is levied for other mine products on the basis of the quantum of production, not on the basis of the value of production. The Cine Workers Welfare Cess Act, 1981 has adopted a method of levying cess on films on the basis of production, not on the basis of collection. There are three different rates for films in different languages. The rationale for differential rates and the wide variation in the rate structure of the cess have attracted criticism.

7.342 The welfare funds fall broadly into two groups – tax-based

and contributory. The funds set up by the central government are tax-based, while those set up by the government of Kerala are mostly contributory. A contributory scheme is akin to social insurance. In India, there is only one social insurance scheme, and that is the Employees State Insurance Scheme (ESIS). The experience of this scheme has not been encouraging. Nor has Kerala experience been encouraging, with contributory schemes where coverage has been limited, and increasing difficulty in collecting contributions. There is a view that in Indian conditions, tax-based schemes would work better. However, a combination of contributory and tax-based schemes can bring in resources, and also encourage the participation of the actors involved, particularly the workers. As far as the ESI scheme is concerned, it could be said that, despite constraints, it is still the scheme that unorganised workers like construction workers are aiming at (Nirman Mazdoor Panchayat Sangam demands it).

7.343 Benefits through Central Welfare Funds: The end use of the welfare funds is prescribed in the respective laws or schemes. The

Central Welfare Funds for mine workers and *beedi* rollers are used to fund the improvement of public health, sanitation, medical facilities, water supply and educational facilities, prevention of disease, the improvement of standards of living including housing and nutrition, and the amelioration of social conditions and provision of recreational facilities. In actual practice, most of the expenditure from the welfare funds has been on health, education and housing. For example, in 1992-93 in the case of the limestone/dolomite mineworkers, 51.49% was spent on health, 9.7% on education/recreation, and 17.83% on housing.

7.344 Healthcare: The assistance and facilities provided for medical care include the purchase of spectacles for those with ophthalmic problems, reimbursement of actual expenditure for heart disorders, kidney transplants and cancer, reservation of beds in hospitals that treat tuberculosis and domiciliary treatment for those with tuberculosis, grants for treatment, diet, transportation charges, subsistence allowance for those with mental disorders or leprosy, and the supply of artificial limbs for those with orthopaedic problems. The central

welfare Funds have adopted the integrated model of healthcare, and have undertaken to provide medical services directly. Each Fund has created its own hospitals, dispensaries and other facilities. However, this approach of each Fund developing its own chain of hospitals does not help the Funds either to cater to all the needy patients or deal with complicated diseases needing highly specialised treatment. We have been told that Funds could have done better if they had assigned the responsibility to agencies specialising in health, instead of trying to build up their own costly set-up of expertise in fields that are found to be too expensive.

7.345 Housing: The mineworkers and *beedi* workers schemes include housing. But considering the present costs of construction, it is doubtful whether the scale of assistance provided is adequate.

7.346 Education: Education of workers' children has been a thrust area as it was felt that this would bring a qualitative improvement in their lives on an enduring basis. Among other things, scholarships, school uniforms, textbooks and stationery are provided.

7.347 Barring medical care, the welfare funds set up by the Central government for mine and *beedi* workers have no provisions for meeting expenditure on any of the well-recognised branches of social security, such as occupational injury benefit, invalidity benefit, old-age benefit, survivor benefit or unemployment benefit. Sickness benefit is given as medical attention for the whole family, but no cash allowance is given in sickness. Yet, these welfare funds have the scope and the potential to become instruments of social security if suitable amendments are made to the laws.

7.348 The end use of the welfare funds has been changed in the latest Act on building and construction workers. It provides the benefits of immediate assistance in cases of accident, payment of pension, loans or advances for construction of houses, payment of premiums for group insurance schemes, financial assistance for the education of children, payment of medical expenses for the treatment of major ailments, payment of maternity benefits, and provision for other welfare measures.

7.349 Tamil Nadu: Tamil Nadu has been one of the pioneer States in spearheading social welfare measures. Even before the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act 1996 made it necessary for every State to set up Welfare Boards for these workers, Tamil Nadu set up a statutory scheme in 1994, namely The Tamil Nadu Manual Workers (Construction Workers) Welfare Scheme.

7.350 Tamil Nadu Labour Welfare Board: The Welfare Fund is collected annually at the revised rate of contribution at Rs. 5, Rs. 10 and Rs. 5 per from the Employees, Employers and the Government respectively. The Board functions with 19 representatives consisting of 4 Government Officials, 5 Employers' Representatives and 5 Employees' Representatives, 3 Members of the Legislative Assembly and 2 Women Representatives. The Minister for Labour is the Chairman of the Board. The Board is implementing several welfare schemes and Rs. 28,50,660 have been disbursed to 5552 beneficiaries during the year 1999.

7.351 The Board runs 52 Labour Welfare Centres and 71 Tailoring Centres throughout the State. Each Labour Welfare Centre consists of a Tailoring Class for women dependants of workers and a childcare centre. Tailoring classes are conducted for the wives and unmarried daughters of the workers. The training period is for one year. So far, 2279 persons have been given training in tailoring. During the training period, a stipend amount of Rs. 80 per month is being paid for each trainee. The Board also pays their examination fees. Further, a sewing machine is given to the trainee who secures top marks in the Lower/Higher Grade Government Examination in each centre.

7.352 In the childcare section, free primary school education is provided to the children, apart from providing nutritious midday meals, milk, eggs, fruits and medical care, etc. Qualified doctors medically examine these children twice a month. Two sets of uniforms are also supplied to the children each year. A new prize scheme is being implemented to encourage children who study in the 10th and 12th standards, and secure first and second highest marks in each

Educational District. Libraries are run at 9 places by the Board to encourage the reading habit among the workers and their dependents.

7.353 The Board has maintained Holiday Homes for the workers and their families. Separate TB Wards have been constructed in Government Hospitals for the benefit of the workers: TB Sanatorium, Tambaram (26 Beds), Tiruppur (26 Beds), Asaripallam (30 Beds), Austinpatti (26 Beds) and Kilpennathur (24 Beds) in Vellore District.

7.354 The Tamil Nadu Manual Workers (Construction Workers) Welfare Scheme: The Government has constituted the Tamil Nadu Construction Workers Welfare Board to administer this scheme for the welfare of construction workers. It was initially implemented within the areas of Chennai, Madurai and Coimbatore Corporations. The scheme was extended throughout Tamil Nadu in 1997.

7.355 To implement the construction workers welfare schemes, a 'Manual workers General Welfare Fund' has been constituted. As per Section 8A of the Tamil Nadu

Manual Workers (Regulation of Employment and Conditions of Work) Act, 1982, any person who undertakes any construction work within Tamil Nadu will be liable to pay 0.3 % of the total cost of construction to the Fund. The Government and Governmental Departments should also pay their contribution to the Fund directly. As and when other persons undertake any construction work, the Local bodies collect the 0.3 % of the total cost of construction and remit the amount to the Manual Workers General Welfare Fund. As on December end 1999, the Board had received Rs. 16,74,52,803 as contribution, and 1,93,601 construction workers were registered. Rs. 48,40,025 had been collected as Registration Fee at the rate of Rs. 25 per worker. Every manual worker whose name has been registered has to renew his/her initial registration after two years or get subsequent renewals done, by paying Rs. 10 per annum to the Board as Renewal Fee. Identity Cards have been issued to all registered construction workers free of cost.

7.356 Tamil Nadu Labour Welfare Board is implementing the following schemes for the welfare of the

Registered Construction Workers:

- a) Group Personal Accident Insurance Scheme: In the event of death of a registered construction worker in an accident, a sum of Rs. 1 lakh is paid to the nominee of the deceased. For loss of limbs, eyes, etc. compensation is paid upto Rs. 1 lakh depending upon the percentage of loss.
- b) Educational Assistance Scheme: Assistance for the education of son/daughter of a registered construction worker is given as below:

10 th pass:	Rs. 750
12 th pass:	Rs. 1000
- c) Marriage Assistance Scheme: Assistance of a sum of Rs. 1,000 is paid to meet the marriage expense of the son or daughter of a Registered Construction Worker.
- d) Maternity/Abortion Assistance Scheme: Assistance of a sum of Rs. 2,000 is paid towards expenses related to Maternity/Abortion to a Registered Woman Construction Worker.

e) Natural Death Assistance Scheme: In the event of natural death of a registered construction worker, a sum of Rs. 5,000 is paid as Assistance to the nominee of the worker. Apart from this, in the event of death (either natural or through an accident) of a registered construction worker, the nominee is paid an additional sum of Rs. 2,000 to meet the funeral expenses.

7.357 Tamil Nadu Manual Workers Social Security and Welfare Scheme, 1999: In 1997, three committees were constituted to study the conditions of unorganised workers and to give their recommendations. One committee was constituted to exclusively study the conditions of agricultural workers. Of the other two committees, one was to study the working conditions of unorganised workers, who come under one or other of the labour enactments, and the other was for unorganised workers who are not covered by any labour enactment. Based on the report of the last two committees in 1998, the Government added 43 employments to the existing 12 employments in the scheme of Tamil

Nadu Manual Workers (Regulation of Employment and Conditions of Work) Act, 1982. Two employments viz. cycle repairs and domestic work have also been subsequently added to the schedule of the above Act.

7.358 The State government amended the Tamil Nadu Manual Workers (Regulation of Employment and Conditions of Work) Act inserting a new Section 8 B expanding the definition of the term 'manual worker' and also enabling the collection of contribution from the employer. The Tamil Nadu Manual Workers Social Security and Welfare Scheme for the unorganised workers was formulated in 1999. The Scheme provides for the establishment of the 'Tamil Nadu Manual Workers Social Security and Welfare Fund' and outlines ways for augmenting the financial position of the Fund.

7.359 The object of the scheme is to provide (1) for a Group Personal Accident Relief Scheme, (2) a Maternity Benefit Scheme, and (3) a Terminal Benefit Scheme. The workers are entitled to enjoy the benefits under the scheme, after 12 months of their registration. In addition to the grant of Rs 40 lakhs

sanctioned by the Government, the Board received Rs. 47 lakhs from the collection of 1% of the Motor Vehicle Tax (figures for 02.03.2000). The activities of the Board have been computerized through the Electronic Corporation of Tamil Nadu (ELCOT).

7.360 Changes in the latest scheme: The Tamil Nadu Manual Workers Social Security and Welfare Board was initially mooted as a mother board, taking appropriate lessons from the multiplication of Boards in Kerala. The idea was that administrative expenditure could be reduced if multiplication of Boards is avoided. The Tamil Nadu Board is tripartite. It was kept flexible to add more occupations, and new schemes or benefits. Initially 60 employments were included. We were told that 'political' compulsions had forced the Government to announce a number of new separate boards, for instance, for workers of autos and taxis; for tailors, barbers, dhobis, palm tree climbers and handicraft workers. Three employments have been taken out from the original list of 60. We were told that four more employments were likely to be added. The scheme is meant for the wage-employed as well as the self-employed. Registration is

optional. A fee of Rs. 25 for registration, and a monthly contribution of Rs. 20 are charged from the worker. Now it is a one-time contribution of Rs. 100 including the registration fee. Eligibility for benefits has changed to a waiting period of four months and, according to reports, that period itself is going to be further reduced. A terminal benefit of the contribution at 12% compound interest and some gratuity, and accidental death (not necessarily in the course of work) insurance of Rs. 1 lakh are part of the scheme. Very recently, in 2000, two more boards were announced, one for artists and the other, for audio and video workers. So now, it appears that the original concept of an umbrella or principal board has been given up.

7.361 The Kerala State has set up more than 20 welfare funds for the benefit of workers in the unorganised sector, like *abkari*/toddy workers, agricultural workers, handloom workers, auto-rickshaw workers, cashew workers, coir workers, construction workers, motor transport workers, some artisans and others. Most of them are statutory bodies. These provide a wide range of benefits including old-age benefit,

medical care, education, assistance for marriage, housing, etc to the workers. The schemes are administered by autonomous boards and financed by contributions from employers, workers and others.

- a) Let us look at the welfare schemes for the fisher people in Kerala as an example of what can be done for those relying on common property resources. Apart from the welfare fund boards, the Department of Fisheries, Kerala has taken a number of steps for the fisher people. The Kerala Fishermen Welfare Societies and related Rules have led to the delimiting and notification of the boundaries of 'Fisheries Villages,' and the publication of a list of all fishermen in the villages. This has been done for both marine and inland fisheries. The process has helped in identifying fish-workers. Subsequent orders of the Government have included 'the wives of fishermen engaged in fish vending' in the list of fishermen. By another circular issued in 1987 'the widows of fishermen,' have also been

included in the list of fishermen. Once the fishermen, their families and villages were defined and identified, the working of the welfare fund has become easier.

7.362 The Kerala Fishermen Welfare Fund Act, 1985 provides for the setting up of a Board and a contributory Scheme under it. The Board and the Scheme came into existence in 1986. The statutory Board under the Fishermen's Welfare Commissioner has three regional executives and 54 Fisheries Officers under it, for looking after 235 fisheries villages of which 13 are in the inland circles. The fish-worker has to contribute Rs. 30 per year for the initial three years, and then on 3% of the price of his/her catch or of the wage or earning he or she gets. The trader has to contribute 1% of the annual turnover or an amount fixed by the Board as per relevant clauses of the Act. The owner of the fishing vessel, owner of the fishing net, and prawn and pisciculture owners have also to contribute to the Fund.

7.363 The Kerala Fishermen Welfare Fund Board runs 15 schemes in all. They are:

Schemes under the Kerala Fishermen Welfare Fund Board

No.	Name of the Scheme	Financial support as on 1996
1	Group Insurance Scheme	Accidental death or disappearance – Rs. 5000 Permanent full injury – Rs. 5000 Permanent partial injury – Rs. 2500
2	Financial support for dependants on the natural death of fishermen during or immediately after fishing	Rs. 15000 since 1986 (as the fishermen become ineligible for group insurance scheme)
3	Financial support for the marriage of daughters (not to be repaid)	Rs. 1500 since 1995
4	Funeral expenses support for death of dependants	Rs. 300 since 1991
5	Pension due to old age or physical infirmity (per month)	Rs. 100
6	Temporary injury due to accident	Rs. 500 since 1991
7	Funeral expenses support for dependants on the death of fishermen	Rs. 5000
8	Support for the wards of fishermen who pass with highest marks in the matriculation examination For continued studies for 2 years for the 1 st and 2 nd at State level.	(since 1994) First at State level – Rs. 3000 Second – Rs. 2000 1 st at district level – Rs. 1000 each Rs. 100 per month
9	Those who undergo Family Planning operations	Rs. 500 since 1994
10	Expert treatment for fatal diseases Pension for patients with serious diseases.	Maximum of Rs. 40000 Rs. 100 per month since 1995
11	Sanitation scheme	Rs. 2500
12	Chairman's relief fund	From Rs. 100 to Rs. 2500
13	Netrajyoti (scheme for eye treatment)	Expenses needed for eye camps and surgery
14	Special grants from Board	As the Board meeting decides
15	Support for delivery related expenditure and treatment	(since 1997) Rs. 500 each for the first two deliveries.

Source: The Kerala Fishermen Welfare Fund Board (1997)

7.364 The Kerala Welfare Fund schemes, including that for the fishermen, provide a much wider range of benefits, including many of the branches of social security that are included in the ILO Convention concerning Minimum Standards of Social Security. For instance, the Kerala Fishermen Welfare Fund Act provides payment for injury in any accident sustained while fishing, lump sum assistance for funeral expenses, interest-free loans for the marriage of daughters, educational assistance, and medical facilities. In actual practice however, the welfare funds in Kerala are not able to provide all the benefits because of resource constraints.

7.365 The Central and the Kerala models represent two extremes, one the minimalist approach, the other the maximalist approach. Neither can be considered ideal for the future development of welfare funds in India as far as benefits to the workers in the unorganised sector are concerned. What needs to be done is to prepare a standardised list of benefits which may be provided from the welfare funds and to prioritise them, somewhat as follows: healthcare, invalidity, old-age and survivor

benefits, maternity and child care, educational assistance, and housing.

7.366 Recently, the Kerala Government has set up an apex authority for Labour Welfare, through the Kerala State Labour Authority Ordinance. The Authority is to serve as an apex body to coordinate, regulate, streamline, monitor and control the activities of the Labour Welfare Schemes, Boards and the Government.

7.367 This Labour Authority shall, among other things, monitor and issue guidelines and direction to the Statutory Welfare Fund Boards for the proper implementation of the various schemes, advise the Government on matters pertaining to labour, and administer the existing non-statutory Welfare Funds and Schemes, transferred by the Government to the Labour Authority.

7.368 Funds of the Labour Authority are the Kerala State Labour Authority Fund and the Kerala Labour Welfare (Manpower Development and Training) Fund. The Kerala State Labour Authority Fund is authorised to borrow, receive loans and grants from governments, and get

contributions from Schemes administered by it. For the Kerala Labour Welfare (Manpower Development and Training) Fund, every employer has to contribute one rupee for each worker engaged by him per month to the Labour Authority. The Labour Authority will collect the Fund through Labour Welfare Fund Boards or other agencies as may be specified by the Government.

7.369 The money collected by the Labour Welfare (Manpower Development and Training) Fund is to be apportioned and utilised as follows: 70% is earmarked for the Institute of Labour Studies and Management, 10% for research, information and extension, 10% for establishment and promotional expenses of the Labour Authority, and 10% for human resources development through other institutions. Institutions like the Institute of Labour Studies and Management and Labour Academy of Advanced Learning, are also visualised in the Ordinance establishing the Authority.

7.370 The apex authority for Labour Welfare, i.e., the Kerala State Labour Authority, announced through an Ordinance in 2000, is facing rough

weather now. Irrespective of political and ideological differences, trade unions related to the Welfare Fund Boards have objected to such an authority over and above each Board, to control Boards and receive contributions from the specific Boards. Therefore, the concept of a mother board in the case of vast sections of unorganised workers, can be thought of not as an authority over various boards, but as a single board, for the purpose of coordination and effective functioning.

7.371 The Maharashtra Labour Welfare Board (MLWB) is a statutory body constituted by the State Government under the Bombay Labour Welfare and Fund Act, 1953 for the promotion of welfare of labour and their dependants in the State of Maharashtra. The finances of the Board include the fines realised, unpaid dues of the employees collected from various factories and establishments, six-monthly tripartite contributions, i.e., contribution from employees, employers and the government. All factories coming under the Factories Act, 1948, all shops and establishments within the meaning of the Bombay Shops and Establishments Act, 1948

employing 5 or more persons, and all motor transport undertakings coming under the Motor Transport Workers' Act, 1961, are required to pay to the Labour Welfare Funds, employees' and employers' contributions, in respect of all employees on their establishment register, as on 30 June and 31 December every year at the prescribed rates.

7.372 The Board conducts a variety of institutionalised and non-institutionalised welfare activities through 247 small and big welfare centres in and around 127 cities and towns all over the State. Educational, recreational, health and sports activities form the main agenda of the Board. The facility for training in sewing and handicraft under a trained female teacher constitutes a special programme for wives and wards of workers. Each centre is provided with a minimum of 4 sewing machines. Fabrication orders are undertaken at times as part of subsidiary occupation programmes. All Welfare Centres have Montessori training facilities for children in the age group of 3-6 years. These children are served mid-day snacks daily. Community crèches have been established at some centres in Mumbai, Nagpur, and Sholapur.

7.373 The Welfare Commissioner is the Principal Executive Officer of the Board, and is directly responsible to the Board for the implementation of the various programmes of the Board. All Executive and financial powers of the Board are exercised through the Welfare Commissioner.

7.374 A note prepared by the MLWB makes it clear that their schemes do not reach out to the large majority of unorganised workers (perhaps with the exception of head load workers). In its note, the Board says that it is willing to extend its welfare programmes to the unorganised rural agricultural and other categories of labour as well as child labour. However, due to paucity of funds it is unable to take any steps in this direction. The Board believes that it has the necessary infrastructure to undertake any welfare activities for the benefit of unorganised urban and rural labour and child labour. If the Central Government and/or international organisations like the ILO and United Nations Food and Agriculture Programme (UNFPA) make the necessary funds available, it may undertake implementation of some welfare programmes for the unorganised labour.

7.375 Mathadi Boards in Maharashtra have been successful in decasualising the head load workers to a great extent. A *mathadi* is a worker who carries a load on his head, back, neck and/or shoulders. His work is mainly physical labour, and he is expected to be strong and to withstand heavy weights for stacking. All this work is performed in a gang or *toli* system. All the workers in a *toli* belong to the same village and are often related to each other. According to their convenience, when some of them go to their native places, others, mostly their relatives come and take their place in the *toli*. The *toli* workers work under a headman known as *mukaddam*, who actually arranges the work, is responsible to the employer, gets the labour charges from the employers, and distributes the wages among the workers. However, there is no single fixed employer, and the situation is one of one-employee-multiple-employers. We have been told that the *mukaddam*, sometimes exploits *toli* workers by conniving with the employer. Since the availability of the work depends on the arrival, availability and departure of ships, trains, goods trucks, etc. it is extremely difficult to predict the time and volume of work. As a result, there

are no fixed hours of work, no overtime, and no paid holidays or leave. The location of work also spreads all over Greater Mumbai.

7.376 Though many witnesses who appeared before us in Maharashtra as well as in other States extolled the work done by the Mathadi Board and recommended it as a model for the unorganised sector all over India, some witnesses did point out that the system works like a closed shop, and therefore, keeps out other head load workers. They were of the opinion that this was discriminatory. Some representatives of the management also felt that this system created a monopoly and resulted in arbitrary fixation of wages.

7.377 During the 1950s, tripartite bodies could get the dockworkers statutory rights through a process of decasualisation. The decasualisation scheme for dock labourers (and for the *badli* workers in the textile mills in Mumbai introduced about the same time) was the first of its kind to evolve a method to secure basic protective social security for unorganised workers by regularising their intermittently available work and developing employer-employee

relationships. Under this scheme, the tripartite body could get the workers their statutory rights to an attendance allowance of 50% of daily wages, weekly off, one-day holiday wage, and 12 days' minimum guaranteed wages.

7.378 Anna Sahib Patil, who has had long experience of working with dock labour during the dock workers struggle to decasualise themselves in the early 1950s, started organising *mathadis* in the late 1950s in Mumbai. Efforts on similar lines were also made in Pune by Baba Adhav, and in Dhule, by Paranjpe, to organise *mathadis*. Committees were appointed. The recommendations of the three committees paved the way for the Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969. Since 1969, the Mathadi Tripartite Boards regulate the *mathadi* labour market. Today, there are around 50,000 registered employers with almost 1.5 lakh workers registered under 30 different boards in Maharashtra. A chairperson, appointed by the Government of Maharashtra, heads each of these boards. There is an equal number of representatives from the unions and the employers' association. Each

board has its own staff including secretary, personnel officer, chief accountant, inspectors and clerks. The staff gets paid out of the levy, which is negotiated every 3-4 years, and charged to the employers.

7.379 We have been informed that there are some *mathadis* who earn enough to pay Income Tax. They pay professional tax as well. Their Dearness Allowance is linked to the CPI. The PF contribution of workers is 8.33%. Their hospital contribution is Rs. 20 per month. They receive medical benefits and HRA. Wage variations are still sharp, and wages fluctuate from less than Rs. 1000 to Rs. 10,000 per month. Besides better health facilities, social security also gives importance to housing and education with the help of the *mathadi* boards. 4000 *mathadi* workers have been able to get housing facilities on an ownership basis. For this purpose, they have taken loans from the GIC and HDFC, and also drawn from their own provident fund. The boards are also trying to promote formal education among *mathadi* families. Since 1992, they have instituted quite a few scholarships for the children of *mathadi* workers. More than 100

children have been given scholarships till 1997.

7.380 We now refer to some important points that arose during discussions at different centres:

- a) Mathadi Boards in Maharashtra could regulate the open entry of new, employable workers through a process of decasualisation of existing workers, by bringing them into an organised set-up. Young blood is brought into such organised structures through a process of recruitment, and age-based superannuation.
- b) Lessons from the Kerala and Tamil Nadu experience: It can be seen that with the latest ordinance, Kerala is trying to integrate or interlink its various enactments in the area of social security, while in Tamil Nadu, the latest trend is towards separate set-ups. The experience of both the States, in fact, points out the need for some sort of linkage among the various welfare boards. Both commonality and variety have to be taken into account while structures for social security are built up.

Kerala started from individual schemes and ended up with an apex body to interlink them, while Tamil Nadu traversed an opposite path. The experience of welfare boards in both the States tells us that a mother board that can accommodate variety serves as a better model.

- c) The Central Welfare Funds are administered departmentally by the Ministry of Labour through Welfare Commissioners appointed by the government, with the help of advisory committees that have no financial or administrative powers. They require to be sensitised to acquire a spirit of initiative.
- d) Moreover, an unnecessary multiplicity of Funds has led to administrative problems and proved uneconomical. In the mining sector, as will be recalled, three separate Funds have been constituted – one for mica, one for limestone and dolomite, and a third for iron ore, manganese ore and chrome ore mines. The cost of administration of central welfare funds has varied from 0.83% of

the total benefit expenditure in the case of cine workers to 22.1% of the benefit expenditure in the case of the Limestone and Dolomite Labour Welfare Fund for the year 2000-2001. The total average administrative cost of central welfare funds for the same year was 7.96%. The problems arising from multiplicity can be seen in the working of the welfare funds set up by the Government of Kerala, which are administered by auto-nomous boards. There are as many boards as there are funds. Overheads can be reduced appreciably by integrating the separate welfare funds.

- e) Establishing a Board for the unorganised sector as a whole and using the mechanism of cess collection from products, can overcome the problem of identifying individual employers, which is often a major obstacle in the unorganised sector.
- f) In some cases, it will be better to levy cess as a percentage of the sale value. In such cases, it will not be on the basis of the quantum of production or sale.

However, this method is applicable only for product-based occupations, and the case of service providers will have to be tackled separately.

- g) Cess collection from products is possible at various points of transactions like the wholesale, retail and export stages.
- h) It is advisable to combine tax-based as well as contributory systems of financing of the Fund under the Board, because it would enhance the financial viability of the Fund on the one hand, and the initiative of the workers on the other.
- i) The actual per capita expenditure on medical care incurred by the State governments under the Employees State Insurance Scheme during 1994-95 ranged from Rs. 315 to Rs. 1,035. It can be seen that the expenditure incurred on medical care from the welfare funds is comparatively low. Due to the increasing specialisation of health care and the increasing number of private and public hospitals, the model of the health service provision has

proved to be neither popular nor viable, both in the case of welfare funds and the Employees' State Insurance Scheme. Both will therefore, benefit by adopting the alternative model of reimbursing expenditure, or providing services indirectly by entering into agreement with the providers of the service, confining their own function to the financing of the services.

- j) However, we are of the opinion that health has to be retained as a component of social security. Studies show that workers have to spend more on health problems in the unorganised sector.
- k) One of the major problems that arise in the administration of central welfare funds is the identification of beneficiaries. Welfare funds do not now have a system of registration. Instead, they have a system of identity cards. The identity cards are to be issued by the employers, who have not been very responsive to the idea. The Ministry of Labour has reported in its Annual Report (2000-

2001) that identity cards for beedi workers have been issued for about 36,89,116 workers while the total number of *beedi* workers is said to be about 44,11,275. Workers cannot get the benefit of the welfare funds unless they have identity cards. Thus, nearly 7,22,159 workers have been denied benefits because identity cards have not been issued. On the other hand, in Kerala, the system of registration exists, but since the schemes are optional, the number of workers who have registered varies from scheme to scheme, and in some cases the coverage has been very low. The new Board that we propose, will have to take up registration of workers in an effective, useful and meaningful way.

- l) Though the Acts, under which the Central Welfare Funds have been set up, do not prescribe any ceiling, in practice there is a ceiling in the application of the benefits of the welfare funds. This used to be Rs. 1,600, and was raised to Rs. 3,500 in 1991. Income ceilings screen most of the workers from availing of the benefits, and in some cases this

measure goes against the very objective of the legislation. If one gets more than Rs. 1600 per month, the worker is not covered by the Payment of Wages Act. In practice, similar filters exclude most of the eligible workers.

- m) In spite of the many problems associated with the welfare funds and their implementation, they provide one of the most important ways of reaching workers in the unorganised sector. We believe that the new structure that we are suggesting will overcome these problems. Welfare Boards, whether at the State level or at the Centre, have addressed situations where employer-employee relationships exist. Since most of the unorganised workers are self-employed or home-based, there will be no benefit if we replicate the structure and method of functioning of these Welfare Boards. Issues like establishing the identity of workers, the constitution of boards, the financing and disbursement of funds, etc. have therefore to be worked out. The concept of a mother board seems relevant in

the light of our experience with the Central and State Boards.

Proposal for Umbrella Legislation

7.381 The review in the preceding paragraphs has shown that most of the Labour Laws that we have today, are relevant only to the organised sector. Furthermore, the laws in the statute book that relate to some sectors of the unorganised sector are too inadequate to give protection or welfare for the vast majority of workers in the unorganised sector. The schemes of Welfare Funds and Welfare Boards are also confined to a few states and specific categories of workers in the unorganised sector. It is in this context that we have to look at the need for new legislation that will have general applicability and will provide essential protection.

7.382 To recapitulate, the sector is vast and varied. Over 90% of our labour force works in this sector. The employments in which they are engaged vary from the most unskilled jobs like stone breaking or collecting minor forest produce, to sophisticated jobs in software technology or info-systems. The vast majority of the

workers are extremely poor. It can also be said that 90% or more of the poor in our country are in the unorganised sector: employed, under-employed or unemployed. They are not only poor and marginally employed, but are deprived and discriminated against. Many of them belong to the Schedule Castes and Tribes for whom our Constitution has prescribed special consideration and protection. Their incomes are so low that they cannot provide for, or 'buy' social security; they cannot even buy food or clothing. Many of them are victims of the system of 'bonded slavery' and are described as bonded labour. The laws that we have enacted, and the ways in which they are being implemented have not given these workers the protection and welfare that our Constitution promises. The Constitution talks of equality and human dignity and providing the minimum requirements of livelihood and welfare. (We will refer to this subject in a little more detail in some succeeding paragraphs). The rights and benefits guaranteed in our Constitution are not only for the rich and the highly 'visible' and organised, but for the poor, the 'invisible' and the unorganised as well. Fifty years after Inde-

pendence and the promulgation of the Constitution, if this 90% do not enjoy 'guaranteed' rights, there is every reason to say that we have not practised what we have preached, to say that there has been lack of will or lack of focus or lack of sincerity. We give critics a chance to say that our promises are hypocritical. What is worse, we allow indignation and cynicism to gather momentum and create a mood that questions our very bona fides and the real intentions of our political, economic and social systems. This provides a fertile ground for the birth and growth of movements that aim at overthrowing the system, like the Naxalite movement or similar violent movements that we see in many parts of the country with increasing ferocity. One, if not the most important, of the ways of reversing this trend and preempting violent upheavals or guerrilla movements, is to fulfil the promises that the Constitution makes to the poor and under-privileged in the unorganised sector, in the rural and in the urban areas. Reports of the violent activities in many parts of the country should make us wonder whether time is running out for us. All those who mould public opinion and are in a position to influence

those in authority have to ask themselves whether time is really running out.

7.383 Land reforms have not been implemented, in spite of reminders from many Commissions, and the manifestos of political parties. Employment opportunities are not adequate. Those in employment often do not get the minimum wages that have been guaranteed in law. Working conditions are deplorable, sometimes, inhuman. The existing laws have proved inadequate. It is, therefore, necessary to construct a new legal framework and system of social security that will provide protection and welfare to the workers in the unorganised sector.

7.384 We have already pointed out that the way to extend legal protection to the employments and vocations in the unorganised sector is not by legislating separately for each employment or vocation. This will only multiply the number of laws when one of our goals is to simplify and reduce the number of existing laws. It is, therefore, logical and wise to enact an umbrella type of law for the unorganised sector which would guarantee a minimum of protection

and welfare to all workers in the unorganised sector, and would leave it open to the Government to bring in special laws for different employments or sub-sectors if experience indicates the need for it, provided that the sub-sectoral laws do not take away any of the basic rights or the access to social security that the umbrella legislation provides. Such an arrangement will give full respect to the federal nature of our Constitution as well as the different needs of diverse groups of workers. It will also be open to Governments to repeal existing sub-sector laws or merge existing (welfare) Boards with the Boards or Funds that we are suggesting in the Umbrella Legislation.

7.385 Our Constitution, the ILO Conventions that we have ratified and the existing laws together guarantee some rights to the workers. The Universal Declaration of Human Rights, proclaimed by the General Assembly of the United Nations on 10 December 1948, is an assertion of the universal right to freedom and life with dignity. Article 23(1) of the Declaration states: 'Everyone has the right to work, to free choice of employment, to just and favourable

conditions of work and to protection against unemployment.' In fact, the legislative steps we take should satisfy the contents of this Article. This UN Declaration is one of the basic documents on human rights and justice that has become a standard-bearer or standard setter for peoples, communities and nations.

7.386 Article 1 of the Universal Declaration of Human Rights of 1948 considers that: 'All human beings are born free and equal in dignity and rights.' Article 3 says that 'Everyone has the right to life, liberty and security of person.' According to Article 4, 'No one shall be held in slavery or servitude.' All these Articles guarantee freedom and security of life and aim at banishing slavery and all types of bondedness. Articles 20 and 23 provide rights of association, employment and unionisation. Article 20 says, 'Everyone has the right to freedom of peaceful assembly and association.' Article 23 guarantees right to work and TU rights. According to Article 23 (4), 'Everyone has the right to form and join trade unions...' Article 22 states that 'everyone, as a member of society, has a right to social security ... indispensable for his dignity and the free development of

his personality.' Other relevant Articles guarantee the 'right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay' (Article 24), and the 'right to a standard of living adequate for the health and well-being...' (Article 25(1)). Article 26 provides the right to education. Article 26(1) says that: 'Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory...' All these Articles together ask, in essence, for the overall social security of all individuals including workers.

7.387 This Declaration (1948) talks also about motherhood and childhood. Its Article 25(2) says: 'Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.' We have dealt with issues such as child labour in a subsequent chapter of our report. However, it should be mentioned here that a number of Conventions reiterate the rights of children including the right to education. The need to extend special attention and care to the child has been affirmed in

the Geneva Declaration of the Rights of the Child (1924) and in the Declaration of the Rights of the Child adopted by the General Assembly of the UN in November 1989. These rights are endorsed in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (in particular in Articles 23 and 24), the International Covenant on Economic, Social and Cultural Rights (Article 10) and the statutes and relevant instruments of specialised agencies and international organisations concerned with the welfare of children. The Declaration of the Rights of the Child tells us, 'the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth...'

7.388 The Convention on the Rights of the Child was adopted and opened for signature, ratification and accession by a resolution of the General Assembly in November 1989. It came into force in 1990, and India acceded to it in 1992. Articles 28 and 29 of the Child Rights Convention prescribe free and compulsory primary education for children. (Details of the Convention can be

found in the chapter on women and children).

7.389 Before presenting a draft for Umbrella Legislation in the sector, let us again remind ourselves of the Fundamental Rights and Directive Principles in our Constitution and the International Conventions to which our Government have subscribed. The context in which we have to frame our proposals includes these. We cannot therefore, overlook them or wish them away.

7.390 The Constitution of India: We have already pointed out that the Constitution of India offers, protection and social security to all citizens of India. It is obvious that the workers in the Unorganised Sector are as much entitled to protection and welfare or social security as citizens in any other groups. Fundamental Rights include the right to equality (Article 14), the protection against discrimination (Article 15), the rights to freedom of speech and association (Article 19), the rights to life and personal liberty (Article 21), protection against traffic in human beings, protection from forced labour (Article 23), and the rights of the child (Article 24). The Directive

Principles of State Policy (Part IV of Constitution – Articles 36 to 51) spell out the concept of social security. Article 38 of the Constitution, requires the state to strive to promote the welfare of the people by ‘securing justice – social, economic and political, and minimize inequalities in income and status between individuals, groups and regions.’

7. 391 We have cited these Articles in detail elsewhere, and looked at what they promise in the fields of freedom and Social Security.

7.392 Article 39 (a), (b) and (e) of the Constitution requires that the citizens have the right to adequate means of livelihood, that the material sources are so distributed as best to serve the common good, that the health and strength of workers and the tender age of children are not abused, and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength. Article 41 requires that within the limits of its economic capacity and development, the state shall make effective provision for securing the right to work, to education and to public assistance in case of unemployment, old age,

sickness and disablement, and in other cases of undeserved want. Article 42 requires that the State should make provision for securing just and humane conditions of work and maternity relief. Article 43 requires that the state shall endeavour to secure work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities. Article 47 requires that the State should regard the raising of the level of nutrition and the standard of living of its people, and improvement of public health, as among its primary duties.

7.393 Section 2(1)(d) of the Protection of Human Rights Act, 1993 (Act 10 of 1994) defines human rights as ‘the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India.’ This Act also justifies the need for legislation in favour of workers who are not yet covered by existing legislation.

7.394 ILO Conventions: ILO conventions are codifications of universally applicable labour

standards and have led many countries to accept labour rights as basic rights. Some of its conventions protect children from labour, women from night shifts, and all workers from forced labour. As on September 2000, ILO with 175 member states could convince only 22 countries to sign its eight Core Conventions. Another 52 countries signed seven of the eight Core Conventions. Thus, 74 countries have signed seven or more Core Conventions. However, the ILO Conventions are binding on member states. While the ratified Conventions work as legal sanction, the other conventions have the force of moral sanction for the practices of member states. Most recently, in the 86th Session of the International Labour Conference in 1998, the ILO adopted the 'Declaration on the Fundamental Principles and Rights at Work,' which was an affirmation of the eight Core Conventions. These Conventions are seen as representing core labour standards, which are fundamental to the implementation of other standards. These fundamental principles and rights at work are (1) Right to Organise and Collective Bargaining (Conventions 87 and 98), (2) Abolition of Child Labour (Conventions 138 and 182), (3) Elimination of Discrimination (Conventions 100 and 111) and (4)

Against Forced Labour (Conventions 29 and 105). The follow-up mechanism envisaged in the Declaration makes it binding on member states, irrespective of whether the concerned state has ratified the Conventions or not, to submit annual reports to the ILO on the observance of the respective Conventions.

7.395 It is, therefore, necessary to ensure that the proposed Umbrella Legislation for Workers in the Unorganised Sector incorporates the core rights that have been enshrined in the Constitution of India, UN Covenants and ILO Conventions.

7.396 Let us recapitulate the reasons that lead us to the conclusion that a new and separate umbrella legislation is imperative to protect the rights and welfare of workers in the unorganised sector:

- a) The existing labour laws do not offer protection and welfare to workers in the unorganised sector. Whatever exists is inadequate.
- b) Our Constitution and the international agreements we have entered into give us the mandate to do so.

c) The Unorganised Sector including the agricultural sector account for more than 92% of the total workforce in the country, i.e. around one-third of India's population. Nine-tenth of India's population is surviving on employments in the Unorganised Sector. The 'informal' or 'unorganised' sector (interchangeable terms) has been criticised as a low productivity area where the earnings are meagre. But in absolute terms, this sector contributes more to the economy and employment in India. The National Accounts Statistics Report of 1995 confirms that nearly 65% of the national income is contributed by the Unorganised Sector. Thus, in spite of their considerable contribution, the unorganised sector lacks adequate protection through labour legislation. Workers in this sector do not get social security and other benefits as their counterparts in the organised sector do. There is no trade union or any other institutional structure to fight for the workers in this sector. Collective bargaining is a far cry

for them. These workers, particularly women, have not been able to organise themselves and are further discriminated against. Let us look at who they are. They are contract workers, home-based workers semi-skilled and unskilled, home-based skilled artisans, and a section of the self-employed involved in jobs such as vending, rag picking, *rickshaw* pulling. Then come the agricultural workers, rural non-agricultural labour, Khadi and village industries workers, construction workers, migrant labour and those in manual and helper jobs. The existing labour laws do not define most of them as workers because a principal employer is not easy to identify in these kinds of work. To be brief, a specific employer-employee relationship is missing (or ambiguous) in the unorganised sector. The draft of the Study Team has analysed and discussed at length, each existing labour law and social security legislation and scheme and fund, and shown the very limited applicability or non-applicability of most of these to

the vast working population engaged in the unorganised sector.

- d) If properly conceived and effectively implemented, a law for unorganised sector workers will make a definite contribution to the eradication of poverty from the country. Poverty has so far been addressed as a question linked, on the one hand, with economic growth and on the other, with Government inputs. However, the real cause of poverty is the lack of opportunity to work and adequate good quality work, income earning opportunities and lack of organised will and strength. Employment is one of the surest links between economic growth and the abolition of poverty, and the means to achieve distributive justice.
- e) The umbrella legislation which we propose should be viewed in a holistic way. The unorganised sector is in no way an independent and exclusive sector. It is dependent on and linked to the organised sector and the rest of the economy.

Such interdependence has to be recognised. It has to be understood that the unorganised sector cannot be wished away. Therefore, the nature of the work which is informal, seasonal, and characterised by the absence of fixed employers and workplaces, will have to be thoroughly understood and recognised.

- f) The national 'divide' between the Organised Sector (Formal) and the Unorganised Sector (Informal) of the country's economy, and the workers/labour engaged in them, is unreal because these sectors are interdependent. In the Umbrella Legislation, the basic approach is to provide recognition and protection to all types of socially useful work and workers.
- g) The unorganised sector workers are literally everywhere, in fields, in homes, on streets, in small workshops, in forests – everywhere. So, it needs to be recognised that the umbrella legislation cannot be effective unless it integrates their needs

for protection and welfare with those of the rest of our society and economy.

- h) The Umbrella Legislation should be seen as a legislation that will lead to the growth of the economy, improve the quality of employment, provide a decent life to workers, and integrate them with the growing opportunities in the country.

7.397 In specific terms, the objectives of the legislation will have to be:

- a) To obtain recognition for all workers in the unorganised sector.
- b) To ensure a minimum level of economic security to these workers.
- c) To ensure a minimum level of social security to these workers.
- d) To facilitate the removal of the poverty of these workers.
- e) To ensure future opportunities for children by eliminating child labour.

- f) To encourage formation of membership based organisations of workers including Trade Unions.

- g) To ensure representation of the workers through their organisations in local and national economic decision making.

7.398 Most workers in the Unorganised Sector are not recognised as workers and so they have no identity. In most surveys they are not counted and so their reality is not reflected in the policies or the law. The first objective of recognition of these workers is to include them in official surveys. This can be done every five years, either by the NSS or by the labour department. (Note: In 1999, the NSS conducted an informal sector survey as part of its regular labour force survey. This can be made a regular feature.)

7.399 In order to achieve recognition as a worker each person who is actually working should be given an official identity card. At present, there are many types of identity cards which are given such as cards issued by employers, Cards

issued by EPF, cards issued by Welfare Funds, cards issued by trade unions or co-operatives, cards issued by municipal authorities etc. The identity card gives the worker a definite legal identity and recognition.

7.400 It is sometimes argued that the sheer magnitude of numbers in India, would make the identification of workers an impossible task. However, in a country where voters lists are prepared, taking into account every adult over the age of 18 years, voters identity cards are issued, and ration cards are issued for every family, listing all family members, and a census covering 100 crore people is conducted every ten years, it should not be too formidable a task to identify every worker.

7.401 Such an approach will help all those petty but productive activities undertaken by the poor, particularly by poor women, to be counted as part of GNP/national income.

7.402 The role of the unorganised sector in the national economy, its need for social security systems as well as its own positive ability to build its own viable integrative system, needs to be understood and

recognised. Today, all policies are aimed at the public sector and the organised private sector. Statistics are collected about them, and they are projected as the engines of growth of the economy. However, the truth is that these two powerful sectors put together contribute only 8% of the employment, 35% of the income and 33% of the savings of the country (despite the possibility that the official statistics overestimate the contribution of these sectors). The rest of the country's economy depends on the unorganised labour and the self-employed producers.

7.403 The element of income security and social protection – food, water, healthcare, childcare, shelter and education – need to be treated as basic entitlements of the workers and producers of the economy. They are entitled not only because they are citizens, but also because they are the main contributors to the wealth of the nation. Today, even without these entitlements they contribute their labour, skill and entrepreneurship to the economy. When provided with these entitlements, their productivity as well as their purchasing power will grow. They will add to the country's gross national product, strengthen

the economy and help fight economic crises. On the other hand, if their economic contribution is not recognised and enhanced, if they continue to be treated as the recipients of safety net policies, they will continue to be poor beneficiaries, living constantly on welfare and subsidies.

7.404 As structural adjustment proceeds, the entitlements of the organised sector are getting eroded, and the need for social security systems is becoming more urgent and central to the success of structural adjustment programmes. The concept of social safety nets may not be feasible in the economic situation that prevails in India. Difficulties may deepen with the increasing marginalisation of labour. Social safety nets would be viable if the number of people who 'fall' into them constitutes a small percentage of the workforce. But no 'net' is capable of supporting over 96% of the labour force of a country, and certainly not a country where this 96% is over 300 million workers.

7.405 This can be achieved only if social security is work-linked. This also means that the right to work would

have to be viewed as a necessary concomitant of the right to social security. According to us, social security must contain at least healthcare (including maternity, injury) childcare, shelter and old age support that strengthen productivity and the economic security of the current workforce.

7.406 We have a long, and perhaps impressive record of recommendations for labour legislation by various committees, commissions, conferences of ministers, study groups, advisory boards, tripartite agreements and court judgments. Some of the suggestions that have exercised considerable influence on the criteria for calculating minimum wages have come from the Committee on Fair Wages, the sessions of the Indian Labour Conference, the Central Pay Commissions, ILO Conventions, Reports of the National Commissions on Rural Labour and Agricultural Labour, the Committee on Wage Policy, the Committee of Secretaries, the Study Group on Wages, Incomes and Prices, and the Minimum Wages Advisory Boards. It is not possible for us here to go into each recommendation. However, we would

like to recall some of the major reports and their recommendations, as they are concerned with unorganised, low-paid and sweated labour. The paragraphs that follow refer to recommendations of (1) the National Commission on Labour 1969, (2) The National Commission on Self-employed Women and Women in the Informal Sector (Shramshakti) 1988, (3) The National Commission on Rural Labour 1991, and (4) The Thirty Fourth Session of the Indian Labour Conference.

7.407 REPORT OF THE NATIONAL COMMISSION ON LABOUR, 1969: The first National Commission on Labour under the Chairmanship of Justice P. B. Gajendragadkar submitted its report in 1969. It was set up to study and review the conditions of labour since 1947, the then existing labour legislation and the living conditions of workers. To keep up continuity with the Whitley Commission (1929-1931), the period of 1931-47 was also considered whenever necessary by the Commission. The Report of the Commission is a comprehensive document that touches, among other things, the issues of industrial relations, labour welfare, social

security, minimum wage, wage fixation machinery, and employment of women and children. The Commission expressed its concern about child labour, and considered it as a serious economic problem. However, it did not suggest the complete elimination of child labour. The Commission recommended that by fixing limited hours of employment for children, their education and employment should be combined (p. 387).

7.408 The Report of the Commission devotes attention to labour in the unorganised sector. The main recommendations of the Commission included:

- a) First hand detailed surveys from time to time to understand the problems of the different categories of unorganised labour.
- b) Legislative protection by the state for unorganised/unprotected labour.
- c) Simplification of legislative and administrative procedures applicable to small establishments.

- d) Expediting education and organisation in the field of unorganised labour.
- e) As there is no alternative to the existing implementation machinery, what exists should be reinforced, and the inspection system should be strengthened. The Commission felt that the difficulties faced by small employers were genuine, and they should be encouraged to form associations and give training to their staff.
- f) Steps for the protection of workers against middlemen, and development of self-help through co-operatives. Co-operatives should pay adequate wages and bonus, and give employment opportunities to the under-employed and unemployed among them (pp.434-35).

The Commission enlarged its scope to include women workers in the unorganised sector. It submitted its report (*Shramshakti: Report of the National Commission on Self-employed Women and Women in the Informal Sector*) in 1988. The main objectives of the Commission were:

- a) to examine the status of self-employed women with special reference to their employment, health, education and social status, and constraints that affect productivity,
- b) to assess the impact of various labour laws, especially those on maternity benefits and health insurance, on self-employed women,
- c) to identify gaps in training, credit, upgradation of skills and marketing,
- d) to survey employment patterns including production relations and their impact on wages, and
- e) to study the effect of macro level policies on the health, and productive and reproductive role of self-employed women.

7.409 REPORT OF THE NATIONAL COMMISSION ON SELF-EMPLOYED WOMEN AND WOMEN IN THE INFORMAL SECTOR, 1988 (SHRAMSHAKTI REPORT): The National Commission on Self-employed Women was set up in 1987. Smt. Ela Bhatt was the Chairperson.

7.410 The Commission decided to cover poor women too as both self-employed and poor women shared important characteristics relating to: fewer and poorer opportunities to work, greater impact of unemployment/underemployment, casual nature of work, greater vulnerability due to lack of skills and education, heavy responsibilities, systematic social practice of underrating women's work, and lack of access to better technologies, tools and productive assets. To a large extent, poor women kept moving among the categories of the self-employed, casual labour and the unemployed.

7.411 The Commission recommended enlarging the definition of work done by women to include all paid and unpaid activities performed within the home or outside as an employee or on 'own account.'

7.412 In the view of the Commission the single most important intervention towards improving the economic status of poor women working in the informal sector of the economy would be to devise strategies which would enhance their ownership and control over productive assets. These could be a plot of land, housing,

tree *pattas*, joint ownership of all assets transferred by the state to the family, license, bank accounts, membership of organisations and identity cards.

7.413 The Commission noted the unquestionable evidence from all available studies about the flagrant violation of statutory provisions regarding payment of wages, safety regulations, provision of housing and medical facilities, accident compensation and so on. It felt the need for more stringent observance of existing labour laws and the introduction of deterrent penalty clauses. In the context of non-observance of these laws, the Commission recommended simplification of judicial procedures, particularly to enable unorganised workers to obtain legal redress without undue harassment.

7.414 For domestic workers, the Commission recommended the introduction of a system of registration. It felt that, in view of the existing trends of exploitation, it was extremely important to fix a minimum wage, and to pass legislation to regulate conditions of employment, social security and security of employment.

7.415 Though 51% of the working women are engaged in farm labour, their contribution is unrecognised. Women's access to land ownership is extremely limited and women have no say in decision-making, and in the use of credit, technology and marketing. The Commission observed that in certain areas, for the same kind of work, women got Rs. 3 to 4 per day, while men got Rs. 10 as wages. It recommended that the contribution of women to agriculture should be recognized by policy makers and reflected in the country's agricultural policy and programmes, with adequate resource allocation and orientation for women producers. Women involved in seasonal agriculture should be helped to diversify into horticulture, fruit processing, vegetable growing, animal husbandry and dairying. The Commission also noticed that the number of women cultivators was declining.

7.416 The Commission observed that the rates of minimum wage are low and have to be increased keeping in view the requirements of the woman worker and her family. Piece-rates must be so fixed as to enable women workers to earn for 8 hours of work a wage equal to the time-rated

minimum wage. Where work is carried out at home due to which the employer saves on installation cost and equipment, an additional amount at 25% of the minimum wage should be paid. There should also be a national or regional minimum wage. Despite the Equal Remuneration Act 1976, wage discrimination is widely prevalent. This must be corrected through better enforcement and wider dissemination of the law. There is a tendency to classify the tasks generally done by women as those of a slightly inferior nature. This has to be corrected, and one way of doing this is to broad base into a single category the activities requiring work of a similar nature.

7.417 The Commission further recommended that the Right to Work, already a Directive Principle, should be made a Fundamental Right.

7.418 The Commission recommended the setting up of an Equal Opportunities Commission under a central law, and also recommended that such a Commission should have wide powers of investigation, direction, advice and monitoring.

7.419 It recommended the establishment of Tripartite Boards, as no law, however well conceived, would benefit women workers unless they had a major hand in the implementation of the laws. The Tripartite Boards have to be constituted in such a manner that workers have as many representatives as the government and the employers. The Tripartite Boards will regulate implementation of legislation and also contribute to making women workers visible, and empower them to be equal partners and participants in the production process.

7.420 The Commission recommended setting up of a Central Fund from which welfare and social security measures for women workers should be financed. Apart from a levy on individual employers, it is desirable to impose a levy on major industries for the benefit of small activities that home-based workers carry out.

7.421 Another recommendation of the Commission was that a separate wing should be set up in the Labour Department for unorganised workers with adequate number of women employees at various places.

7.422 The Commission also felt that no solution to the problems of women at work would be complete without taking into account their reproductive functions, which can be effectively facilitated through maternity benefit and childcare. Maternity benefits, on the scale provided under the Maternity Benefit Act, should be universally available to all women. The responsibility for this should be borne by all employers, irrespective of whether or not they employed women, through a levy calculated as a percentage of the wage bill, and placed in a separate fund from which maternity benefit could be provided. In the case of a large number of women like home-based workers and others, where the employer is not identifiable, the responsibility for providing maternity benefits must lie with the State governments.

7.423 The Commission noted with distress that though childcare facilities were provided in various labour laws, these were not being implemented, and had in fact led to the retrenchment of women workers since the employers wanted to avoid the statutory responsibilities that the law imposed. Hence, it was

necessary to introduce an extended system of childcare throughout the country to reduce the burden on women and to facilitate the all round development of the child.

7.424 The Commission laid stress on the need for an integrated perspective on health as most of the health problems that women faced, related to their general life situation, which aggravated the problems they faced as workers. These problems included inadequate nutrition, non-accessibility to healthcare, water, housing, sanitation, maternity benefits and childcare among others. A package of health services for women in the informal sector would be inadequate, if it does not simultaneously address their standard of living, including a living wage, improved conditions of work, a safe and hazard free workplace with protective equipment, controlled work hours, benefits for health, maternity, crèches and old age, housing, and potable water near their homes in quantities necessary for family health.

7.425 The Commission emphasised the need for regulating working hours in the informal sector where there is considerable

exploitation of the poor. It recommended that piece-rates be converted into daily wages based on the normal quantum of work completed at a healthy pace, and that health insurance including compensation for accidents should be available to women workers. Health cards should be distributed to them. Every workplace had to assure safety to the workers. Preventive health education was to be initiated through Worker Education Board. The Commission recommended that a comprehensive law on health and safety be formulated and enacted.

7.426 NATIONAL COMMISSION ON RURAL LABOUR (1987-91): The first ever Commission on Rural Labour had its genesis in the Budget Speech of 1987, when the then Prime Minister, Rajiv Gandhi, announced that 'the Government would appoint a National Commission on Rural Labour to look into the working conditions of this vulnerable section of our society and the implementation of social legislation for their protection.' The terms of reference of the Commission were very comprehensive, and the Commission made recommendations on a wide

spectrum of issues, aimed at eliminating poverty, improving the quality of life and increasing productive opportunities for rural labour. The Commission submitted its report in 1991.

7.427 The National Commission on Rural Labour estimated Agricultural labour to be around 110 million or 73% of the total rural labour with nearly half belonging to the Scheduled Castes and Scheduled Tribes. According to the Commission, a multi-dimensional strategy was needed to lift agricultural workers from the vortex of poverty. First, an infrastructure had to be created for irrigation, drainage, flood control and rural electric supply, without which it would be impossible to increase agricultural productivity and employment. Second, it was essential to enforce minimum wages and social security. Third, it was necessary to introduce central legislation for agricultural labour providing security of employment, prescribed hours of work, payment of prescribed wages and machinery for dispute settlement. It was essential to introduce a system of registration and to provide identity cards to these workers. Fourth, the Commission

was of the opinion that a Welfare Fund should be set up with employers' contribution in the form of a cess on land, and a nominal contribution from agricultural labour. This Fund would make provisions for

(a) maternity leave for women agricultural labour, (b) old age pension at a minimum of Rs. 100 per month to every agricultural worker above the age of 60, and (c) compensation for death or injuries due to accidents.

7.428 According to the Commission's estimates, non-agricultural labour accounted for 40 million or 27% of rural labour.

7.429 The Commission made recommendations for various categories of workers which are as follows:

a) Handloom Workers: The Commission endorsed the proposal to place Handloom (Reservation of Articles for Production) Act 1985, in the Ninth Schedule of the Constitution. Weavers were to be trained in new methods of weaving technology, adequate

- financial assistance was to be provided and marketing for handloom products was to be improved. The Commission recommended Legislation on the lines of the Tamil Nadu Handloom Workers Act 1981.
- b) *Beedi* Workers: All workers engaged in *beedi* making, either at their homes or elsewhere should be provided with identity cards. The contract system should be abolished, and initiatives to form the workers' own cooperatives should be encouraged. A change in the *Beedi* Cigar Workers Act 1966 was suggested, in order to establish unambiguously the employer-employee relationship in the case of home workers.
- c) Construction Workers: The Commission recommended that the recruitment of workers through middlemen should be checked to enable construction workers to get their wages in full.
- d) The Commission also suggested measures aimed at improving the lot of brick kiln workers, toddy tappers, fishermen, leather workers and sweepers.
- e) Bonded Labour: The National Commission on Rural Labour suggested a countrywide census of bonded labourers, and periodic sample surveys in districts with concentration of bonded labourers. In the view of the Commission it was necessary to ensure the effective enforcement of the Bonded Labour (Abolition) Act. The process of identification, and release of bonded labour and the criminal prosecution of the employer of bonded labour should be done simultaneously.
- f) Migrant Labour: As more than 10 million inter-State rural migrant workers were involved in various activities, the Commission suggested some changes in the existing Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 (ISMW):
- The definition of migrant workmen should be expanded to cover all migrants, whether they

come on their own or through contractors, or change contractors after entering a recipient State.

- Amendments should be made to allow third parties to file complaints.
 - The liability of the principal employer should be defined more clearly to prevent him from escaping liability.
 - The contractor should be made liable for the breach of the Act either by him or by the subcontractor.
- g) Recommendation on Minimum Wage: According to the Commission, Rs. 20 per day at 1990 prices was the subsistence wage level and no employment should be allowed at less than this level.

7.430 INDIAN LABOUR CONFERENCES: The 34th session of the Indian Labour Conference (ILC) held in December 1997 recommended that the Government should issue identity cards to all workers both in the organised and unorganised

sectors in a phased manner. This was recommended to improve the visibility of the workers and also to improve accountability in terms of the enforcement of labour laws.

7.431 Yet another recommendation was that all the State governments and Union Territories emulate the example of the Government of Kerala and a few others, who had set up welfare funds for various categories and sub-categories of unorganised labour. These Welfare Funds would go a long way in meeting the bare minimum welfare needs, like allotment of home sites, providing drinking water, medical aid, and scholarship for workers' children. The Conference wanted that the ambit of the Welfare Funds should be progressively enlarged.

7.432 The 34th session of the ILC expressed its concern over the predicament of inter-district, inter-State and inter-country migrant workers. It recommended that the provisions of the existing laws should be rigorously enforced.

7.433 We have now to address the question, what is the minimum that

the Umbrella legislation for workers in the Unorganised Sector should ensure. It is obvious that it should provide them protection and welfare. Measures for protection have to include a policy framework that ensures the generation and protection of jobs, and access to jobs; protection against the exploitation of their poverty and lack of organisation: protection against arbitrary or whimsical dismissals; denial of minimum wages; and delay in the payment of wages; protection against unauthorised deductions; and safety and dignity at places of work. The system of Welfare should include access to compensation for injuries sustained while engaged in work; provident fund; medical care; pensionary benefits and; maternity benefits and childcare in the case of women workers.

7.434 In the case of legal rights, the law should be capable of being implemented and monitored easily. It should be such that the worker can understand his rights, and obtain expeditious redress in cases of violation or non-fulfilment of rights. It should, therefore, include machinery for the disposal of claims and complaints at a place that is not too distant from his place of work, with

expedition, and without putting unbearable strains on the complainants.

7.435 The system for Social Security must be such that the worker can make a commensurate contribution to the cost, consistent with his financial capacity (resources). It ought to cover as many of his needs as possible, and deliver the services as near his place of residence or work as possible. The machinery should not be cumbersome, costly, centralised, and burdened with many administrative layers and overheads.

7.436 It is with these objectives that we have looked at the kind of Umbrella legislation that workers in the unorganised sector need. But before we outline the scheme of the legislation and the welfare system that we are proposing there are two other matters which we have to address.

7.437 One is the kind and extent of welfare systems (or Social Security systems) that exist in the unorganised sector today. (We have already recounted the work of the Welfare Boards etc. in the earlier

paragraphs and also discussed the protective legislation that exists in the field.) The other is the question of minimum wages. We have dealt with the importance of defining and ensuring the payment of minimum wages in another section of our report.

7.438 POLICY ON SOCIAL SECURITY IN INDIA'S FIVE-YEAR PLANS: The labour policy set out in the five-year plans since Independence was based on the belief that the basic needs of workers for food, clothing and shelter must be satisfied. The First Plan (Part-III, Chapter XXXIV) recommended many measures like the granting of occupancy rights for house-sites, support for the *Bhoodan* movement (land-gift movement), labour cooperatives, financial assistance, educational stipends, minimum wages, etc. for the welfare of agricultural workers.

7.439 The Second Five-Year Plan (Chapter XXVII) continued the policy laid down in the First Plan with modifications that became necessary with the adoption of the goal of a socialist pattern of society. There were new proposals for development

programmes under labour and labour welfare. The Plan policies recommended what flowed from the ideal of a Welfare State. It made provision for industrial housing. The Third Five-Year Plan made no specific reference to labour welfare, but stressed that for improving work efficiency, welfare within the establishment should be ensured. As a part of the reoriented policy, cooperative activity was identified as a labour welfare measure. The Draft Fourth Five-Year Plan made a significant allotment of Rs. 145 crores for schemes for training and other programmes oriented to the welfare of workers. The draft Fifth Five-Year Plan made a provision of Rs. 57 crores for the training of craftsmen, employment service and labour welfare.

7.440 The thrust of the programmes in the Sixth Plan (Chapter XXIV) was on the effective implementation of different legislative enactments regarding labour and special programmes for agricultural labour, artisans, handloom weavers, fishermen, leather workers and other organised workers in the rural and urban areas. The Plan also

emphasised vocational rehabilitation of the physically handicapped, apprenticeship and training schemes, organisation of rural workers, and problems of bonded-labour, child labour, women labour, contract labour, construction labour, inter-state migrant labour, migrant shepherds, and dairy cattle owners.

7.441 The thrust of the Seventh Plan (Chapter V) was the improvement of capacity utilisation, efficiency and productivity. An important aspect of labour policy outlined in the Seventh Plan relate to the formulation of an appropriate wage policy, and provisions for the welfare and working and living conditions of unorganised labour not only in the rural sector but also in urban areas. The Eighth Plan (Chapter VII) said that improvement in the quality of labour, productivity, skills and working conditions and provision of welfare and social security measures, especially of those working in the unorganised sector, were crucial elements in the strategy for quantitative and qualitative enhancement of the status of labour. The Plan also laid emphasis on the enforcement of labour laws especially laws relating to unorganised labour and women and child labour.

7.442 However, it has to be admitted that the Five-Year Plans did not formulate an integrated and comprehensive scheme of social security for unorganised labour.

7.443 We shall not attempt here to enter into a discussion on the ingredients of social security. We will do so in the chapter that we are devoting to the subject of social security. Here, we will limit ourselves to some important aspects of social security in the unorganised sector.

7.444 As we have pointed out earlier, the sector is diverse, and the problems in formulating and enforcing a social security scheme for the unorganised sector arise from the specifics of the sector. In looking at the need for social security in the unorganised sector and the demands on a system of social security in the unorganised sector, we have to keep certain characteristics of the sector in mind. First, the unorganised sector is not a homogeneous category. Employment relations vary considerably, and are very different from those in the organised sector. The sector comprises the following categories:

- a) Those who are employed on a more or less regular basis, in establishments which are outside the scope of the existing social security legislation.
- b) Those who are employed as casual labour, intermittently on contracts, with uncertain employment and income.
- c) Those who are own-account workers and producers, including small and marginal farmers, who may occasionally hire the labour of others.
- d) Those who do a variety of jobs from day to day, from season to season, and often even within the same day.
- e) Those who are seeking work as migrant labour.
- f) Those who worked but can no longer work.

7.445 Second, a major obstacle in introducing contributory social insurance schemes for the unorganised sector is the difficulty in identifying the employer. Third, unlike the organised sector where steady and regular employment is more or less a given fact, unorganised sector workers need employment security, income security and social

security simultaneously. Fourth, the needs of these workers often vary from those of workers in the organised sector. For example, since a large proportion of the unorganised sector comprises of women, child-oriented needs become increasingly important.

7.446 Specific limitations and difficulties that one encounters in the sector: Social Security measures for the unorganised sector labour are constrained by factors such as (a) lack of permanent or stable linkage between employer and employee that precludes schemes based on employer's contributions, (ii) low and unstable wages and lack of round-the-year employment which precludes schemes based on employee's contribution, and (iii) purely casual nature of employment which precludes benefits like sick leave, maternity leave, etc.

7.447 We have to see how these constraining factors can be eliminated or mitigated to extend the benefits of social security to workers in the unorganised sector. While doing so, let us not lose sight of the fact that in this sector social security should have promotional and preventive aspects addressing employment security and

income security, covering healthcare, childcare and old age.

7.448 We believe that the Social Security measures for the Unorganised Workers should include:

- a. Health Care
- b. Maternity and early Child Care
- c. Provident Fund Benefits
- d. Family Benefits
- e. Amenities Benefits including Housing, Drinking Water, Sanitation, etc.
- f. Compensation or Employment Injury benefits (including invalidity benefits and survivor's or dependent's benefits)
- g. Retirement and post-retirement benefits (Gratuity, Pension and Family Pension)
- h. Some cover in cases of loss of earning or the capacity to earn
- i. Besides these, there should be schemes, either independent or in association with the Government, Welfare Bodies, NGOs and Social Organisations, for the upgradation of skills and the education of workers, and for the elimination of child labour, forced labour, and unfair labour relations and practices.

7.449 Healthcare should include medical care and sickness benefits such as leave and allowance. It is better to leave the actual medical care in the hands of specialised agencies. But, an apex Board that is set up will have to take care of the expenses involved. This can be paid as medical allowance. Schemes of medical insurance should be thought of in support of healthcare. In the case of regular workers in the Unorganised Sector, contributions from the workers and employers should be collected by the Fund/s to be set up under the Board/s. Contributions can be collected from the self-employed as well. In the occupations declared as hazardous there should be special health schemes. The alternative is to prohibit such processes in the unorganised sector.

7.450 Maternity benefits and provision of early childcare facilities are two related and important issues that need serious attention. At present, maternity benefit is available only in the organised sector, and very rarely in the Unorganised Sector. The provision for crèches has not been enforced with strictness. As women need special attention, apex Board/s should see that the scheme of social security includes maternity and early childcare, and are made a compulsory

element in security measures in the Unorganised Sector.

7.451 Provident Fund benefits form the only range of financial support that workers enjoy on retirement. In the Unorganised Sector too, workers do need such a source of support. It is not that this facility is absent in the whole sector. Public Provident Fund for the self-employed and Employees Provident Fund for the workers should be made universal in the Unorganised Sector. The Board that we are recommending at the central level should take steps in this regard for workers registered with it.

7.452 Family benefits should mainly take the form of educational assistance to the children and dependants of the worker's family. Promotional measures like 'food for education' schemes should also be introduced. For this, the Board/s can work in tandem with other bodies.

7.453 Amenity benefits include schemes for housing and basic amenities such as drinking water, sanitation, electricity, etc. Here, there is space to work in alliance with other bodies.

7.454 Compensation or employment injury benefits (including invalidity benefits and survivors or dependant's benefits) should be

provided to unorganised workers. The Umbrella legislation should introduce provisions for this without leaving the subject to be covered by the existing Workmen's Compensation Act of 1923 that has proved dilatory, especially where the employer-employee relation is disputed.

7.455 Retirement and post-retirement benefits include gratuity payment in case of superannuation, or additional lump sum compensation in case of voluntary retirement, and family pension. In the unorganised sector, where there are schemes of de-casualisation, or in rare cases of regular workers, retirement benefits are given. We suggest that the Board should make provision for paying retirement-related benefits for the registered workers, if they do not get such benefits from individual managements.

7.456 Some cover for under-employment and loss of jobs should be introduced, as the sector has many occupations of a seasonal nature, incidence of loss of jobs, etc. In Kerala, group insurance schemes have been introduced for fish-workers. Such schemes can be formulated with such improvements as the Board may find necessary.

Classification of occupations

7.457 Before going into the modalities of setting up an Unorganised Sector Workers Board, it is necessary to classify the occupations in the unorganised sector.

7.458 The Minimum Wages legislation has listed occupations under two parts – Industry (Part – I) and Agriculture including forestry (Part – II). The National Industrial Classification (NIC) of 1987 followed by the CSO (Central Statistical Organisation) contained ten primary groups with many divisions within each group (CSO, 1987). The CSO has revised the National Industrial Classification in 1998. The number of primary sectors now has gone up to 17 (from A to Q) with a total of 99 divisions (CSO, 1998). The coding of the primary sectors according to the NIC 1998 is as follows:

- A. Agriculture, Hunting and Forestry
- B. Fishing
- C. Mining and Quarrying
- D. Manufacturing
- E. Electricity, Gas and Water Supply
- F. Construction
- G. Wholesale and Retail Trade; Repair of Motor Vehicles, Motorcycles and Personal and Household Goods
- H. Hotels and Restaurants
- I. Transport, Storage and Communications
- J. Financial Intermediation
- K. Real Estate, Renting and Business Activities
- L. Public Administration and Defence; Compulsory Social Security
- M. Education
- N. Health and Social Work
- O. Other Community, Social and Personal Service Activities
- P. Private Households with Employed Persons; and
- Q. Extra-Territorial Organisations and Bodies.

7.459 However, the industrial classification of economic activities has not been found helpful in arriving at the kind of distinct groups/classes of occupations and processes existing in the unorganised sector. Therefore, with the intention of seeking common parameters and patterns for arriving at a broader clubbing of jobs and processes in the unorganised sector, 106 jobs were taken at a random basis for analysis, based on available secondary sources. The data sheet and the list of jobs are attached as an Appendix. We thought that this exercise would be useful in classifying the organised economic activities into groups with similarities.

7.460 Factors considered for classification are as follows. Recruitment, payment, unionisation, casual nature, relation to child labour, family labour and migrant labour, wage and earning levels, skill level, home-based activity, source of raw materials, access to capital, debt bondage, nature of output (product or service), and occupational hazards and diseases. Samples from both self-employed and employed groups have been considered.

7.461 The classes that we have identified on this basis are:

1. Workers dependent on open access and common property resources.
2. Workers engaged in putting-out system of work such as weavers.
3. Non-motorised transport workers (rickshaw pullers, boatmen, etc.).
4. Motorised transport workers.
5. Contract workers.
6. Work-contracted home-based workers.
7. Traditional service workers.
8. Pastoral toilers.
9. Workers in child labour-prevalent occupations.
10. Migrant workers.
11. Small credit dependent traders such as hawkers and vendors.
12. Construction workers.
13. Manual workers of unspecified jobs.
14. Service sector workers (excluding traditional services).
15. Agricultural labourers.
16. Small farmers.
17. Mining and quarrying workers.
18. Food processing workers.
19. Workers in timber, fibre and pulp based activities.
20. Engineering industry workers.
21. Electrical and electronic industry workers.
22. Village and khadi industry workers.
23. Other miscellaneous workers including crafts persons.

7.462 These classes were arrived at on the basis of various factors at various levels. For instance, class-1 is based on the source of raw materials, and class-2 on the basis of mode/organisation of production. Contract workers (class-5) are those employed through contractors (mode of

recruitment). Class-6 is also based on a similar factor where work is contracted for home-based workers. There are child labour prevalent occupations and migrant labour prevalent occupations (classes 9 and 10). Small vendors are credit dependent (class-11). Construction workers (12) and Agriculture workers (15) follow partly, industrial classification and partly, their sheer numerical strength.

7.463 Let us now give some thought to the logic of classification. National Industrial Classification (NIC) of economic activities (of both 1987 and 1998) is on the basis of 'the nature of economic activity carried out in an establishment' (CSO, 1998:99). The NCO (National Classification of Occupations – 1968) bases itself on the nature of occupations. In the unorganised sector, both these principles can be used but combined with other elements. Some purpose-based classification such as one meant for social security legislation can also be thought of. For instance, as earlier mentioned, Subrahmanya and Jhabvala (2000) point out six categories. They are (a) the regular unorganised sector employees outside the scope of the existing social

security legislation, (ii) casual labour, (iii) own-account workers and producers, including small and marginal farmers, who may occasionally hire the labour of others, (iv) those who do a variety of jobs from day to day, from season to season, and often even within the same day, (v) job seekers like the migrant labour, (vi) and those who worked but can no longer work. This classification is definitely useful for the purpose of devising social security schemes. However, this will not be useful for the purpose of fixing minimum wages (or minimum prices for products as, for instance, in the case of small farmers).

7.464 Can the classification then, be based on a distinction between worker and producer? This would be more or less equivalent to the distinction between the employed and self-employed sections. In our analysis, no substantial group emerged to be denoted as merely self-employed. In almost all the occupations, we can find both self-employed and employed workers. Even among hawkers and vendors, one can find employed workers, though a vast majority of them are self-employed and own-account

workers. And as such, we have considered them as a self-employed group. The unorganised sector has generated jobs handled by both the self-employed and employed workers, and it is meaningless to distinguish and separate them as distinct groups either within the same occupation or in general. This is not to deny the difference between the two.

7.465 We can consider whether a division is possible on the basis of the nature of the product of labour. Product based and service based industries can be differentiated. However, this does not serve any specific purpose here. Consideration on the basis of primary, secondary and tertiary sectors would not also be useful as it results only into three bigger and broader categories.

7.466 Another factor is that one finds the same person engaged in different occupations. Take the case of a marginal farmer for instance. He or she is a working producer, own-account worker and also self-employed. At the same time, he/she is not the kind of own-account worker in the strict sense, because he/she employs some agricultural labourers at times of need. The same person

gets employed as agricultural worker or construction worker at other times. Here, he/she is self-employed, and sometimes employed. Whichever sector he/she is spending more time in, can be considered his/her main occupation on the lines of the norms followed by the National Sample Survey Organisation (NSSO) and the Census.

7.467 Now the question is where do this classification and these classes take us. Our reading of the National Industrial Classification (NIC) of economic activities (of both 1987 and 1998) and the present classification exercise point out that single-method approaches are not helpful in differentiating groups in a substantial way. Mixed approaches are to be tried wherein empirical studies and surveys, NIC and NCO (National Classification of Occupations) structures of classification, skill levels, modes of production, occupation status, nature of resources involved, unique distinguishing factors, etc. can be applied. Thus, different groups are formed on different considerations of logic. We feel that this eclectic is more a problem of the sector than one of rationality. If the logic is fragmented, it is only a reflection of

the diversity of the unorganised sector itself.

7.468 We believe that classification should be an on-going process. For instance, if a child labour prone group exists under the board, after some period the group can be removed when sufficient improvement is reported in the sector on the incidence of child labour. Thus, options should always be kept open and flexible to accommodate newer classes and eliminate existing classes. And there should be provision for such a set-up in the Board to be constituted.

7.469 However, given the limitations of classification, we are suggesting a tentative but comprehensive list of groups that can be useful in wage fixation and in undertaking studies to assess the undergoing changes in the respective group of industry and occupation. For the purpose of social security measures and cess collection, separate group-based consideration would be necessary. However, we are suggesting the following subgroups to be set up under the main umbrella board for unorganised workers:

a) Agriculture and animal husbandry workers: This excludes cultivators and includes

all workers of horticulture, sericulture, bee-keeping etc. Bee-keeping is otherwise considered part of the group of Khadi and cottage industries that is distributed among different divisions in our classification. Numerically, this is the biggest group.

- b) Cultivators: This consists of those involved in small and marginal farming including the forest and wasteland cultivators and the sharecroppers. Those, who rent out the land, or the owners of lands in case of sharecropping, will not be the beneficiaries of the legislation.
- c) Fish workers: Fish-workers of inland, backwater, estuarine, marine and aquaculture fisheries and related workers constitute this group. As against the common perception, they have to be treated as skilled workers.
- d) Forest workers: This also includes the forest produce gatherers.
- e) Manual workers: Generally, manual workers are considered unskilled workers. But all of

them are found engaged in some skilled work or the other. In our classification exercise, we have treated them as semiskilled. All manual workers who are not coming within the purview of other groups and the head load workers come under this group. Domestic workers are included in this group.

- f) Construction workers: Though a new central legislation has come up for these workers, a majority of them are still outside the purview of this legislation. Unorganised construction workers constitute a numerically bigger group.
- g) Transport workers: As far as the work organisation is concerned, these workers have to report to the employer. This is a service-based industry, and the group includes both the motorised and non-motorised transport workers, together with own-account workers among them.
- h) Workers in the putting-out system: All weavers come under this class. Cotton, silk, and carpet weaving are included here. This group is classified on the basis of work organisation. The loan and raw materials provided to the weavers bond them practically to the master weaver or the trader. At the same time, all weavers are considered self-employed. However, a major process in the textile industry comes under this group that includes handlooms, powerlooms and carpet weaving.
- i) Work-contracted home-based workers: Home-based work has come up on a large scale in the unorganised sector. A number of non-factory based activities, factory related small level ancillary activities such as assembling, etc. are done at home where family labour is engaged. These are mostly piece-rated contract jobs. Those involved in this contracted home-based work except the putting-out system of work come under this class.
- j) Unregistered factory based workers: Ancillarisation and liberalisation have transferred more components of the organised sector activities to the unorganised sector and

- generated new activities as well. This class would comprise of a large number and variety of industries and occupations.
- k) Non-factory based industrial workers: Workers belonging to service and information-based industries, small establishments such as eateries, shops and manufacturing enterprises etc., are included here. Food processing workers, for instance, are distributed among this class and class-10 (unregistered factory based workers).
- l) Mining and quarrying workers: Workers who do not come in the purview of Mines Act, the contract and casual workers of the registered mines, and the workers of the informal mining sector, are considered here.
- m) Hawkers and vendors: This is a group of small traders both mobile and fixed. Small vendors of cooked food, vegetable and fruit vendors, door-to-door salespersons, etc. can come under this class.
- n) Freelance workers: This class includes a type of own account workers. They may be home-based or otherwise. They can be contract workers or otherwise. Similar to home-based workers, freelancers of various hues are getting into new occupations that are unorganised. These include medical transcriptionists and call centre workers who are called tele-workers (information based freelance workers). Some sections of these tele-workers also work on a regular basis while some of the data entry operators are on freelance basis.
- o) Miscellaneous workers: This class includes the workers not classified elsewhere in the 14 classes listed.
- This classification that we support is based on the principles of organisation of work, nature of resources, or space of work or even on the basis of sheer numerical strength. Thus, multiple factors have been taken into consideration, and used.
 - It is possible to consider forest workers and fishery workers together as a single class of

workers dependent on open access and common property resources, where those dependent on village commons can also be included. Then the classes can come down to a total of 14.

- But the need is to keep the process of classification continuous and flexible.

Unorganised Sector Workers Bill

7.470 In conclusion, and before setting out our specific proposals for an umbrella legislation to cover workers in the Unorganised Sector, we will once again recapitulate the objectives of the legislation.

7.471 The unorganised sector accounts for over 90% of our workforce. Their percentage is likely to increase. They are as entitled to protection and welfare/security as workers in the organized sector, who are often described today as the privileged sector of the workforce. The laws that exist today hardly touch the workforce in the Unorganised Sector. It is therefore necessary to enact new legislation to cover workers in this sector. There is a wide variety

of employments in this sector. Conditions vary, levels of organisation vary. The nature of the relations with employers vary. There is an expanding sector of those who are self-employed, or are on contract, and work from homes. It is difficult, to have separate laws for each employment. This will only result in endless multiplication of laws, and oversight of one or the other of the employments. The answer therefore lies in one umbrella legislation that covers whatever is basic and common, and leaves room for supplementary legislation or rules where specific areas demand special attention. But we cannot overlook the fact that all such legislation is enacted with the twin purposes of extending protection, and welfare/security. Protection includes security of employment, identification of minimum wages or fair wages, making the minimum known to workers, ensuring the full payment of these wages without unauthorized deductions, and a machinery at the threshold of his/her workplace to enforce the law on minimum wages and working conditions. Welfare/security has to include medical services, compensation for injury, insurance, provident fund and

pensionary benefit etc. We have also tried to keep in view the need to ensure that the machinery proposed for enforcement of laws or disbursement of benefits is not vitiated by distance, centralization, top heavy structure, inaccessibility, multiplication of administrative set-ups etc.

7.472 It is clear to us that the crucial guarantees of justice lie in minimum wages and security including job security or safety, and social security. In an ideal situation, the agricultural sector will need not only the fixation of minimum wages for agricultural labour, but also minimum prices for agricultural products that would enable producers or farmers to pay minimum wages. The report of the Study Team has laid emphasis on this connection. But, we are not going into the question of prices in this enquiring, since it may take us beyond our terms of reference.

7.473 To meet these crucial requirements, we propose the Constitution/establishment of an Unorganised Sector Workers (Employment And Welfare) Board with constituent bodies that will extend to the level of the Panchayat.

7.474 We recommend that all those who work should be entitled to avail of the facility and register themselves and procure identify cards. As we have stated elsewhere, employers in establishment employing 5 workers or more will have the duty to register the workers in their employment and ensure that they receive their identity cards. Self-employed workers as well as workers in establishment employing less than 5 will also be encouraged and enabled to register themselves and obtain identity cards. The necessary forms may be made available at the Facilitation centers or post offices, and Facilitation centers may issue identity cards to such workers.

