

# Gender Approach towards Human Right facet of Workers in Unorganized Sector in India

Neelima Sawakar

Ph.D. Scholar with Symbiosis International University (SIU), Lavale, Mulshi Taluka, Pune, Maharashtra 412115, India

**Abstract:** *The unorganised sector plays a significant role in the India economy. The informal sector/unorganised sector is not exclusively defined or covered under any law. The informal sector is the critical source of work for women than for men in the developing nation. Women represent a significant part of India's unorganised workers. This article looks into the aspect of the human right of women workers in the unorganised sector. Most of the times the work of women goes unrecognized, and the benefits rarely reach them. Being a vulnerable women worker faces lots of problems violating their fundamental human right, as of the right to equal remuneration, maternity benefit, and sexual harassment, mental and physical violence. Further, the law and legal provision for protecting the right of women worker in the unorganised sector in India is critically analyzed.*

*Keywords: Women, Unorganised sector, India, women worker*

## 1. INTRODUCTION

Unorganized labours in India have escalated post-independence. As per a study carried by the National Sample Survey Organisation (NSSO) in 2009–10, the entire employment in the country was of 46.5 crores including around 2.8 crores in the organised and the residual 43.7 crore workers in the unorganised segment. In the unorganised sector, 24.6 crore workers are working in the agronomic sector, about 4.4 crores in construction labour and remaining in manufacturing and service. (Diwaker & Ahamad, 2014) The major part of Indian economy belongs to the unorganised sector. These unorganised sectors are not enumerated under any legal provision.

Women in our world have so far had only an inferior status, and the economic dependence of women upon men is one of the critical reasons which has pushed them into the backdrop and resulted into their inferior status both within and outside the family (Wadhera 1976). In most cases, women are not given credit for their contribution though they have proved themselves in every walk of life. In India, women amount to almost half of the entire populace as well as they engage in a crucial task in the domestic field, in the rural area and also in the urban economy (Sansiya, 2013). Looking at the census data, we can see that women's financial position is shallow, mainly those of those who are engaged in the informal sector of the urban economy (Tripathy & Das 1991). The significant population of labourers is in the unorganised sector, i.e., 46 crores out of which 14 crores are women (Indian express 2016). Mainly because women are basically within a vulnerable and impoverished group, they face the added inequalities of gender. These lead too many tangible-unequal pay, no maternity benefits, mental and physical harassment, and poor diet and ill health. Women in the unorganized sector along with innumerable other women consistently also start an extensive range of "invisible" work and often carry the double burden of paid and non-paid work (Bharat 2002). The non-paid assistance for work-related to the household core, provisioning, and reproduction which in turn are usually performed by women or female kids -be likely to end up being unnoticed in the estimate of the labour. (Joshi, 2007)

## 2. DEFINITION OF UNORGANIZED SECTOR

Many times, unorganised sector is used as a synonym to the informal sector, informal economy, and even informal labour which time and again look into the most concerned part of the sector, namely, the labour/worker. "Informal labour" is labour who are not administrated either by State rules or by collective agreements between workers and employers (Jacob, 2014)

According to Kenneth King, "*Their unorganised derives from their being unrecognized in government employment statistics and operating in the main act of the makeshift shelters on urban wastelands, roadsides, and forest fringes.*" (Agarwal 2012)

According to Unorganised Workers' Social Security Act, 2008 'Unorganised Sector' means "*an enterprise owned by individuals or self-employed workers and engaged in production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten.*"

The present Act also defines Unorganised Worker under Section 2(1) as "*a home-based worker, self-employed worker or a wage worker in the unorganised sector and includes a worker in the organised sector who is not covered by any of the acts mentioned in schedule II of the Act.*"

From the study of definitions, it is clear that the unorganised sector is a term that evades definition as the sector is too enormous and diverse to confine within a conceptual definition.

The unorganised worker was classified by India's Ministry of Labor, in its 2008 report (Sharma, 2012). The classification was based on occupation, type of work, particularly distressed categories and service categories (Sharma, 2012). The working group comprise of landless agricultural labourers, sharecroppers, fishermen, those involved in animal husbandry, small and marginal farmers, beedi rolling, cataloging and padding, structure and construction workers, leather workers, weavers, artists, salt workers, workers in block kilns and stone quarries, workers in sawmills, and workers in oil mills (Sathaya, 2016). One of the categories based on the type of work consist of attached agricultural labourers, bonded labourers, migrant workers, contract and casual laborers. Another distinct group contains toddy tappers, scavengers, and carriers of head loads, drivers of animal driven vehicles, loaders, and unloaders (Report, 2008). The next unorganized labour group consists of service workers such as midwives, household workers, barbers, vegetable and fruit hawkers, newspaper salesperson, pavement vendor, handcart worker, and the unorganized retail. (Nurul& Singh, 2002)

The informal sector is likewise divided into two broad classes: traditional household support informal sector and recent informal (Gustav & Stewart, 1999). The traditional informal segment is distinguished as minimum size, low capitalization, low labour production, stagnant knowledge, and household-based production unit. The new informal sector is described as more substantial in size, capital concentrated and more active in technology.

According to Ranis and Stewart (1999), the traditional informal sector produces consumer goods only, sold mainly to the low-income consumer. The new informal sector produces both consumer goods and capital goods, serves both low and middle-income trades. These goods frequently contend with the goods manufactured by the recognized segment. The consumer goods produced by the new informal sector usually used up by the sector itself and the people involved in the formal sector. Elsewhere, the transitional products and simple capital goods produced by the modern informal sector that partly used the sectors own need and partly serve the demand of the formal sector. Thus, modern informal sectors production is complementary to and as well as competitive with the formal sector. (Hart, 1973)

### 3. ROLE WOMEN WORKER IN UNORGANIZED SECTOR

As per the United Nations Development Programme (UNDP) report, women are intricate in doing 68% work of the world; yet they are socially and economically destitute. They receive only 10% of the universal income and have 1% part in global assets. This discrimination also persists in their workplace in the unorganized sector (Sharma 2012). Women form an integral part of India's workforce. According to the data provided by the office of Registrar General & Census Commissioner of India, per Census 2011, the overall figure of female workers in India is 149.8 million, and womanly workers in countryside and urban ranges are 121.8 and 28.0 million correspondingly. Out of 149.8 million-woman workers, 35.9 million females are working as cultivators, and another 61.5 million are agricultural labourers. Of the remaining female's workers, 8.5 million are in household Industry, and 43.7 million are classified as other workers. (Harish & Ramakrishnappa, 2015)

Women workers in the unorganised sector are increasing due to varied reasons. This can be attributed to the method of the economic process, export-oriented manufacturer and due to industrialization in developing countries, at the other side, a decline in the traditional segment and home-based units have pressured them to opt for the unorganised sector as a means for sustenance. This leads to a disproportionate financial burden on the shoulders of women. This draws them into a direct economic role as wage earners in factories, construction sites, homes and even in farms. Here they are utilized as low-cost substitute labor where the case is hugely against women employees and in favor of their employers (Nilay & Srivastav, 2002). They work in conditions which are usually not suitable but have fewer or nonexistent options. To further complicate the situation, they are uneducated and ignorant regarding the status and hesitant to object to the misbehavior or existing state of affairs at work.

As per the study conducted by Dr. Vandana Dave reality of women working in the unorganised sector, it was observed that women workers do not have a proper working hour. They are affected by the irregular work hours and the wages provided for their work also low in rate (Dave, 2012). The unorganized sector is most vulnerable, neglected and multifarious. Women in the unorganized sector comprise a considerable figure, so it is essential to review their issues and prospects.

### 4. HUMAN RIGHTS OF WOMEN WORKER

Human rights are known as natural rights to be acknowledged by all UDHR. Therefore, it is necessary to understand how the unorganized workers generally, and women workers in particular, who are regarded as the most vulnerable section of India's human resources, realize their human rights. Along these lines, it is essential to see how the unorganised laborers by and large, and specifically women workers, who are viewed as a weaker segment of India's workforce, understand their human rights. When we look at human right framework from gender approach, we can see that the current human rights practice do does not point out how it already identified human rights violations, but often impact women differently because of their gender. (Patil, 2001)

The National Commission for Women evaluates that 94 percent of the total female workforce is to be found in the unorganised sector (Sansiya, 2013). The presence of a large number of women as workers and producer in the unorganized sector, where wages are low, employment occasional and insecure, supportive services inadequate or even absent, growth occasion few and combined associations frail, has fetched into strident focus the disappointment of the mainstream to improve their difficulty. While it is true that workers, regardless of gender, are exploited in the unorganized sector, women agonize more by the fact of their gender. Critical questions have been raised concerning the lifestyles of labouring women, their state of consciousness and, even more importantly, the impact of attempts at motivating them in self-help. (Das 2003)

Human Right offenses are very rampant in the unorganized sector in the form of low wages, unemployment, and decline to recognize the cultural and social principles. Women workers most of the times face discrimination based on gender. Women are often unable to raise their voice against violations due to a secondary place in society. Protecting their socio-economic right with another human right is essential.

#### 4.1. Right to life:

Human rights can be acknowledged as a basic accord within the world with a view of rights and freedoms. These rights and freedoms are pertinent to every human being and are acknowledge by representing common values, principles, and morals; one of these fundamental rights and freedoms is the "right to life" (Teacher, 2013). Everyone has the right to personal life and liberty. The right to life is undoubtedly one of the most basic of all rights. All other rights add value to the life in issue and depend on the pre-existence of life itself for their operation. As human rights can only attach to living beings, one might expect the right to life itself to be in some sense primary, since none of the other rights would have any value or utility without it.

The Universal Declaration of Human Rights 1948, Article 3 enumerate that *"Everyone has the right to life, liberty and security of person."*

The right is also enshrined in Article 6 (1) of the International Covenant on Civil and Political Rights states that:

1. *Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*

Constitution of India 1956, Article 21 explains about the person's life and liberty. The Court in *Rural Litigation and Entitlement Kendra, Dehradun v. Uttar 216 Pradesh* (AIR 1985 SC 652), has held that the right to livelihood is an integral part of the right to life under Article 21.

Contextually, we find that a highly visible percentage of women workers continue to live a life full of subsistence, compromises and most of their access in terms of the right to life is subsidized. The furthestmost significant determining feature to such access and denial primarily evolves out of poor literacy and lack of awareness resulting in self-exclusion from the mainstream opportunities. (Mohapatra, 2012)

The leading cause for women to work in inferior conditions of the informal sector is poverty. They are the deprived, indigent, unfortunate and underprivileged section of the society, live in the pathetic and pitiable conditions (Parveen 2014). They have more responsibilities, stress, and tensions in their life. Women labours play dual roles, inside their homes and outside their homes. They manage their home and family responsibilities at one hand and manage their employee work on the other hand. As per the study conducted by Kamala, the women respondents reported that they are getting low wages by working longer hours and their employers always give them late payments. They do not have medical and maternity benefits. They are not only insecure in employment but are also discriminated in wage payments. (Gani & Ara, R. 2010)

#### 4.2. Right to work:

The right to work is very much associated with other fundamental rights such as the right to life, the right to food and the right to education. The right to work explains that every person must be given the prospect to work for a living. International Legislations Universal Declaration of Human Rights, Article 23(1) and 24 elucidate the fundamentals of right to work. Every person has the right to work and is free to choose employment in the excellent and workable environment.

Constitution of India does not provide for the right to work as a fundamental right. However, under the Directive Principle of State Policy Art 39 and Art 41 speak about the right to work.

MNREGA is a job guarantee scheme, enacted by legislation on 25 August 2005. The scheme delivers a legal assurance for 100 days of employment in each financial year to adult members of any rural household keen to do public work-related unskilled manual work at the statutory minimum wage of Rs. 100 per day.

#### 4.3. Human Rights related to working hours, conditions of services and employment

The work environment is one more vital aspect of the informal sector and is of particular significance to the women workers. The evaluation of the working environment of women labour is also essential to have a profound considerate of their living. The working environment includes working hours, nature of work, terms, and conditions of payment, overtime payment, etc. Due to the diverse nature of the work in various kinds of unorganised activities, the health troubles develop into a restraint for women workers. (Gupta, 2013)

Convention on the Elimination of All Forms of Discrimination against Women, Article 11 (f) includes *"the right to protection of health and safety in working conditions, including the safeguarding of the function of reproduction."*

Employment Policy Convention (No. 122), 1964, The Convention delivers that Governments must follow, as a significant goal, an dynamic policy intended to promote full, productive and freely chosen employment and that there should be the fullest possible opportunity for each worker to qualify for, and to use his or her skills and endowments in a job for which he or she is well suited, irrespective of inter alia, sex. (Sharma 2006)

Article 42 of the Constitution of India requires that the State ought to make provision for safeguarding just and humane environments of work and maternity relief (Gupta 2014). Article 43 requires that the State shall endeavor to secure work, a living wage, surroundings of work confirming a decent standard of life and full enjoyment of leisure and social and cultural opportunities. (Sharma 2016)

#### 4.4. Laws Related to Social Security

Social security is a Human Right guaranteed and mandated by many International Conventions and by many world Constitutions. Universal Declaration of Human Rights, International Convention on Economic, Social and Cultural rights recognized have declared social security as a fundamental right. The Constitution of India under Part IV of the Constitution reinforces social security as social, economic justice under Articles 38 and 39(e). The Constitution also states that the State to secure a social order for the promotion of the welfare of the people. As per the Article 38 (1) of the Constitution of India, *"The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life."*

In *Regional Director, ESI Corporation v. Francis De Costa* (1992 SCR (3) 233), The Apex Court stated that security against sickness and disablement is fundamental right under Article 25 of the Universal Declaration of Human Rights and article 7(b) of International Convention of Economic, Social & Cultural Rights and Articles 39(e), 38 & 21 of the Constitution of India (Kamban 2014).

Equality of employment and work can only be achieved by providing equal opportunity and equal treatment without any gender discrimination. Equal opportunity indicate towards equal chance for applying for job, unbiased admission to work, which includes, equal option to obtain training in the field, capability for promotions, and admissibility to attain specific education/training ; equal treatment refers to being entitled to equal pay, working conditions, social security, and social protection and quality of family life. (Mukharjee 1997)

A woman's income, on usual, worldwide, per hour is 75% that of a man (Gould, Schieder & Geier, 2016). One of the explanations this exercise is still so predominant even today is because of the widespread view that the costs of employing women are higher than employing men because due to the numerous positive discriminations provided in Laws. Women work fewer overtime hours; women must be given maternity leave, etc. Wage inequality is so rigid to match because it is frequently hard to notice. It functions through access to promotions and other similar indirect means; as such qualifications affect not only pay but also perquisites. (Kinetzfeb, 2004)

The Universal Declaration of Human Rights, declaration proclaims that “*all human beings are born free and equal in dignity and are entitled to all rights and freedoms set forth therein without any discrimination as to sex.*” International Covenant of Economic and Cultural Rights, 1966, Article 7 provides among other things that “*there shall be equal remuneration for work of equal value without distinction of any kind in particular women being guaranteed conditions of work not inferior to those enjoyed by men with equal pay for equal work.*” Universal Declaration of Human Rights Article 23(1) states that ‘*everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.*’

On 18th of December, 1979, the United Nations adopted the "Convention on the Elimination of All Forms of Discrimination against Women." Article 11 summaries the right to work for women as "an unalienable right of all human beings." It entails equal pay for equal work, the right to social security, paid leave and maternity leave "with pay or with similar social benefits without loss of former employment, seniority or social allowances." Firing on the grounds of maternity, pregnancy or status of marriage shall be banned with the sanction.

Constitution of India Article 39, by clause (a) further casts an obligation upon the State to direct its policy towards securing to all the citizens including men and women equally, right to adequate means of livelihood. Article 39(d) speaks explicitly about Equal pay for equal work; because of this, the State has to take steps for securing that there is equal pay for equal work for both men and women. (Diwan 1996)

The provision of maternity protection is crucial in promoting the cognizance of equal opportunity in employment. The idea of providing for such assistance is to avert childbirth as a restraining woman to work, and to safeguard that women do not have to choose among their “reproductive and productive roles.” As enumerated underneath the ILO Maternity Protection Convention and Recommendations of 2000, motherhood leave is a mother’s right to a period of leave for rest and recuperation from childbirth and its consequences thereof. The convention provides for cash and medical benefits and also a right to breastfeed her child after returning to work(United Nations, 1986). It aims to promote equality of all women in the workforce and the health and safety of the mother and child. Considering the conditions of women workers and the need for protection during pregnancy, which has to be the collective responsibility of State and Society. (Hadad 2016)

Sexual harassment is another form of gender discrimination. In 1993, in an ILO Conference held in Manila, it was recognized that Sexual Harassment of Women at the Workplace was a form of gender discrimination. Article 11.1 of CEDAW requires ratifying States to “*take all appropriate measures to eliminate discrimination against women in the field of employment.*” The International Labour Organization through the adoption of the Discrimination (Employment and Occupation) Convention, 1958 (No.111) also provides for non-discrimination. (Abraham et al. 2014)

On 5 September, the historic Convention Concerning Decent Work for Domestic Workers, also known as the Domestic Workers Convention, No. 189, comes into force(Gausi 2013). This groundbreaking new treaty sets to establish the first global standards for the working condition of more than 50 million domestic workers worldwide. The treaty aims to bring domestic workers at par with other workers, entitling them with weekly offs, minimum wages and vacations(Claiming Rights, 2016).

## 5. PROTECTING HUMAN RIGHTS THROUGH NATIONAL LEGISLATION

To execute the International Convention, some legislation is made for the interests of women workers in the organised and unorganised sector. The requirements about the welfare of women worker in the unorganised sector include some basic services at work place, working hours, safety, etc. However, our labour laws which offer for labour rights and welfare provisions of workers apply mainly to the organized sector. The more significant part of the unorganised sector is nearly unprotected due to the absence of legislation and policy. The organized and unorganized sectors are differentiated based on the degree to which these laws apply to different employment sectors. Though the organized sector workers, which form a small part of the labour force, are covered by various labour laws, which guarantees job security, regular wage revisions, retirement, and another reimbursement, there is still an absence of welfare provisions such as education, health care, housing, public distribution system. There is only some legislation, which directly related to the unorganized sector even though welfare measures, grievance redressal mechanisms and social security rights in these Acts are insufficient or non-existent. With growing informalization of the formal sector, it is utterly necessary that the social security and labour rights provisions in labour laws are amended with the purpose they apply to all women workers irrespective of which sector they are engaged in. (Abraham et al., 2014)

Labour laws lack to protect workers in the unorganized sector. Whatever exists is inadequate. Much of the work that a woman performs as part of family labour or as self-employed and home-based producers are either not recognized as work or is dubbed a survival and, therefore, an auxiliary activity. The neglect of women's labour finds manifestation in a variety of poverty alleviation programs and social legislation. Many labour laws are unmindful such as the Plantations Labour Act of 1951 as well as the Mines Act of 1952, which comprise special provisions regarding working hours benefit for women worker.

Due to the increase in the number of women employees, the maternity leave and other motherhood benefits are becoming gradually more frequent. The Maternity Benefit Act of 1961 is on the list of few laws enacted especially to protect the interest of women. To regulate the employment of women in the establishment for specific periods before and after childbirth and to make available maternity benefit and assured other benefits to women workers. It also offers similar benefits for sickness and medical disability to male and female workers as well as maternity benefits to women (Phillips 2017). It is generally acknowledged that there are inadequacies in the Maternity Benefits Act at the national level (Reports of the National Commission on Labour, 2003). The Court held that even women workers involved on a casual basis or muster roll on daily wages are also eligible to benefit under the Maternity Benefit Act, 1961 as nothing in the Act confers the benefit only on regular women employees (Municipal Corporation of Delhi v. Female Workers (Muster Roll) 2000 (2) SC Almanac 269). The Employees State Insurance Act, 1948 similar proposition benefits for illness and medicinal incapacity to male and female workers as well as maternity benefits to women. The Mines Act 1946, The Factories Act, 1948 and the Plantation Labour Act, 1951 make it compulsory for employers to open crèches if the number of women in their employment exceeds a specific number (Srivastava 1975). The employers are also made accountable for giving women laborer creche facilities for their children. A significant facet of support of women's employment is their conduct and wellbeing in the labour market while they are employed. Maternity benefits like paid leave by their employers are made available to the formal sector working women; such benefits are missing for 90 percent of women who

are employed in the unorganised sector (Deb 2017). It is the need of the hour to make maternity benefit available to women workers in the unorganized sector.

While discussing the right of women workers of the unorganized sector, it is essential to mention the Bidi and Cigar Workers Act, 1966, which applies to home-based workers. This legislature bids upon the principal employer to pay minimum wages, register women workers in his books and issue them an identity card and a logbook. The Bidi Workers' Welfare Cess Act, 1976 & Bidi Workers' Welfare Fund Act, 1976 purpose at encouraging the welfare of the workforce. Despite this, employers have quickly learned to evade the law by adopting a contract system. Between the principal employer and the workers is a long chain of contractors, adept at manipulation (Smith, 2014).

At this point a look at The Factories Act, 1948(Sec 66(1)(b)), The Mines Act, 1952(Sec 46(1)(b)), and the Plantation Labour Act, 1951(Sec 25) need to be discussed as it prohibits the employment of women, between 7.00 p.m. and 6.00 a.m. in factories, mines, and plantations. As per the Report of National Commission for Enterprises in Unorganised Sector (2007) and Report of National Commission for Women (2005) have a look into the matters about long working hours in unorganised sector which is contrary to the regulatory norms of work. These enactments similarly allow the government to fix the maximum load to be carried by women workers.

Speaking of working hours and condition The Contract Labour Act, 1978 was approved to control the working conditions of contract labour, which includes a vast number of women workers. The law has provisions for payment of wages, provision of welfare facilities and looking after their role as mothers, by insisting employers to provide crèches for the children. Women engaged in construction work, are mostly exploited. They are employed on a casual basis. Unstable employment/earnings and shifting of workplaces are the essential characteristics of construction workers. In most cases, safety norms are violated.

While discussing of the point of social security The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 intend at offer social security and timely financial aid to the employees and their families when they are in distress and/or unable to meet family and social obligations and to protect them in old age, disablement, early death of the breadwinner and in some other contingencies. The Act applies to explicit listed factories and establishments employing 20 or more employees and ensure provident fund to a small percentage of the population as smaller establishments are excluded from the benefits of the said Act Sec 16. As a result, greater part of Labour force in the unorganized sector is beyond the benefits under the said Act. ( Polaski 2015)

Another Act which deals with the social security The Payment of Gratuity Act, 1972 consider the point of making available retirement assistance to the workmen who have given long and immaculate service to the employer, and thus added to the opulence of the employer. For long and meritorious service gratuity is an incentive. The importance of this Act lies in the acceptance of the principle of Gratuity as a compulsory, statutory retrial benefit. The Payment of Gratuity Act (1972), the Building and Construction Workers Act (1996, etc. reveal the attention given to the organized workers to attain different kinds of social security and welfare benefits. In the unorganised sector above Acts are directly and indirectly applicable to the workers, but their contribution is very negligible.

About the above, the next act to look at is The Workmen's Compensation Act, 1923 which deals with the cases of an accident at the workplace. As an accident or some other diseases happened to be at workplace resulting in death or disability of women workers, is not just a monetary defeat, but also of housekeeping function. It is an irreparable loss to the family itself. Even if a male member of the family meets some mishap at workplace resulting in injury or death, the women are the real victims. These legislations exclusively do not speak of the benefits available to the workers in the unorganized sector nor do they prohibit coverage of unorganized workers. Though, they restrict application to the establishments based on the size of the establishment, deployment or engagement of work force in their establishments or their location and concentration or based on their class (Rao 2016). In effect, majority of the working class in the unorganized sector is not in enjoyment any social security benefit like Provident fund, Pension, Medical, or Maternity benefit, Disablement benefit, and widow Pension, etc. (Chandrshekar 2010)

Coming to The Unorganised Workers' Social Security Act, 2008 which aims to the relief of reimbursement to unorganized workers in instances of illness, disability, maternity, unemployment, old age and the death of a family's wage earner. As discussed early the Act has defined 'Unorganised workers' broadly and liberally to include those who are casually employed and receive daily or monthly wages as well as 'home-based workers' and even farmers who work on small land-holdings. The Act does not provide for a grievance redressal mechanism. The fairness and effectiveness of the implementation of the Act dramatically depend on the availability of a well-designed and functional grievance redressal mechanism through which workers have recourse to a method for voicing their complaints about violations. This inherent structural gap and inadequacy make the Act ineffective in providing social security benefits. The Act is quiet on the matters associated with minimum wages, non-payment of wages, hindrance in payment, unequal remuneration, and the national minimum wage. Additionally, there is no provision to deal with the concern of women workers such as equal remuneration, a particular scheme for maternity and childcare benefits, good working conditions and protection from sexual harassment (Report of the Working Group on Women's Agency and Empowerment 2011).

The Domestic Workers Welfare and Social Security Act, 2010 is first a Comprehensive Central Legislation explicitly planned to meet the working condition of the domestic workers including registration, who are a vital segment of service sector of Indian economy and who have a Multiplier impact on the economy by enabling the women, in particular, to work by sharing the family burden, can ensure the end of the abuse of these domestic workers. Women domestic workers are an economically disadvantaged group, and Domestic work is the primary growing informal sector activity occupied mainly by women. Women from certain areas or regions with the specific socio-economic background are found to be concentrated in this occupation. There no uniformity in the domestic workers' wages structure and it is very waged they are getting. These are increasing inequality and development discrimination among urban livelihood and new lifestyle patterns of living in the urban middle class. Lack skills and alternative employment opportunities, dependence on placement agencies are challenges of women domestic worker and makes domestic workers vulnerable to various explorations. Low pay, absence of job security, long working hours is low social status defines the occupation. (Adin and Singhe 2016)

One of the significant forms of discrimination is sexual harassment. Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, the object of the Act is to provide women protection against sexual harassment at the workplace and for the prevention and redressal of complaints of sexual harassment. The Supreme Court in the case of *Vishaka v. State of Rajasthan* (AIR 1997 SUPREME COURT 3011) held that sexual harassment at the workplace is a form of

discrimination against women. The Court held that it violated the Constitutional rights under Article 14, 15, 19(1) (g) and 21 and laid down a set of guidelines to deal with sexual harassment at the workplace till the legislature enacted suitable legislation. In *Apparel Export Promotion Council Ltd. v. A.K.Chopra*, (1999) 1 SCC 759 also the Supreme Court recognized that sexual harassment had been committed by the respondent against a female employee and upheld the order of the Disciplinary Authority and Appellate Authority and removed him from service. By and under the Vishaka Judgment, several educational institutions and other establishments set up complaints mechanisms and formulated guidelines to inquire into and prevent sexual harassment at the workplace (Jaising (2014)). In pursuance to the Vishaka Judgment, the Act of 2013 has been enacted to fill the gap in statutory law on sexual harassment at the workplace. Sexual harassment has been defined as unwelcome acts of behavior (whether directly or by implication) namely (a) *physical contact and advances or*, (b) *a demand or request for sexual favors or*, (c) *making sexually coloured remarks or*, (d) *showing pornography or*, (e) *any other unwelcome physical, verbal or non-verbal conduct of sexual nature* (Desai 2018). The Act ensures that women are protected against sexual harassment at all workplaces, be it public or private, organised sector or even the unorganised sector, regardless of their age and status of employment. The act also covers students in schools and colleges, patients in the hospital as well as a woman working in a dwelling place or a house. (Bagaria 2013)

The most relevant and vital pieces of legislation for the women workers relating to the wages and equal pay are Minimum Wages Act, 1948, Payment of Wages Act, 1936 and Equal Remuneration Act, 1976. The Minimum Wages Act 1948 envisages providing minimum statutory wages for scheduled employments to obviate the chances of exploitation of labour through the payment of very low and sweating wages. The Act also provides for the maximum daily working hours, weekly rest day and overtime. Rates fixed under the Minimum Wages Act, 1948 prevail over the rates fixed under award/agreement (Varkkey & Mehta, 2008). A meaningful wage policy has to include besides a minimum wage fixed at a reasonable level, provision for assured employment for a minimum number of days. (Employment guarantee scheme). Globalisation and informalisation of the workers, a mere national floor level of wages are not sufficient to protect all the workers (Bremann, J. 2001). While the existing legal provision enables the government to protect organised sector wages with periodic revisions, the unorganised workers remain largely neglected (Varkkey and Mehta, 2008). The Act has failed to have an impact on unorganised workers. Unorganised workers are employed with millions of employers (sole proprietor, domestic or small traders) who are scattered and hence becomes difficult to cover them under law. This diversity in locations and nature of work has left them vulnerable to exploitation in the absence of a broad legal standard (Koodam 2016). Notably, in the construction sector and brick-kiln industry, a large proportion of unorganised workers remains outside the protection of the Minimum Wages Act, 1948.

In the unorganised sector, casual workers incline to be the least protected and have the lowest level of earnings. The wages for the vast informal sector cannot be left to be resolute by the interplay of the market forces (Report Of The Working Group On Social Security For Twelfth Five Year Plan 2012-17). There is no consistency in wage structure across the various States or Union Territories (Report On The Working Of The Minimum Wages Act, 1948 For The Year 2007). This is also due to the applicability of the Act only to certain employments which does not include all workers. The Minimum Wages Act does not protect all workers in that industry if a State Government fails to include particular employment within an industry in the employment schedule.

The Payment of Wages Act, 1936 was passed to regulate the payment of wages to workers working in industries and to promise a speedy and effective remedy to them against unlawful deductions and unreasonable delay caused in paying wages to them. The Act does not apply 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.

Besides safeguarding women's welfare at the workplace, equal treatment in earning income from the same type of work was ensured through the passing of the Equal Remuneration Act, 1976. The state and central machinery of the labour department's undertake inspections in this regard. The Equal Remuneration Act provides for payment of equal remuneration to men and women workers, for same work or work of a similar kind and the prevention of discrimination, on the grounds of sex, against women in the matter of employment (Adhav 2016). These enactments, however, apply mostly to the workers in the organised sector. In other words, protective social security measures were mainly for the organised sector such as medical care and benefit relating to sickness, maternity, old age, etc and promotional security were for the unorganised sector in terms of self-employment, wage employment, and provisions of basic needs such as health, food, and education. The principle of equal pay for equal work should be extended even to daily wagers/casual workers employed through contractors (*Food Corporation of India v. Shyamal K. Chatterjee* [2000] LLR 1293). The reason for inequality in income is that a majority of the current female labor force is intricate in the informal sector, such as agriculture and domestic work, which have minimal regulations in relations to remuneration and social security. "Neither law-makers nor those assigned with the responsibility of implementing laws enacted for welfare of unorganised workers have put in place proper mechanism for the safety of persons employed by or through contractors to whom services meant to benefit public at large are outsourced by State and/or its Agencies/Instrumentalities for doing workers, which are integrally hazardous and dangerous to life nor have they made provision for payment or reasonable, compensation in the event of death" (*Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers* (2011) 8 SCC 568). The central government Labour Code on Wages Bill, 2015 aims to consolidate the Payment of Wages Act, 1936, Minimum Wages Act.

## 6. CONCLUSION:

After the industrial revolution, the role played by women who constitute nearly half of the population has dramatically been affected. In addition to their family chores, they are now working in offices, industries, educational and professional institutions, and commercial and agricultural occupations. Nobody can now afford to ignore their contribution to different walks of life. In the industrial area, they are working both in the organised and unorganised sectors of employment.

The primary object of labour law is to protect the human right of worker with an outlook to offer just treatment, interests, well-being and security to make the labor force more well-organized and useful. Moreover, on the other side, it will act as a tool for industrial harmony. Human development insists that everyone should enjoy a minimum level of security. Moreover, it is the responsibility of the State to protect its citizen from various contingencies like employment injury, sickness, death,

unemployment, maternity, etc., in their work life by assuring better standard living to workers. From the previous discussions, it is quite evident that women in the unorganized sector are deprived of all kinds of social security such as employment security, economic security, health security, educational security, and remedial opportunities.

Moreover, one of the main reasons is that unorganised sector cannot be identified by definition, but it could be described because this sector is not homogenous as it includes the diversity of employment. They are much scattered and fragmented in terms of occupation like agricultural labour, domestic workers, construction workers, beedi workers, plantation workers, etc. This is a hurdle for them to get unionised or actively organised as they have concentrated a small number of activity groups. (Balamurugan, 2015)

Majority of women work in unorganized sector where labour legislation is not applied. Hence these laws should be unmitigated to the unorganised sector also. By strengthening the enforcing agencies and by imposing inflexible punishment on the guilty the employers should be made to change their attitude towards women labour. Women workers should be treated as associates in the industry and not as products. There was a growing need to give more protection to women workers who are discriminated as regards employment and wages, though labour welfare enactments have provided various protections, safeguard and benefits to working women in our country. In India, the wages of women workers are meager. Generally, they are not paid the bare minimum wages for the type of work they do. This is nothing but a form of gender discrimination in the workplace. About the payment of wages, there are several unfair labour practices. The payment of wages is made by the employers is not indefinite form that is sometimes they made payment of wages in money and sometimes in kind. The delay in payment of wages resulted in poverty and growing indebtedness. The need to protect the wages earned by women has enormous significance in the Indian economy where even minimum wages are not paid to them.

The ignorance of women and lack of awareness about their right at work is also responsible for the evasion of these beneficial legislations. By participating in the various activities of trade unions, women should get fully conscious about their rights and should get courageous enough to fight for their rights.

From the above discussion, it is concluded that the Constitutional guarantee has not made women equal to men. Women workers in the unorganized sector in different occupations such as agriculture, beedi rolling, construction, etc., in substantially large numbers, but paid less than men for the same or similar work. Legislations which are providing health and welfare measures, maternity benefits, etc., are not implemented effectively because women employees do not get the stipulated benefits and facilities to their desired extent. This is a sign of vulnerability and exploitation. Despite all these labour laws, a majority of women employees lack proper education and ignorance of statutory provisions, which is the thrust area affecting the development and welfare of women employees. Hence, appropriate efforts should be taken to make women employees conscious about their rights for improvement in socio-economic conditions.

If we look at the Unorganized Sectors' Social Security Act (2008), it provides only lip service for an unorganized worker as the Act only provides some guidelines on social security. The Act requires the legal binding and provisions of right to work and entitlements under it. The Act lacks to specify the nature which form appropriate and sufficient social security for the massive group of unorganised workers and their wards, what qualifying criteria, assuming any, should be endorsed, what will be the range of advantages that the laborers and their families are qualified for and under what circumstances, what will be the subsidizing courses of action that must be placed in positions to meet the cost of standardized savings et cetera.

Along these lines, this law which does not manage the issue of unemployment, its control, wages, and states of work et cetera is not only deficient but rather broken off if it continues to manage social security on an independent premise. The Act experiences a genuine absence of authoritative policy and purpose. Eventually, this Act is an eyewash which has neither the ability to address nor the inbuilt arrangement to give answers for the necessities of the unorganised sector. Indeed, even the arrangements and methodology of the Minimum Wages Act (1948) is so dubious and vain that distinctive conditions of India have settled appallingly small wages and that too with such a large amount of varieties from State to State.

Social security laws like Employees' State Insurance Act, Employees' Provident Fund Act, Payment of Gratuity Act and Maternity Benefit Act cover both organised and unorganised part, at the same time, it is constrained in its scope because of edge farthest point of work in which the unorganised sector don't meet the qualification criteria and in this manner kept aside the domain of utilization of these laws. On account of the Employees' Compensation Act, employees indicated in Schedule II confine its appropriateness. Consequently, there is an insufficient scope of social security laws to unorganised sector laborers.

The outstanding statutory arrangements of security, wellbeing, and welfare for the women representatives concerning insurance of business, confinement on conveying overwhelming burdens, isolate can offices and washing offices creche offices and so on., under the Factories Act, 1948; Building and Other Construction Workers (Regulations of Employment and Conditions of Service) Act, 1996; Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979; Plantations Labor Act, 1951; Beedi and Cigar Workers (Conditions of Employment) Act, 1966 are neglected to ensure the real interests of ladies workers because of their poor execution. Compensation in the chaotic division is self-assertively settled without respect to the Minimum Wages Act, 1948.

Under the Factories Act, 1948; Building and Other Construction Workers (Regulations of Employment and Conditions of Service) Act, 1996; Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979; Plantations Labour Act, 1951; Beedi and Cigar Workers (Conditions of Employment) Act, 1966, the relevant statutory provisions of safety, health and welfare for the women employees with regard to protection of employment, restriction on carrying heavy loads, separate toilet facilities and washing facilities creche facilities etc., are failed to protect the legitimate interests of women employees due to their poor implementation. Compensation in the unorganised sector is self-assertively settled without respect to the Minimum Wages Act, 1948.

According to Sudeshna Sengupta, 29.7 million women of India getting pregnant each year. "Even if the law is entirely executed, "studies show that it will benefit only 1.8 million women in the organised sector leaving out practically 99% of the country's women workforce. In India, women's paid workforce constitutes just 5% of the 1.8 million. The remaining come within the unorganised sector. How fair is it to leave out this lot from the ambit of the new law?" asks Sengupta. (Lal, 2016)

The study titled 'Sexual Harassment at Workplaces in India 2011-2012' was jointly conducted by Oxfam India and the Social and Rural Research Institute, a wing of IMRB International. The study done in cities likes Delhi, Mumbai, Bangalore, Chennai, Kolkata, Ahmedabad, Lucknow, and Durgapur also said that most women had faced incidents that were non-physical. The study

found that the top three industries were unsafe for women: labourers which account for 29%, followed by domestic help – 23% and small-scale manufacturing which accounts 16%. (Chandran 2012)

Women workers specifically of the unorganised sector are unaware of their rights, benefits and safeguard made available under labour enactments. Numbness towards legal provisions is one of the critical factors that had brought in injustice to women. As there is a requirement for the empowerment of labourers in broad sense and women in specific, it is recommended that State, trade unions, non-government organisations should provide information concerning to wellbeing, nourishment and also hygiene and disperse data to laborers about the rights and their obligations. To anticipate abuse of workers, it is likewise proposed that the trade unions ought to extend their helpconcerning access to legal aid throughout legal procedures.

#### REFERENCE:

1. Almelkar Ramesh & Chandrakumar. B. Sedamkar , Human Rights Of Working Women In Unorganized Sector. Indian Streams Research Journal, Vol. III, Issue. XI, (2013). <http://isrj.org/UploadedData/3377.pdf>
2. Eapen, M, Women in Informal Sector in Kerala: Need for Re-Examination, Economic and Political Weekly, Vol. 36, No. 26, 30 Jun, (2001)
3. Gopal, Meena, Gender Ageing and Social Security, Economic and Political Weekly, Vol. XLI, NO. 42, October 21, (2006).
4. HARRY CALVERT, SOCIAL SECURITY LAW, SWEET & MAXWELL, LONDON 1978
5. Isabelle, Guerin, Bhukuth Augendra, Parthasarthy Venkatasubramanian G, Labour in Brick Kilns: A Case Study in Chennai, Economic and Political Weekly, February 17 (2007).
6. Kannan, K.P., Ravi Srivastava, Arjun Sengupta, Social Security for Unorganised Sector, Economic and Political Weekly, Vol. XLI, No. 32, August 12, (2006).
7. Kantor, Informal Sector: Lifting the Shroud, EPW, Vol. 32, No. 40 (1997).
8. MAAJID ABDUL, LEGAL PROTECTION TO UNORGANIZED LABOUR, DEEP AND DEEP PUBLICATIONS PVT. LTD. 2000.
9. MAMURIA & DOSHI, LABOUR PROBLEMS AND SOCIAL WELFARE IN INDIA, KITABMAHAL PVT. LTD., ALLAHABAD 1966
10. National seminar on participation of women in unorganised sector in india--problems and prospects
11. PANDA, LABOUR IN UNORGANISED SECTOR: THE DEVALUED AND THE DEPRIVED, MANAK PUBLISHERS, NEW DELHI, 1999
12. Papola, T.S, Informal Sector: Concept and Policy, Economic and Political Weekly, Vol. 15, No. 18, (1980).
13. Rao, V.M.D., Rajasekhar, J.Y. Suchitra, Unorganized Workers, Deprivation, Social Security Needs, Policy Implications, Economic and Political Weekly, Vol. XLI, No. 19, May 13, (2006).
14. Sarthivel, Unorganised Sector Workforce in India: Trends, Patterns and Social Security Coverage, Economic and Political Weekly, Vol. 41, No. 21 (2006)
15. Saxena Monika & Srivastava, B.B.L, *Occupation and Employment Pattern of Women Labour in Agriculture Sector*, in WOMEN IN UNORGANISED SECTOR: PROBLEMS AND PROSPECTS (Singh, J.L. Pandey, R.K. and Singh, A.K. eds 2002.)
16. Saxena, Anu, Women Workers in Unorganised Sector: Inequity and Discrimination, Social Action, Vol. 54, October-December (2004).
17. Seied Beniamin Hosseini Legal protection and social security in unorganized sector with special references in India Published on Apr 6, (2016) <http://www.slideshare.net/beniaminhosseiny/legal-protection-and-social-security-in-unorganized-sector-with-special-references-in-india-60582833>
18. Singh Vinita, , Female Domestic Workers: A Case of Violated Human Rights, Legal News and Views, Vol.16, No.1, (2002)
19. SINGH, D.P, WOMEN WORKERS IN UNORGANIZED SECTOR. DEEP AND DEEP. New Delhi. 2005
20. Singh, J. L., Pandey, R. K., & Singh, A. K. Women in unorganised sector: problems and prospects. New Delhi, Sunrise Publications (2002).
21. Srinivasan, M.V, Women Workers in Unorganised Sector, Women's Link, Vol. 6, No. 4. (2000)
22. SULTANIA, MADHU, WOMEN CONTRACT LABOURERS: A DEPRIVATION SYNDROME, CLASSIC PUBLISHING HOUSE, JAIPUR 1994
23. The Unorganized Workers Social Security Act, 2008, Social Change Vol. 39, No. 1, March (2009)
24. Tomy Jacob, The unorganised sector in India, fedina.org/777/2011/10/UNORGANISED-SECTOR-IN-INDIA1.doc 2014
25. Unni, Jemmol, Changes in Women Employment in Rural Areas 1961-81, Economic and Political Weekly, ( 1989)
26. V.T. PATIL, HUMAN RIGHTS: THIRD MILLENNIUM VISION, NEW DELHI: AUTHORSPRESS, 2001.
27. Varshney Shweta Role of Women in Informal Sector Economic Affairs Vol. 56 No.2 June 2011 (Page 179-183)
28. The Report of India's Ministry of Labour and Employment, Government of India, 2008.
29. KUMAR, NILAY & SRIVASTAVA, AMITA, WOMEN'S PARTICIPATION IN UNORGANIZED SECTOR: PROBLEMS AND PROSPECTS (Sunrise Publications), (2002) pg. 86.