

**THE KERALA UNORGANIZED WORKERS (RIGHTS, REGULATION OF
EMPLOYMENT, CONDITIONS OF WORK, SOCIAL SECURITY AND WELFARE)
BILL**

Preamble.—WHEREAS Social and economic justices are the promise of our Constitution;

AND WHEREAS justice to the unorganized workers who are long neglected victims of very exploitative conditions is therefore an urgent imperative of our Socialist Republic;

AND WHEREAS the experience of implementational failure, legal and litigational hurdles of existing labour legislations have made it necessary to make creative changes in the structure, schemes and operation of any labour legislation designed to liberate the workers in this sector from the unjust practices prevalent in the field;

AND WHEREAS the participation of workers as envisaged by the Constitution under Article 43-A in the working of the legislation and enforcement of remedies thereunder is essential if credibility and confidence are to be commanded by the law.

BE it enacted in the Fifty-ninth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) The Act may be called The Kerala Unorganized Workers (Rights, Regulation of Employment, Conditions of Service, Social Security and Welfare) Act—

(2) It extends to the whole of Kerala.

(3) Chapter I shall come into force at once and the rest of the Act shall come into force on such date or dates as the Government may, by notification in the Official Gazette, appoint.

2. Definitions.—In this Act, unless the context otherwise requires,

(a) “Adolescent” means a person who has completed 15 years of age but has not completed 18 years of age.

(b) “Adult” means a person who has completed 18 years of age.

(c) “Government” means Government of Kerala.

(d) “Board” means Unorganized Workers Boards established under Section 7 of this Act.

(e) “Kerala Advisory Committee” means an Advisory Committee constituted under Section 15.

(f) “Child” means a person who has not completed 15 years of age.

(g) “Contractor” in relation to any unorganized worker in the scheduled grouping of employments, means a person who undertakes to execute any work or render any service for an establishment by engaging such workers on hire or otherwise, or who supplies such workers either in groups, gangs or as individuals and includes a sub-contractor, an agent, or a mastery or any supplier of labour.

(h) “Employer” in relation to any unorganized worker in the scheduled grouping of employments, means the principal employer and in relation to any unorganized worker in the scheduled grouping of employments, the person who has an ultimate control over the affairs of the establishment work or service and includes any other person to whom the affairs of such establishment are entrusted, whether such person is called an agent, manager or is called by any other name prevailing in the scheduled group of employments.

(i) “Establishment” means any place or premises belonging to, or under the control of an employer where workers are employed in any work and includes an establishment belonging to a contractor.

(j) “Family” in relation to an employer or any unorganized sector worker in the scheduled grouping of employments, mean the spouse, son, daughter, father, mother, brother or sister of such employer or any unorganized sector worker in the scheduled grouping of employments, who lives with him and is wholly dependent on him.

(k) “Fund” means fund created for social security, administration and welfare schemes under this Act.

(l) “Home based worker” means a person involved in the production of goods or services for an employer premise in his name or other premises of his choice other than the work place of the employer for remuneration irrespective of whether or not the employer provides the equipment, materials or other inputs.

(m) “Inspector” means an Inspector appointed under Section 16.

(n) “Prescribed” means prescribed by rule or scheme made under this Act.

(o) “Principal employer” means any employer who engages any unorganized worker in the scheduled grouping of employments, by or through a contractor.

(p) “Scheduled employment” means any employment specified in schedule or any other employment added in the schedule by notification under Section 11.

(q) “Scheme” means a scheme notified by the Government under the Act.

(r) “Self employed person” means any person who is not employed by an employer, but directly engages himself in any employment or vocation for his livelihood.

(s) “Social security number” means the number given to the worker under clause (o) of subsection (2) of Section 8.

(t) “Unorganised sector & Unorganized Sector Worker” means the sector in which the scheduled employments exist.

(u) “Wages” means all remunerations expressed in terms of money or capable of being so expressed which would, if the terms of contract of employment, express or implied were fulfilled, be payable to an unorganized sector worker in respect of work done in any scheduled employment but does not include—

(i) The value of any house accommodation, supply of light, water, medical attendance, or any other amenity or any service excluded from the computation of wages by general or special order of the Government;

(ii) Any contribution paid by the employer to any pension fund or provident fund or under any scheme or social insurance and the interest which may have accrued thereon;

(iii) Any travelling allowance or the value of any travelling concession;

(iv) Any sum paid to the unorganized sector worker to defray special expenses entailed to him by the nature of his employment; or

(v) Any gratuity payable on discharge.

(vi) “Worker” means a person between the age of 15 and 60 years working in any unorganized sector in the scheduled grouping of employments, as a self employed, or employed directly or through any agency or contractor whether exclusively for one employer or in a group or otherwise one or more employers whether simultaneously or otherwise and includes,—

(a) A casual or temporary worker;

(b) Migrant worker;

But does not include any member of the family of an employer.

3. Effect of laws and agreements inconsistent with this Act.—(1) The provisions of this Act shall have effect notwithstanding anything inconsistent therein contained in any other law for the time being in force or in any contract or instrument having effect by virtue of any law other than this Act or any other decree or order of any court, tribunal or authority or under any settlement.

(2) The Government may by notification in the Official Gazette and subject to such conditions as may be specified in such notification, exempt any employer in the Schedule Grouping of

Employments from the operation of this Act, if the workers under such employment are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act.

4. *Application of Various Laws to Unorganized Sector Workers.*— Notwithstanding anything contained in any other law for the time being in force, provision of Workmen’s Compensation Act, 1923 (Central Act 8 of 1923), Interstate Migrant Workers Act, 1976, Payment of Wages Act, 1936 (Central Act 4 of 1936), Maternity Benefit Act, 1961 (Central Act 53 of 1961), Minimum Wages Act, 1948 (Central Act 11 of 1948), Equal Remuneration Act, 1976 (Central Act 25 of 1976), Employee’s State Insurance Act, 1948 (Central Act 34 of 1948), Employees

Provident Fund Act, 1952 (Central Act 19 of 1952), Payment of Gratuity Act, 1972 (Central Act 39 of 1972) subject to modifications of this Act shall apply to all the Unorganized Sector Workers covered under this Act.

5. *Rules of evidence.*—Notwithstanding anything contained in the Indian Evidence Act, 1872 (Central Act 1 of 1872) the burden of proof that compliance with the provisions of the Act and the Scheme have been effected shall be on the employer and the units of the Board wherever applicable.

CHAPTER II

MINIMUM LABOUR STANDARDS TO BE ENSURED

FOR THE WORKERS

6. *Duty of Government to ensure Minimum Standards.*—Government shall ensure to every worker engaged in the Scheduled Grouping of Employments the following Rights and Entitlements, namely: —

(i) The right to livelihood including the right over common properties and natural resources in the following manner:

(a) Ensuring the traditional rights of all types of Forest Workers, Fish Workers, Potters, Sand Miners, Quarry and other Miners and other groups of workers having traditional access to common property resources for their livelihood.

(b) Ensuring the right of workers to share the public space to engage in economic activities.

(c) Ensuring the right to inhabitation in places where the workers are usually residing.

(ii) Not to be employed in employments such as forced/bonded labour, child labour and manual scavenging.

(iii) Prohibition of discrimination in employment on grounds of religion, race, caste, creed, sex, place of birth/residence/domicile or any other reason.

(iv) Minimum age of employment not to be below 15 years of age.

(v) The age of superannuation not exceeding 60 years for men and 55 years for women.

(vi) The right for written contract with regard to terms and conditions of employment.

(vii) The right to have an uniform social security card.

(viii) The duty of the Government to prescribe a model set of standing orders in consultation with worker's representatives on matters such as hours of work, weekly rest, annual leave with wages, suspension, disciplinary proceedings, discharge, termination and welfare measures within the scope of employment, with a condition that every employer must frame the standing order in conformity with such standing orders. In cases where an employer fails to frame such standing order, model standing order shall be applicable. Any condition of engagement, employment or service not so provided, shall be in accordance with the provisions of this Act.

(ix) The right to form the union and for collective bargaining through the tripartite mechanism or otherwise.

(x) The right to collective action by the Unions and the Workers.

(xi) The employers' duty to provide occupational and other safety measures.

(xii) The right to the entitlement for vocational training and guidance through the State, Employers Organisations or otherwise.

(xiii) Ensuring special protection for migrant workers and their families in providing ration cards, housing, medical help and education to their children. (xiv) Providing the protection for women workers against sexual harassment at work place, as defined in the Visakha judgment.

(xv) Restricting mechanization causing labour displacement and other labour displacement methods in the unorganized sector.

(xvi) Ensuring the health and medical care, employment, injury benefit, maternity benefits, group insurance, housing, gratuity, bonus and pension benefits.

(xvii) Providing Credit, adequate raw material (input) supply and creating marketing facilities for the Employments specified in the Scheduled Grouping of employments in respect of home-based and self employed workers.

(xviii) Ensuring access to Banking Institutions, in the State or Co-operative Sector for the purpose of affordable credit facilities with due provisions for insurance collective or otherwise.

CHAPTER III

CONSTITUTION OF STATE BOARDS, FRAMING OF SCHEMES

7. Unorganized Sector Workers Boards.—(1) The Government shall, by notification in the Official Gazette, establish Unorganized Sector Workers Board at State level for each grouping of scheduled employments with such number of members as may be prescribed. The Board shall consist of representatives of workers, employers, and Government representatives and experts in the field.

(2) Every such Board shall be a body corporate with the name as aforesaid having perpetual succession and common seal with power to acquire, hold and dispose of property and to contract and may by that name sue and be sued.

(3) The Government shall after consulting the State Advisory Committee, by notification in the Official Gazette and subject to the condition of prior publication set up at the District level bodies on the same pattern as that of the State Unorganized Sector Workers Board constituted by each grouping of scheduled employments.

(4) The representatives of workers of the Board shall be elected by registered Unorganized Sector Workers in such manner as may be prescribed. Until that time, representatives of the workers in the Board shall be the representatives of Trade Unions of the Unorganized Workers in the corresponding grouping of scheduled employments with such substantial membership as may be prescribed.

(5) Women unorganized sector workers shall have proportionate representation among representatives of workers in all bodies.

(6) The term of the members of the Boards and the District bodies shall be for a period of three years.

(7) The meeting of the State level Boards shall be held in every two months and the meeting of the District Boards shall be held every month.

8. *Scheme for ensuring regular employment of workers.*—(1) The Government shall, in consultation with its Unorganized Workers Boards frame schemes to be called the Unorganized Workers (Regulation of Employment and Conditions of Service) Schemes, for ensuring greater

regularity of employment, for regulating the employment of unorganized workers and for prescribing conditions of service for the unorganized workers covered by the scheme.

(2) Each Scheme shall be for the corresponding group of scheduled employments of unorganized workers and for all categories of workers. (3) In particular, the Scheme may provide for any or all of the following matters, namely: —

(a) For the application of the Scheme to such classes of unorganized workers and employers as may be specified therein;

(b) For ensuring regular employment and regulating employment in the each grouping of scheduled employments in the unorganized sector and providing benefits to workers;

(c) For regulating the recruitment and entry into the Unorganized Sector Workers Board, by way of registration of unorganized workers identified by registered trade unions and employers including the maintenance of registers, temporary or permanent; removal of names of workers or employers from the registers and the imposition of fees for registration for provision of identity card, work book and a social security number to each worker;

(d) For regulating the employment of unorganized workers, and the terms and conditions of such employment, including rates of remuneration, hours of work and conditions as to holidays and pay in respect thereof;

(e) For providing for minimum payment to workers who are available for work in respect of periods during which full employment, or even part employment, is not available;

(f) For prohibiting, restricting or otherwise regulating the employment of unorganized workers who are not registered workers and the employment of unorganized workers by employers who are not registered employers;

(g) For collecting levy from employers of the scheduled employments towards the scheme and social security and welfare fund;

(h) For the manner in which, and the persons by whom, the cost of operating the scheme is to be defrayed, including any contributions to the fund by employers and manual workers and the rate of such contributions;

(i) For creating such fund or funds as may be necessary or expedient for the purposes of social security and other welfare benefits and for the administration of such fund or funds;

(j) For training, imparting skills to and providing welfare for unorganized workers; such as housing, crèche, assistance for accidents, natural death of the registered workers, marriage and education of children etc.;

(k) For the welfare of the officers and other staff of the Board;

- (l) For health and safety measures in places where unorganized workers are employed;
- (m) For implementing ESI, PF, Pension from the age of 55, maternity benefit to the registered workers;
- (n) For constituting Social Security and Welfare Fund composed of contributions from Employers through Cess, levy, annual budgetary provision from the State Government and small contribution from the workers;
- (o) Provision of National Social Security Number to each unorganized sector worker by the Unorganized Sector Boards;
- (p) For implementing special protection for migrant workers and families;
- (q) For constituting complaints committee on sexual harassment of women workers;
- (r) For evolving guidelines for restricting of mechanization and other labour displacement policies and practices in the unorganized sector and implementing them;
- (s) For devising steps to help workers depending on open and common resources to see that their activities are not hindered and sustainability maintained with environmental protection;
- (t) For taking steps to protect the historical and traditional rights of the forest workers and forest produce gatherers, fisher-people, potters, sand miners, quarry workers and other miners and such other groups of workers having traditional access to common property resources for their living and avocation;
- (u) For taking steps to protect the right of the unorganized sector workers to share the public space to engage in economic activities;
- (v) For taking steps to protect natural and common resources with a view to sustainability of work of those group of workers who are having access to natural and common property resources for their living avocation;
- (w) For promotion of labour intensive methods and practices in the unorganized workers;
- (x) For constituting, Administrative Bodies at various levels as may be necessary for the administration of the Scheme;
- (y) For setting up units of the Board at various levels;
- (z) The Scheme may further provide for constituting appropriate dispute resolution bodies for speedy resolution of disputes that may arise between workers, the contractors, principal employers and Board, or any two of the unorganized workers, the principal employer's contractors and the Board.

(aa) for formulating appropriate provisions for taking disciplinary action if necessary against employers and workers, and the functionaries of Boards and its bodies.

9. *Contribution to Social Security and Welfare Fund.*— Notwithstanding anything contained in any law for the time being in force or in any agreement,—

(i) The employers of goods and services shall make contribution to the social security and Welfare Funds of the corresponding unorganized sector workers boards in the State. One percent of levy of the total turnover shall be paid by every kind of production and services before the exit of goods and services from place of production and at the time of sale at the point of distribution of goods and services in the State.

(ii) Every motorized transport service shall pay 1% of the road tax for Social Security and Welfare Funds of the Unorganized Workers (Transport & allied services, No. 12 in the Schedule) Boards in the State.

(iii) The Govt. shall make annual grants to the Social Security and Welfare Funds of the Unorganized Sector Workers Boards operating in the State starting from 3% of the budgetary allocations and increasing every year till adequate Social Security levels are reached in the State.

(iv) Each registered worker shall make a small contribution.

10. *Amendment of the Scheme.*— The Government may in consultation with the Unorganized Workers Boards for grouping of scheduled employments by notification in the Official Gazette, from time to time may amend, alter or vary the schemes framed under Section 8 for the purpose of more effective implementation of the Schemes or for conferring additional benefits to the unorganized workers.

11. *Amendment of Schedule.*— Government may add any unorganized sections to the Schedule by notification in the Gazette.

12. *Functions of the Boards.*—(1) The Unorganized Sector Workers Boards at state level shall be responsible for administering the schemes and shall exercise such powers and perform such functions as may be conferred on them by the Scheme.

(2) The District Board shall likewise be responsible for administering the Schemes in their respective areas, under the over all supervision and guidance of the Board.

(3) The District, Panchayat level Board shall convene meetings of registered workers in each scheduled grouping of employments every year and the minutes placed before the corresponding boards in the subsequent meeting.

(4) There shall be grievance day every week in the District Boards, where the registered worker can get the redressal of grievance relating to the functioning of the Scheme.

(5) No decision of a Board, which is adverse to the interests of unorganized workers, shall be taken except with the concurrence of the representatives of the workers on the concerned Board.

(6) The Boards shall recruit necessary staff from the employment exchange. The service rules of such staff of the Boards shall be formulated by the Board in meeting and published in the gazette.

(7) Notwithstanding anything contained in any other law, the Board may nominate persons or officers who would be competent to act on behalf of any unorganized sector workers to initiate action for making any claim under any law or rules made thereunder or award or settlement made under any such law and appear on behalf of the unorganized workers in such proceedings.

(8) The State level Board shall submit to the Government as soon as may be, after the first day of April every year, the annual report on the working of the scheme during the preceding year ending on thirty-first March of that year. Every report so received shall be laid as soon as may be after it is received before the State Legislature if it is in session, or in the session immediately following the receipt of the report.

(9) The Board shall constitute a vigilance committee comprising of the representatives of workers, employers, government and experts to check corruption, monitor the functioning of the board and evolve strategies to eradicate corruption and to promote accountability and transparency.

13. *Accounts and Audit.*—(1) The Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts, including a balance sheet in such form as may be prescribed.

(2) The accounts of the Board shall be audited annually by such qualified person as the Government may appoint in this behalf.

(3) The auditor shall at all reasonable time have access to the books of accounts and other documents of the Board, and may for the purposes of the audit, call for such explanation and information as he may require or examine any member or Officer of the Boards.

(4) The accounts of the Board certified by the auditor, together with the audited report thereon shall be forwarded annually to the Government after it is approved by the corresponding Board.

(5) The Board shall comply with such directions as the Government may after perusal of the report of the auditor, think fit to issue.

(6) The cost of audit, as determined by the Government, shall be paid out of the funds of the Board.

14. *Recovery of dues to the Board.*—(1) On an application made by the Board for the recovery of arrears of any sum payable to it under this Act or any scheme and on its furnishing a statement of

accounts in respect of such arrears, the Collector may, after making such inquiries as he deems fit, grant a certificate for the recovery of the amount stated therein to be due as arrears.

(2) A certificate by the Collector shall be final and conclusive as to the arrears due. The arrears stated to be due therein shall then be recovered as arrears of land revenue by the Collector and remitted to the Board.

15. *Advisory Committee*.—(1) Government shall constitute an Advisory Committee in order to evolve appropriate schemes for the scheduled grouping of employments.

(2) The Advisory Committee shall monitor the functioning of the schemes and Boards in the State and make suggestions for suitable amendments to the schemes in conformity with the provisions of this Act.

(3) The Advisory Committee shall consist of such number of members as may be prescribed by the Government.

(4) The method of selection and terms and conditions of their service shall be such as may be prescribed.

16. *Inspectors*.— (1) The Board may appoint such persons as it thinks fit to be Inspectors possessing the prescribed qualifications for the purpose of this Act or of any scheme and may define the limits of their jurisdiction.

(2) Subject to any rules made by the Government in this behalf, an Inspector may,—

(a) Enter and search at all reasonable hours, with such assistants as he thinks fit, any premises or place, where unorganized workers are employed, or work is given out to unorganized workers in any scheduled employment, for the purpose of examining any register, record of wages or notice required to be kept or exhibited under any scheme, and require the production thereof, for inspection;

(b) Examine any person whom he finds in any such premises or place and who, he has reasonable cause to believe, is a manual worker employed therein or an unorganized worker to whom work is given out therein;

(c) Require any person giving any work to unorganized sector workers or to a group of unorganized workers to give any information, which is in his power to give, in respect of the names and addresses of the persons to whom the work is given, and in respect of payments made, or to be made, for the said work;

(d) Seize or take copies of such registers, records of wages or notices or portions thereof as he may consider relevant, in respect of an offence under this Act or scheme, which he has reason to believe has been committed by an employer; and

(e) Exercise such other powers as may be prescribed:

Provided that the Inspector shall have no power to require anyone to answer any question or make any statement tending to incriminate him.

(3) Every Inspector appointed under this section shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code (Act XLV of 1860).

17. *Obstructions.*—(i) Whoever obstructs an Inspector in the discharge of his duties under this Act or refuses or willfully neglects to afford the Inspector any reasonable facility for making any inspection, examination, inquiry or investigation authorized by or under this Act in relation to an establishment to which, or a contractor to whom, this Act applies, shall be punishable with imprisonment for a term which may extend to two years, or with a fine which may extend to two thousand rupees, or with both.

(ii) Whoever willfully refuses to produce on the demand of any Inspector any register or other document kept in pursuance of this Act or prevents or attempts to prevent or does anything which he has reason to believe is likely to prevent any person from appearing before or being examined by any Inspector acting in pursuance of his duties under this Act, shall be punishable with imprisonment for a term which may extend to two years, or with a fine which may extend to two thousand rupees or with both.

(iii) Such obstruction or willful refusal shall at once be reported to the respective unit of the Board within whose jurisdiction such obstruction / willful refusal takes place, as well as to the Board which may also take appropriate action in accordance with the scheme.

CHAPTER IV

DISPUTE RESOLUTION BODIES AND THEIR CONSTITUTION

18. *Resolution of Disputes.*—All disputes arising out of the enforcement of the provisions of this Act shall be resolved only by Dispute Resolution Councils and Appellate authority duly constituted under this Act.

19. *Constitution of Dispute Resolution Councils and Appellate Authority.*—(1) Government shall constitute the Dispute Resolution Council and an Appellate Authority in each District.

(2) The Dispute Resolution Council in every District shall comprise of three members, representing the Government, the unorganized workers and the employers in each of the Unorganized Workers Board.

(3) The term of office of the members of the council shall be three years and the members may be nominated by each Board for such term.

(4) The Appellate authority shall likewise be a tripartite body, representative in composition and constituted in the same manner by each Board.

20. *Reference of Disputes.*—(1) Where the appropriate unit of the Board is of the opinion that dispute exists or is apprehended it may at any time, by order in writing—

(a) Refer the dispute to the Board for promoting a settlement thereof; or

(b) Refer any matter appearing to be connected with or relevant to the dispute to a Council for inquiry; or for resolution of the dispute as provided in the Scheme.

(2) No proceeding pending before a Dispute Resolution Council or the Appellate Authority in relation to a dispute shall lapse merely by reason of the death of any of the parties to the dispute being a workman, and such council or appellate authority shall complete such proceedings and submit its award to the appropriate unit of the Board.

CHAPTER V

PROCEDURE, POWERS AND DUTIES OF AUTHORITIES

21. *Procedures and powers of Boards, Councils and Appellate Authorities.*—(1) Subject to any rules that may be made in this behalf by the Board, the Dispute Resolution Council or Appellate Authority shall follow such procedure as may be deemed fit and conforming to principles of natural justice.

(2) Dispute Resolution Council and the Appellate Authority shall have the same powers as are vested in civil court under the Code of Civil Procedure, 1908 (5 of 1908), when adjudicating a dispute in respect of the following matters, namely –

(a) Enforcing the attendance of any person and examining him on oath;

(b) Compelling the production of documents and material objects;

(c) Issuing commissions for the examination of witnesses;

(d) In respect of such other matters as may be prescribed.

(3) Every enquiry or investigation by the Dispute Resolution Council or the Appellate Authority shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code (45 of 1860).

(4) Every document in relation to a dispute shall be a public document within the meaning of Section 76 of the Indian Evidence Act, 1872. Any person interested in the dispute or his authorized representatives shall have a right to obtain copies of such documents.

(5) The Dispute Resolution Council may enforce the attendance of any person for the purpose of examination of such person or call for and inspect any document which it has reasons for considering being relevant to the implementation of any Award or to carrying out any other duty imposed on it under this Act. For the aforesaid purposes, the Dispute Resolution Council shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) (in respect of enforcing the attendance of any person and examining him or of compelling the production of documents).

(6) All members of the Council and the presiding officers of a Council or Appellate Authority shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code. Subject to any rules made under this Act, the costs of, and incidental to any proceedings before a Council shall be in the discretion of that Council, which shall have full power to determine by whom, to whom and to what extent and subject to what conditions, if any, such costs are to be paid, and to give all necessary directions for the purposes aforesaid and such costs may on application made to the appropriate Board, by the person entitled, be recovered by the appropriate Government in such manner as it deems appropriate.

22. Bar of jurisdiction of civil and labour courts.— No civil or labour court shall entertain the suit or application in respect of any matters arising under this Act or the Scheme.

23. Contravention of provisions regarding employment of Unorganized workers.—Whoever contravenes any provisions of this Act or of any rules made thereunder regarding the employment of unorganized workers, or contravenes any other provision under this Act or this Scheme, shall be punishable with imprisonment for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both, and in the case of continuing contravention, with an additional fine which may extend upto one hundred rupees for every day during which such contravention continues even after such conviction.

24. Offences by Companies.—(1) Where an offence under this Act or Scheme has been committed or the provisions thereof have been violated by a company, it shall be presumed that appropriate instruction has not been issued by the Company for wholesome compliance with the Act and Scheme unless it is otherwise proved.

(2) Where it is not so proved, every person who, at the time the offence was committed, was in charge of and was responsible, to the company for the conduct of the business of the company,

as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(3) Where it is so proved, the person who is responsible for such violation shall be proceeded against and punished accordingly.

(4) Notwithstanding anything contained in sub-section (1), if the commission of the offence under this Act is attributable to any omission or negligence on the part of the Director, Manager, Secretary, or other officer of the Company, such Director, Manager, Secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section:

(a) ‘Company’ means any body corporate and includes a partnership firm or other association of individuals; and

(b) ‘Director’, in relation to a firm, means a partner in the firm. 25. Cognizance of offences.—(1) Every offence punishable under this Act and the scheme shall be cognizable only by a Judicial Magistrate not below the rank than a First Class Magistrate of the area concerned.

(2) Whenever any contravention of the provisions of the Act and Scheme takes place, the Inspector of the Board or any person aggrieved by such contravention may in writing complain to the Magistrate for taking cognizance of the offence.

(3) Whenever an Inspector without sufficient reason refuses or fails to make a complaint of such a contravention, the Board, may suo motu or on a report from the person aggrieved, make a report to the Magistrate in writing to take cognizance of the offence. This will be without prejudice to such disciplinary action that the Board may cause to be initiated against the Inspector for his lapse.

26. *Power to make Rules.*—The Government and its unorganized sector workers boards together shall have the power to make rules for the purposes of effective functioning of the Scheme. In particular the Government and its unorganized sector workers boards shall have the power to make in respect of the following:

(a) The election of representatives of unorganized workers in the unorganized sector workers boards.

(b) Health, safety and medical facilities, social security and maternity benefits, and unorganized workers welfare funds.

(c) Enforcement of Provisions of the Act and Scheme, including machinery for such enforcement.

(d) Provisions in regard to welfare crèches, education and such other social welfare benefits for the children of unorganized workers.

(e) The conditions of service including recruitment, pay, allowance, tenure, discipline and appeal, retirement benefits of various categories of employees of the Board and their welfare.

(f) The remuneration or honorarium payable to the Presidents and other Office-bearers of the Boards.

(g) Provisions for leisure time activities, recreation, library any literacy measures including legal literacy among unorganized workers.

SCHEDULE I

LIST OF EMPLOYMENTS IN THE UNORGANISED SECTOR

1. Handlooms & PowerLooms, Dyeing

- a. handloom weaving of cotton and silk
- b. powerloom weaving
- c. cloth printing
- d. bleaching & dyeing
- e. ginning

2. Fish

- a. fishing
- b. fish selling
- c. fishery production
- d. fish processing

3. Poultry & Animal Husbandry

- a. animal husbandry
- b. dairying and allied activities
- c. shepherding

4. Tea, Coffee, Rubber, Cashew, Plantation, Processing, Horticulture, Sericulture

- a. cashew processing
- b. gardening and parks maintenance
- c. horticulture and floriculture
- d. plantation [other than those covered under Plantations Labour Act, 1951 (Act No.69 of 1951)]
- e. sericulture (silk rearing)

5. Forests & Allied Activities

- a. forestry operation

* Till special laws are made honey gathering enacted to cover these sectors

- b. minor forest produce gathering
- c. tendu leaves collection

6. Tree Climbing, Coir

- a. coir processing / manufacture
- b. toddy tapping
- c. coconut peeling
- d. tree climbing

7. **Home Based Work**

- a. agarbatti making
- b. bindi work
- c. masala making
- d. matches manufacture
- e. pappad making
- f. food products and others

8. Vendors

- a. hawking and vending

9. Handicrafts

- a. blacksmithy
- b. goldsmithy
- c. pottery
- d. artist
- e. sculpture
- f. cane / reed work
- g. carpet weaving
- h. chikan work
- i. hand embroidery work
- j. floral work and garland making and others

10. Services (Traditional & Modern)

- a. beautician
- b. hair dressing
- c. rag picking
- d. scavenging
- e. shoe shining work
- f. laundry work
- g. cable TV operation
- h. folk arts
- i. sound & light service and others

11. Shops & Establishments

- a. catering and canteen, hotels and restaurants, bakeries
- b. computer and information technology related services
- c. courier service

- d. distribution of petroleum products
- e. electronic and electrical goods repairs
- f. health services
- g. ngo services
- h. packing and packaging
- i. security service
- j. telephone booth service
- k. video & photography and others

12. Transport & Allied

- a. transport services (driving, conducting, cleaning etc.)
- b. autorickshaw
- c. bicycle, automobile, auto, two-wheeler repair and servicing work
- d. boat / ferry operation
- e. bullock / camel—cart operation
- f. rickshaw and tricycle driving and others

13. Salt Pans

- a. salt pan work
- b. loading & unloading

14. Small Scale & Cottage Industries

- a. arrack and liquor production and vending
- b. bulb manufacture
- c. envelope making
- d. fire work / crackers production
- e. foundry, engineering works
- f. garment manufacture

- g. glassware manufacturing
- h. lock making
- i. plastics manufacture
- j. printing press work
- k. rice mills, oil mills, dhal mills, flour mill
- l. soap manufacture
- m. sports goods manufacture
- n. steel vessels and utensils and containers manufacture
- o. timber industry, furniture manufacturing, saw mills
- p. Sago
- q. tanning (including hides and skins production), leather goods and footwear manufacture and others

15. Loading Unloading Goods Sheds, Yards, Markets Etc.

- a. headload work
- b. cleaning
- c. stacking

16. Tailoring Statement of Objects and Reasons

1. Unorganized workers number nearly—crores in Kerala, of which substantial numbers are women. This sector contributes 65% of the GDP and covers a wide range of occupations such as agriculture, construction, handlooms & powerlooms, dyeing, fisheries, poultry & animal husbandry, tea, coffee, rubber, cashew, plantation, processing, horticulture, sericulture, forests and allied activities, tree climbing, coir, home based work, vendors, handicrafts, services, shops & establishment, transport & allied, leather, tanning products, salt pans, small scale & cottage industries, domestic work, production & distribution of culture, art & media, loading & unloading in goods sheds, yards, markets etc. The unorganized sector is neglected and unprotected. Thus bonded labour, child labour, exploitation of women labour, poverty and deprivation are widely prevalent. Also the processes of globalization, liberalization and mechanization have led to invisible retrenchments, under employment, poverty and mal-nutrition levels. Hence there is an urgent need for regulation of employment, conditions of service, social security and welfare of this vast unorganized sector in our country.

2. Unlike the organized sector, there is no fixed employment relationship in the unorganized sector. The peculiar nature of the unorganized sector is the changing employer–employee relationships and existence of hierarchy of relationships. The employment is contractual, most often on a sub-contract basis and is unregulated and thus the workers are unprotected. Thus, to ensure security of employment and protection of workers, it is imperative to regulate employment in the unorganized sector. A sizable section of workers are women, hence gender discrimination must be prevented and maternity entitlements, childcare ensured apart from preventing sexual harassment at workplaces. Also, there is a large number of self employed workers, at the mercy of traders and authorities, and being further marginalized facing starvation due to globalization.

3. Though labour laws enacted to protect sweated labour, such as the Minimum Wages Act, Contract Labour (Regulation and Abolition) Act etc., are sought to be applied to unorganized sector workers, they are not capable of being implemented due to the changing employer–employee relation, inadequacy of labour law administration and the lack of provisions to involve workers in the implementation or to protect them against victimization.

4. Though social security laws such as the ESI Act, EPF Act, Payment of Gratuity Act etc., have been sought to be extended to the unorganized sector, constraints in their application have been experienced due to lack of continuity of employment, the changing employer–employee relationship and the total lack of records pertaining to details of employment.

5. Thus the major contributing cause to this state of affairs is the total inapplicability of the normal type of labour laws to the situation obtaining in the unorganized sector. The beneficiaries of the labour of unorganized workers have thus a collective obligation to meet the human needs of those, the fruits of whose labour benefit the people at large. If the benefits of labour legislation are to reach this large mass of workers, it is then necessary that the law should take note of the unique features of the unorganized sector and should provide not merely for welfare of the workers, but also for the regulation of employment itself in the unorganized sector. Such regulation could not be left to be taken care of by the employers or by the administrative hierarchy, but must be entrusted to an autonomous body statutorily set up and consisting of representatives of the workers, Government and the employers. 6. The proposed Law intends to incorporate the following features based on the above stated nature of employment in the unorganized sector.

(a) Right to livelihood including right over common property and resources;

(b) Minimum Labour Standards to achieve Decent Conditions of Work;

(c) Right of workers in formulation and implementation of schemes through Tripartite Boards at various levels with workers having decisive voice;

- (d) Compulsory registration of the employers and of the workers, identified by registered trade unions in all the scheduled groupings of employments;
- (e) Restriction on employment in the sector to only those workers who are registered under the law;
- (f) Prohibition of employment in unorganized sector by employers, without registration under the law;
- (g) Equitable sharing of the available employment, category-wise, on the basis of rotational booking of workers;
- (h) Employment guarantee for a minimum number of days in a month;
- (i) Vesting of the responsibility for determining wages including piece rates to be not less than the time rated wage for 8 hours and their disbursement in the autonomous body; and
- (j) Provision of safety measures and for various other entitlements including social security, pension, group insurance, relief for accident and natural death and a minimum guarantee of earnings by the autonomous body;
- (k) Provision of ESI, PF, gratuity, maternity entitlement, housing, crèches etc. and steps for prevention of sexual harassment of women;
- (l) Restriction of mechanization and labour displacement strategies and promotion of labour intensive methods in the unorganized sector;
- (m) Inbuilt tripartite dispute resolution mechanism and appellate authority;
- (n) Special protection of migrant workers and their families;
- (o) Elimination of bonded labour and child labour and ensuring compulsory education of children in the unorganized sector;
- (p) Special measure for prevention of sexual harassment on women workers in workplaces. The objects and reasons for the Bill is stated above.
