

THE CENTRE FOR CIVIL SOCIETY'S COMMENTS ON THE DRAFT UNORGANIZED SECTOR WORKERS' SOCIAL SECURITY BILL 2005

Main Points

1. The term "Employment" should be clearly defined in the Act.
2. The Supervisory Board should have at least 25% representation for self-employed workers and at least 10% representation for female self employed workers.
3. Registration in Workers' Facilitation Centres should NOT be contingent upon holding a licence to engage in a vocation.
4. There should be a grievance cell in every Workers' Facilitation Centre to address the problems of self employed workers.
5. Continuing to engage in self employed activities such as hawking and rickshaw pulling should not disqualify the self employed worker from old age benefits of the Workers' Facilitation Centre.
6. The integrated insurance scheme should include events occurring *force majeure* to self employed workers.
7. The bar on civil courts should be removed.

The Centre for Civil Society has always called for the inclusion of "self-employed" workers in any legislation for unorganised sector workers. This was our main point of contention with the *Unorganised Sector Workers' Bill 2004*. In this context, the inclusion of self employed workers in Section 2 (o) is what we consider a step forward in the draft *Unorganized Sector Workers' Bill 2005*.

The draft Bill defines the term self-employed more concretely to add even self-employed workers that include street entrepreneurs such as hawkers/vendors and rickshaw pullers. It has more broadly and concretely defined the term "Unorganised Sector Worker" to also include any person who "works on his or her own account or is self-employed; in any place of work including his or her home, field or any *public place*". The inclusion of the concepts "self-employed" and "public place" thus broadens the scope of this Act.

Section 2 of the Bill: Having stated that however, CCS does consider it to be of concern that the term "employment" that has been used elsewhere in the draft Bill- [Section 17 (b), which provides for "Employment injury benefit", for example]- creates ambiguity. It has not been made clear whether self-employed workers fall under any sort of "employment" whatsoever. A rickshaw puller, for example, is not under the employment of any body. He is a self-employed worker.

Recommendation: Addition of clause (q) in Section 2 to define the term "Employment"

In order to avoid any ambiguity in the provision of benefits and protection to self-employed workers, it is recommended that clause (q) be added under Section 2 of the Act to define clearly the term "Employment" so that the difference between the two major types of beneficiaries of this Act-the "employee" and the "self-employed worker" is clearly brought out. The term "Employment" can be defined as:

“Employment includes a service or vocation not only where there is an employer-employee relationship but also where the person is engaged in any self employed vocation.”

Section 4 (b) the Bill: It is heartening to note that the Supervisory Board “shall consist of at least fifty percent members who are representatives of workers in the unorganized sector”. But, in this provision, it should be ensured that even the lowest rungs of the self-employed, which include street entrepreneurs such as hawkers/vendors and rickshaw pullers, get represented. Hence the Act should provide that the Supervisory Board would consist of **not less than 25% representatives of self-employed workers**. The Act should be sensitive to the plight of the female self employed and specify that there will be **at least 10% representation for female self employed workers**. This is a much-needed provision keeping in mind their plight with regard to licencing, and the consequent illegality and harassment at the hands of officials.

Let us not forget the female street entrepreneurs!

Women vendors form the lowest rungs among street vendors according to studies conducted by the National Alliance for Street Vendors of India (NASVI). Poverty and lack of jobs among male members of the family force these women to take up street hawking and vending in most cases.

Their numbers can't be ignored:

Though a majority of the hawkers are males, Ahmedabad has a large section of women vendors and Calcutta has few women vendors. Manipur's capital Imphal, on the other hand, has only women vendors. In the other cities more than 60% of the hawkers are males. Not surprisingly, the volume of trade of female hawkers is much lower. In Ahmedabad and in Mumbai, women hawkers usually sell vegetables, flowers and fruits in small quantities. The women are poor and needed to hawk in order to supplement the meagre family earnings. In Imphal too, where hawkers are exclusively women, they are from the poorer section of the population. [Source: <http://www.india-seminar.com/2000/491/491%20s.k.%20bhowmik.htm>]

According to Renana Jhabvala of the Self-Employed Women's Association (SEWA), seventy per cent of vendors in Meghalaya are women, whereas in Kanpur they are about 20%. Similarly, while in Mumbai there are about 17% female vendors, in Patna they are 21% and in Bangalore 44%.

[Source: <http://www.india-seminar.com/2000/491/491%20r.%20jhabvala.htm>]

Recommendation: Section 4 (b) should include provision for at least 25% representation of self employed workers and at least 10% representation of female self employed workers in the Supervisory Board.

In order to ensure that the plight and concerns of self employed workers-especially female self employed workers- such as street hawkers, vendors and rickshaw pullers get taken into consideration when making any decision that affects unorganized sector workers, this Act should add a clause under Section 4 (b) that allows for at least 25% representation of self employed workers and 10% representation of female self employed workers on the Board from among the 50% representation for unorganized sector workers on the Board.

Section 10 of the Bill: Even after more than a decade of globalisation in India, self-employed professionals such as street hawkers, vendors and rickshaw pullers have survived not merely because these are important sources of livelihood but also because of the services they provide for the urban population. For the urban poor, street vendors provide goods, including food, at low prices and rickshaws provide a cheap and accessible mode of transportation. Sadly, in Delhi for example, only 5 % of the more than 600, 000 street hawkers have the *tehbazari* (license) to hawk their goods on public space. Even rickshaw pullers are not exempt-taking the case study of Delhi again, though there is a demand for, and there exist more than five lakh rickshaw pullers in Delhi, the Municipal Corporation of Delhi has fixed a cap of a mere 99,000, thus making a majority of them illegal.

Unlicensed street entrepreneurs don't have any right over the means of their livelihood. They are faced with the constant threat of eviction or seizure. Hawkers, for example, are routinely evicted from their spaces, and their wares confiscated, as if they didn't belong to them at all. It is not true that hawkers free ride on public space. They pay substantially to the authorities involved and suffer losses due to frequent evictions. Once caught, their wares are confiscated and returned to them only after payment of a penalty. Similarly, in the case of rickshaw pullers, if caught plying without a license, then the rickshaw is confiscated, and sometimes auctioned.

Section 10 of the draft Bill has comprehensively elaborated the functions that the Workers' Facilitation Centres will perform that would be beneficial to unorganised sector workers. However, the draft Bill has left out the concerns that plague self employed workers everyday.

A majority of street hawkers and vendors and rickshaw pullers are illegal because of the low cap of licences fixed by the government for the pursuit of their vocation. It is not clear from the draft Bill whether *unlicensed* self employed workers such as hawkers, vendors and rickshaw pullers can be registered too. If they are not, then unfortunately, a majority will lie outside the purview of the benefits that accrue to registered workers.

Most street hawkers/vendors and rickshaw pullers face harassment everyday at the hands of corporation officials, beat patrolpersons, and *goondas* apart from being considered an eye sore by the government and the general public. Therefore, in the additional activities that would be undertaken by the Workers' Facilitation Centres, let there also be the setting up of a Grievance Cell that would address these very real concerns of street hawkers, vendors, rickshaw pullers and other self-employed. In this context, it would also be imperative that there be made special provisions for female self employed workers considering the additional harassment they face.

Recommendation: Insertion of Clause (a) (1) in Section 10 to specify that registration in the Centre is NOT contingent upon being a licenced self employed worker.

Insertion of Clause (a) (1) (i) in Section 10 to register type of vocation and area of work (the public place used) of self employed worker.

Insertion of Clause (1) in Section 10 for setting up a grievance cell in each Centre to address the problems of self employed workers.

Sub clause (1) should be added under Section 10 (a) of the draft Bill that specifies that registration in the Workers' Facilitation Centres should NOT be contingent upon the holding of a licence in the engagement of a vocation.

Sub-sub clause (i) should be added under Section 10 (a) (i) that adds the registration of the type of vocation of the self employed worker and the area of work (the public place used)- so that the worker may be easily identified as working in that area and therefore not an encroacher as part of the registration process in the Workers' Facilitation Centre.

Clause (1) should be added under the additional activities of the Workers' Facilitation Centres in Section 10 for the setting up of a Grievance Cell in each Centre to address the problems faced daily by self employed workers and specifically by female self employed workers. The grievance cell should have at least half representation of women to address the concerns of female self employed workers.

Section 14 of the Bill: Section 14 (a) and (b) are not clear with regard to how they apply to self employed workers such as street hawkers, vendors and rickshaw pullers, who are post-sixty years of age. In fact, this provision for post retirement benefits seems to make sense only for workers working under an employer, who can officially retire. Today, a rickshaw puller does not necessarily retire when he touches sixty. Therefore, does this section qualify that a rickshaw puller or street hawker/vendor, on attaining sixty is automatically a retired person and therefore entitled to post-retirement benefits provided by the Workers' Facilitation Centre? This is problematic because a rickshaw puller who is more than sixty years of age may continue to ply his rickshaw to obtain additional income over and above the pension and old age benefits that being a registered member of the Workers' Facilitation Centre provides.

Recommendation: Insertion of Clause (c) in Section 14 to specify that engaging in any vocation even post sixty years does NOT disqualify an unorganized sector worker from attaining pension and old age benefits of the Workers' Facilitation Centre.

Section 14 (c) should specify that engaging in self employed activities -such as hawking and rickshaw pulling, for example- after one attains the age of sixty does NOT disqualify that worker from the benefits that accrue to a retired member of the Centre-keeping in mind that an organized sector worker gets his/her pension and other old age benefits from his/her previous employment over and above any other vocation that person may engage in post-retirement.

Section 17 of the Bill: Clause (b) of section 17 provides for an “Employment injury benefit scheme” for unorganised sector workers. The inclusion of the term “Employment” here is a cause for concern since it is not clear whether this includes self-employed workers.

Again, clause (f) of this section does not take into account the plight of the self employed worker who is vulnerable to loss of means of livelihood as a result of occupying the public place, which is used by one and all and is more prone to be affected by natural climatic events that have a destructive impact. *Very importantly, even licenced street entrepreneurs such as hawkers, vendors and rickshaw pullers are not exempted from the harassment caused by Corporation officials who show no discrimination between licenced and unlicenced street entrepreneurs, when they extort, or even seize and confiscate wares and rickshaws.* This section should therefore include an insurance scheme for events that occur that are beyond the control of the worker or *force majeure* that result in the loss of means of livelihood for the unorganized sector worker, specifically the self employed worker.

Recommendation: Remove the term “Employment” in Section 17 (b) and replace with the term “Workers’ ” instead.

Insert Clause (f) (1) in Section 17 to specify that the integrated insurance scheme would cover events force majeure or beyond the control of the self employed worker.

The term “Employment” should be removed from clause (b) of this section and the term “Workers’ ” should be added instead so as to avoid the ambiguity that can arise as a result of the existence of two categories of unorganized sector workers: those working under someone else (the employee) and those who are self employed.

An additional clause, Clause (f) (1) needs to be added to specify that the integrated insurance scheme would specifically include events that are *force majeure* or beyond the control of the unorganized sector worker-specifically not excluding self employed workers such as street hawkers, vendors and rickshaw pullers-that result in the loss of

means of livelihood of the worker and thus qualifies him/her for the integrated insurance scheme.

Section 34 of the Bill: This section bans jurisdiction of any civil court on any matter that applies to any provision under this Act. This is a violation of the basic rule of law and moreover, a violation of the democratic right of any citizen of India. Therefore, it should be removed with immediate effect in order to restore the right of the citizens of India to seek judicial redress.

Recommendation: Removal of Section 34 since it violates principle of rule of law and the democratic right of citizens to seek judicial redress.

Section 34 of the draft Bill should be removed with immediate effect since banning the jurisdiction of civil courts on any matter that applies to any provision under this Act is a basic violation of the rule of law and of the basic democratic right to seek judicial redress.

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