



# Labour Rights As Human Rights In The Unorganised Sector: Challenges And Possibilities

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## Article information

Received: 12<sup>th</sup> November 2025

Received in revised form: 18<sup>th</sup> December 2025

Accepted: 20<sup>th</sup> January 2026

Available online: 21<sup>st</sup> February 2026

Volume: 3

Issue: 1

DOI: <https://doi.org/10.5281/zenodo.18949871>

## Abstract

The unorganised sector constitutes the largest segment of the workforce in developing economies, particularly in India, where nearly ninety percent of workers are engaged in informal employment. Despite their substantial contribution to economic growth, unorganised workers remain largely excluded from the protective framework of labour laws and social security mechanisms. This exclusion raises serious concerns when examined through the lens of human rights. Labour rights such as fair wages, safe working conditions, social security, and freedom of association are not merely statutory benefits but fundamental rights essential for human dignity and social justice. This paper examines labour rights as human rights in the context of unorganised workers, analysing the challenges arising from informality, weak enforcement, and structural inequality. It further explores constitutional jurisprudence, international labour standards, and legislative frameworks in India to identify possibilities for a rights-based approach. The study argues that recognising labour rights as enforceable human rights is essential for achieving inclusive and equitable development.

**Keywords:** - Labour Rights, Human Rights, Unorganised Sector, Informal Workers, Constitutional Law, Social Justice

## I. INTRODUCTION

The transformation of labour markets in the modern economy has led to the coexistence of formal and informal modes of employment. While industrial and service sectors have expanded under regulatory frameworks, a vast majority of workers continue to operate within the unorganised or informal sector. In India, the unorganised sector amounts to almost ninety percent of total employment, encompassing agricultural labourers, construction workers, domestic workers, street vendors, home-based workers, workers in the fireworks industry, gig economy and workers in small-scale industries. These workers are marked by the absence of formal contracts, job security, social security, and effective legal protection.

The unorganised nature of employment has historically been viewed as a regulatory challenge rather than a human rights concern. Labour laws were traditionally designed to regulate factory-based employment with identifiable employer–employee relationships. Consequently, informal workers were left out from the scope of labour legislation, rendering them legally invisible. This invisibility has resulted in widespread exploitation, hazardous working conditions, wage insecurity, and social exclusion.

From a human rights perspective, such exclusion is deeply problematic. Labour rights are inseparable from the right to life, dignity, and equality. International human rights instruments and constitutional jurisprudence recognise the right to work, just and favourable conditions of work, and social security as essential components of human dignity. The denial of these rights to unorganised workers therefore amounts to a denial of basic human rights. There remains a gap in integrating labour law discourse with human rights jurisprudence. This paper seeks to bridge that gap by adopting a rights-based analytical framework.

This paper seeks to examine labour rights as human rights in the unorganised sector, focusing on the challenges faced by informal workers and the possibilities for legal and institutional reform. The study analyses international human rights norms, ILO standards, constitutional provisions, and judicial decisions to argue for a rights-based framework for protecting unorganised workers.

## 1.1. Literature Review

### 1.1.1. Amartya Sen (1999) – Development as Freedom

Amartya Sen's capability approach provides a philosophical foundation for recognising labour rights as human rights.

He argues that economic development must expand human freedoms rather than merely increase income. Applied to unorganised workers, Sen's framework reveals how lack of social security, fair wages, and safe work restricts substantive freedom, justifying rights-based labour protection.

### 1.1.2. Alain Supiot (2001) – Beyond Employment

Supiot critiques the narrow contractual understanding of employment and argues for a broader conception of labour law rooted in human dignity. He emphasises that labour protections should extend beyond formal employment relationships to all economically dependent workers. His work is particularly relevant to unorganised labour, as it supports universal labour rights irrespective of legal classification.

### 1.1.3. Baxi, U. (2002) – The Future of Human Rights

Upendra Baxi examines the tension between economic globalisation and human rights protection. He argues that labour exploitation in informal sectors reflects systemic human rights deficits. Baxi's work is significant for understanding unorganised labour as a site of "suffering humanity," requiring constitutional and judicial intervention to transform labour rights into enforceable human rights.

### 1.1.4. Deakin, S., & Wilkinson, F. (2005) – The Law of the Labour Market

Deakin and Wilkinson analyse labour law as an instrument of social justice rather than mere market regulation. They argue that labour law must correct power imbalances inherent in labour markets. Their theoretical insights support extending labour protections to unorganised workers, whose vulnerability arises from structural inequality and absence of bargaining power.

### 1.1.5. Chandrasekhar, C. P., & Ghosh, J. (2016) – Informalisation of Labour in India

Chandrasekhar and Ghosh critically analyse the growth of informal employment in India, linking it to neoliberal economic policies. They highlight declining labour protections, wage stagnation, and social insecurity among informal workers. Their work provides crucial economic context for understanding why recognising labour rights are basic rights is essential for inclusive development.

### 1.1.6. International Labour Organization (2019) – Work for a Brighter Future

The ILO Global Commission Report (2019) offers a comprehensive normative framework linking labour rights with human dignity and social justice. It highlights the growing informalisation of labour and stresses that decent work must extend to all workers, including those in the unorganised sector. The report strongly advocates universal labour guarantees and social protection floors as essential human rights obligations of States.

### 1.1.7. International Labour Organization (2021) – World Employment and Social Outlook

This ILO report provides empirical and legal insights into non-standard and informal employment. It documents wage insecurity, unsafe working conditions, and exclusion from social security faced by informal workers globally. The report underscores the failure of traditional labour laws to protect unorganised workers and calls for inclusive, rights-based labour regulation grounded in international human rights principles.

## II. CONCEPTUAL FRAMEWORK: LABOUR RIGHTS AS HUMAN RIGHTS

### 2.1. Meaning and Scope of Labour Rights

Labour rights refer to the legal and moral entitlements of workers that ensure fair treatment, humane working conditions, and economic security. These rights include the right to work, fair wages, safe and healthy working conditions, reasonable hours of work, social security, and freedom of association. Traditionally, labour rights have been treated as statutory protections granted by labour legislation.

However, contemporary legal and philosophical discourse recognises labour rights as fundamental human rights. This recognition is grounded in the principle that work is central to human dignity and social participation. Without fair and secure employment, individuals are unable to realise other human rights such as health, education, and an adequate standard of living.

### 2.2. Labour Rights under International Human Rights Law

The Universal Declaration of Human Rights (UDHR), 1948, explicitly integrates labour rights into the human rights framework. Article 23 recognises the right to work, just fair and safe conditions of work, equal pay for equal work, and the right to form and join trade unions. Article 25 further recognises the right to an adequate standard of living, including security in the event of unemployment, sickness, disability, or old age.

The International Covenant on Economic, Social and Cultural Rights (ICESCR), 1966, elaborates these principles. Articles 6, 7, and 9 of the ICESCR recognise the right to work, the right to just and favourable conditions of work, and the right to social security. These provisions impose a positive obligation on States to progressively realise labour rights for all workers, irrespective of employment status. Moreover, United Nations General Comment No. on Art. 7 of the ICESCR explains

that every worker has the right to fair wages, equal pay for equal work, safe and healthy working conditions, reasonable working hours, rest and leisure and protection against exploitation or discrimination. This steers States on their duty to adopt laws and policies ensuring decent work and dignity for all workers, including those in vulnerable or informal employment.

The human rights approach rejects the distinction between formal and informal workers and emphasises universality and non-discrimination. From this perspective, the exclusion of unorganised workers from labour protections constitutes a violation of international human rights obligations.

### 2.3. Role of the International Labour Organization

The International Labour Organization (ILO) has played a crucial role in framing labour rights as universal human rights. Through its core conventions on forced labour, child labour, discrimination, and freedom of association, the ILO establishes minimum labour standards applicable to all workers.

ILO Convention No.189 establishes international labour standards for domestic workers by recognising their right to fair wages, reasonable working hours, social security, safe working conditions and protection from abuse and exploitation. Unfortunately, India has not ratified this convention expressed difficulties in regulating employment within private household and the plurality of domestic work arrangements.

ILO Recommendation No.204 provides an international framework to help states enables the transition of workers and enterprises from the informal to the formal economy. It emphasises decent work, social protection, labour rights and legal recognition for informal workers.

The ILO's Decent Work Agenda reinforces the human rights foundation of labour law by promoting employment opportunities, social protection, social dialogue, and rights at work. In recent years, the ILO has emphasised extending labour protections to workers in the informal economy through legal recognition. These shifts reinforce human rights foundation for labour laws and provide guidance for domestic reforms.

## III. THE UNORGANISED SECTOR: NATURE AND CHARACTERISTICS

### 3.1. Meaning of Unorganised Sector

The unorganised sector refers to economic activities that are not regulated by formal legal or institutional frameworks. Workers in this sector typically lack written contracts, job security, fixed wages, and access to social security benefits. Employment relationships are often casual, seasonal, or based on oral agreements.

In India, the unorganised sector includes agricultural labourers, construction workers, domestic workers, street vendors, waste pickers, home-based workers, and workers in micro and small enterprises. Women constitute a significant proportion of the unorganised workforce, making gender inequality a critical concern.

### 3.2. Vulnerability and Power Imbalance

Unorganised workers operate in a context of severe power imbalance. Employers exercise significant control over wages and working conditions, while workers lack bargaining power due to poverty, illiteracy, and absence of collective organisation. This imbalance facilitates exploitation and abuse.

The lack of legal recognition further exacerbates vulnerability. Without formal status, unorganised workers are often excluded from labour inspections, grievance redress mechanisms, and judicial remedies.

### 3.3. Informality as Structural Inequality

Informality is not merely a transitional phenomenon but a structural feature of the economy. It reflects systemic inequality rooted in caste, gender, migration, and economic deprivation. Addressing informality therefore requires a holistic approach that integrates labour rights with social justice and human rights.

## IV. OBJECTIVES OF THE STUDY

- To examine labour rights as human rights in the context of the unorganised sector.
- To analyse the challenges faced by unorganised workers in realising labour rights.
- To study international human rights and ILO standards relating to informal labour.
- To analyse constitutional provisions and judicial interpretations in India.
- To evaluate legislative frameworks protecting unorganised workers.
- To explore possibilities for strengthening labour rights through a rights-based approach.

## V. RESEARCH METHODOLOGY

The study adopts a doctrinal and analytical research methodology. Primary sources include constitutional provisions, statutes, international conventions, and judicial decisions. Secondary sources include books, journal articles, ILO and UN reports. Qualitative analysis is employed to interpret legal principles and evaluate their application to unorganised workers.

## VI. CONSTITUTIONAL FRAMEWORK FOR LABOUR RIGHTS IN INDIA

Article 21 of the Constitution of India guarantees the fundamental right to life and personal liberty. Over the years, the Supreme Court has expanded the scope of Article 21 beyond mere physical existence to include the right to live with human dignity. This expansion has significant implications for labour rights, particularly for unorganised workers who remain vulnerable to exploitation.

In Francis Coralie Mullin v. Administrator, Union Territory of Delhi (1981), the Supreme Court held that the right to life includes the right to live with human dignity and all that goes along with it, such as adequate nutrition, clothing, shelter, and conditions of work. The Court emphasised that any action that deprives a person of these essentials would violate Article 21.

This interpretation provides a constitutional basis for recognising labour rights as human rights. For unorganised workers, whose working conditions often undermine dignity and livelihood, Article 21 serves as a powerful tool for judicial protection.

The landmark judgment in Olga Tellis v. Bombay Municipal Corporation (1985) firmly established the right to livelihood as an integral component of the right to life. The Supreme Court observed that deprivation of livelihood would inevitably lead to deprivation of life, thereby violating Article 21.

Unorganised workers, particularly migrant workers, street vendors, and casual labourers, depend on daily earnings for survival. Any denial of fair wages or arbitrary eviction from work directly impacts their right to livelihood. The principles laid down in Olga Tellis are therefore directly applicable to the protection of informal workers.

Article 23 of the Constitution prohibits forced labour and begar. In People's Union for Democratic Rights v. Union of India (1982), the Supreme Court held that non-payment of minimum wages amounts to forced labour. The Court clarified that compulsion need not be physical; economic compulsion arising from poverty and hunger is sufficient to attract Article 23.

This judgment is particularly relevant to unorganised workers who are often paid below minimum wages due to lack of bargaining power. The decision constitutionalises wage protection and reinforces the human rights dimension of labour law.

The Directive Principles of State Policy (DPSPs) embody the vision of social and economic justice enshrined in the Constitution. Articles 38, 39, 41, 42, and 43 impose a duty on the State to promote welfare, secure adequate means of livelihood, ensure equal pay for equal work, provide social security, and guarantee humane conditions of work.

Although non-justiciable, the Supreme Court has consistently relied on the DPSPs to interpret fundamental rights. In Bandhua Mukti Morcha v. Union of India (1984), the Court emphasised that the right to live with dignity derives its life breath from the DPSPs.

Unorganised workers fall squarely within the protective vision of the DPSPs. Article 41 mandates public assistance in cases of unemployment, old age, and sickness conditions that disproportionately affect informal workers. Article 42 directs the State to provide just and humane conditions of work and maternity relief, which are often absent in the unorganised sector.

The DPSPs thus provide a constitutional mandate for extending labour rights to unorganised workers as part of the State's obligation to ensure social justice.

## VII. JUDICIAL PROTECTION OF UNORGANISED WORKERS

The Supreme Court has played a pivotal role in protecting unorganised workers through public interest litigation. In Bandhua Mukti Morcha v. Union of India (1984), the Court addressed the plight of bonded labourers and held that exploitation violates fundamental rights under Articles 21 and 23.

The Court directed the State to identify bonded labourers, release them, and ensure rehabilitation. This judgment underscores the judiciary's commitment to safeguarding the dignity and freedom of the most vulnerable workers.

In Consumer Education and Research Centre v. Union of India (1995), the Supreme Court recognised the right to health and medical care as a fundamental right of workers. The Court observed that the right to life includes the protection of workers' health and strength.

This principle is particularly relevant to unorganised workers engaged in hazardous occupations such as construction, mining, and waste management, where safety standards are often ignored.

Judicial enforcement of minimum wages has been a critical mechanism for protecting unorganised workers. Courts have repeatedly held that payment below minimum wages violates constitutional guarantees of dignity and equality.

The judiciary's proactive role demonstrates the potential of constitutional interpretation in bridging gaps left by legislative and administrative failures.

## VIII. LEGISLATIVE FRAMEWORK FOR UNORGANISED WORKERS

### 8.1. Unorganised Workers' Social Security Act, 2008

The Unorganised Workers' Social Security Act, 2008, represents a legislative attempt to provide social security to unorganised workers. The Act recognises categories of unorganised workers and envisages welfare schemes related to life insurance, health insurance, maternity benefits, and old-age protection.

However, the Act has been criticised for its limited scope and weak implementation. It does not create enforceable rights but merely provides a framework for welfare schemes at the discretion of the government. The absence of statutory entitlements undermines the human rights approach.

### 8.2. Labour Codes and Informal Workers

The consolidation of labour laws into four labour codes, namely the Code on Wages, 2019, the Industrial Relations Code, 2020, Occupational Safety, Health and Working Conditions Code, 2020 and Code on Social Security, 2020 has significant implications for unorganised workers.

The Code on Wages, 2019, extends minimum wage and timely payment provisions under Chapter 2 and 3 accordingly to all employees across organised and unorganised sectors, aiming to protect informal workers from exploitation.

The Industrial Relations Code, 2020, deals mainly with industrial establishments but indirectly influences some informal workers by regulating lay off, retrenchment under Chapter 9 and trade union recognition under Chapter 3.

Occupational Safety, Health and Working Conditions Code, 2020 also regulates health and safety standards in establishments, including provisions relating to migrant workers and contract labour under Chapter 11 and 12 accordingly.

The Code on Social Security, 2020 expressly recognises unorganised workers, gig workers and platform workers as a distinct category of labour under Chapter 9. The inclusion of digital economy workers acknowledges and advances labour rights as part of the broader framework of human rights protection. It provides for welfare schemes such as social security, insurance, and old age protection through government sponsored schemes. While the Code on Social Security, 2020, seeks to extend social security coverage to informal workers, concerns remain regarding implementation, funding, and enforcement.

The codes prioritise flexibility and ease of doing business, often at the cost of worker protections. For unorganised workers, the shift towards a welfare-based model without enforceable rights perpetuates vulnerability.

## **IX. Challenges in Realising Labour Rights in the Unorganised Sector**

### **9.1. Legal Exclusion and Informality**

The absence of formal employment relationships excludes unorganised workers from labour protections. Legal frameworks continue to prioritise formal employment, leaving informal workers unprotected.

### **9.2. Weak Enforcement Mechanisms**

Even where laws exist, enforcement remains weak due to inadequate inspections, corruption, and lack of political will. Unorganised workers often lack access to justice due to poverty and illiteracy.

### **9.3. Gender and Caste-Based Discrimination**

Women and marginalised communities are overrepresented in the unorganised sector. Gender wage gaps, lack of maternity benefits, and caste-based exploitation exacerbate vulnerability.

## **X. COMPARATIVE PERSPECTIVES ON INFORMAL WORKERS' RIGHTS**

### **10.1. Latin American Experience**

Several Latin American countries have adopted innovative approaches to protect informal workers. Brazil's constitutional framework recognises social rights, including labour and social security, as fundamental rights. Informal workers are covered under social assistance and pension schemes, reflecting a rights-based approach.

Similarly, Uruguay has extended social security benefits to domestic workers, recognising their work as dignified labour deserving legal protection. These examples demonstrate the feasibility of extending labour rights beyond formal employment.

### **10.2. South African Approach**

South Africa's Constitution explicitly recognises labour rights as fundamental rights under Section 23. The Constitutional Court has interpreted these provisions broadly to protect vulnerable workers, including those in informal employment.

The South African experience highlights the importance of constitutionalising labour rights and adopting purposive interpretations to address socio-economic inequality.

Comparative experiences indicate that legal recognition, universal social security, and judicial enforcement are critical to protecting informal workers. India can draw valuable lessons by strengthening constitutional interpretation and adopting inclusive legislative frameworks.

## **XI. POSSIBILITIES FOR RECOGNISING LABOUR RIGHTS AS HUMAN RIGHTS**

### **11.1. Constitutional Interpretation and Judicial Activism**

Indian constitutional jurisprudence provides significant possibilities for recognising labour rights as human rights. The expansive interpretation of Article 21, read with the Directive Principles of State Policy, enables courts to protect the dignity, livelihood, and welfare of unorganised workers.

Public Interest Litigation has emerged as an effective tool for addressing systemic exploitation. Continued judicial engagement can bridge gaps left by legislative inaction.

### **11.2. Rights-Based Legislative Reform**

Moving from a welfare-based to a rights-based approach is essential. Legislation concerning unorganised workers must create enforceable entitlements rather than discretionary schemes. Social security, minimum wages, and occupational safety should be recognised as statutory rights applicable to all workers.

### **11.3. Universal Social Security Framework**

A universal, portable social security system independent of employment status is crucial. Such a system would ensure coverage for health care, maternity benefits, disability, and old-age pensions for unorganised workers.

### **11.4. Strengthening Collective Organisation**

Legal recognition of trade unions and worker collectives in the unorganised sector can enhance bargaining power and participation. Freedom of association is a core human right and must be actively protected.

## XII. RECOMMENDATIONS AND REFORM STRATEGIES

1. Recognition of Labour Rights as Fundamental Rights: Labour rights such as fair wages, safe working conditions, and social security should be explicitly recognised as fundamental human rights.
2. Strengthening Enforcement Mechanisms: Labour inspection systems must be strengthened, with special focus on informal workplaces.
3. Legal Awareness and Access to Justice: Legal literacy programs and simplified grievance redress mechanisms should be introduced for unorganised workers.
4. Gender-Sensitive and Inclusive Policies: Special measures must be adopted to address gender-based and caste-based vulnerabilities in the unorganised sector.
5. Alignment with International Standards: Domestic laws should be harmonised with international human rights and ILO standards to ensure compliance with global obligations.

## XIII. CONCLUSION

The unorganised sector represents both the strength and the vulnerability of India's labour market. While unorganised workers contribute significantly to economic growth, they remain excluded from the protection of labour laws and social security systems. This exclusion undermines human dignity and perpetuates inequality.

This paper has argued that labour rights are fundamental human rights and must be extended to unorganised workers as a constitutional and international obligation. Indian constitutional jurisprudence, international human rights instruments, and comparative experiences provide a robust foundation for reform.

Recognising labour rights as human rights is not merely a legal necessity but a moral imperative essential for achieving social justice, inclusive development, and constitutional democracy.

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