Chapter 3

Realizing Constitutional Guarantees through Private Action: Informal Workers’ Struggle in India

1. Introduction

In chapter 2, I discuss different theoretical concepts and terminologies relating to informal economic activities in general, and with specific reference to India. In the Indian context, the National Commission for Enterprises in Unorganised Sector (NCEUS) defines terms such as informal sector, informal workers, and informal employment based on the actual characteristics of enterprises and specific informal activity rather than statistics derived from the formal sector. Prior to the NCEUS initiative in this regard, informality was ascertained on the basis of available statistics collected from the formal economy. The NCEUS notes that informal employment could be undertaken in the informal sector, in the formal sector, or as self-employed and own-account survival activities.

In this chapter I discuss how (mainly self-employed) informal workers’ collective initiative promotes their human development. I contrast the role performed by informal workers’ organizations with the implementation of constitutional labour rights in India, because the Constitution too envisages promotion of human development through the juridical concept of dignified wholesome work-lives. However, as I argue in this chapter the constitutional guarantees remain unrealized for informal workers in India. It is the organizations of informal workers, rather than the government, that are promoting workers’ interests. My discussion of informal workers’ organizations in this chapter will set the stage for the discussion of the trade union initiative of waste-pickers in Kolkata that I describe in chapter 8. In this chapter the discussion of the constitutional goal of dignified life and the absence of such dignity in the lives of informal workers will help me link the constitutional objective to an approach to human development that I discuss in chapter 4. Moreover, the discussions in this chapter is also relevant for the purpose of analyzing factors necessary for the human development of informal waste-pickers, which I discuss in chapters 7 and 8.

The NCEUS tries to capture workers who are excluded from protective labour and social security legislation, which are enacted largely to promote interests of formal workers in an employment-relationship. Since the point of departure for analyzing informality in Indian context is the availability and applicability of law, in this chapter I discuss the exclusion of
informal workers from legislative protection. Labour legislation is unevenly applied to workers in India. While formal workers in an employment relationship receive comprehensive benefits under protective legislation, informal workers remain excluded from legislative protection. Despite a constitutional guarantee of a positive right to equality, informal workers do not receive treatment that is equal to that of formal workers. The Constitution of India is the source of labour jurisprudence in the country. Labour welfare guarantees such as right to work and unemployment assistance, right to association, freedom of expression, right against forced labour, right to livelihood, equal pay for equal work, right to appropriate conditions of work, and maternity relief are enumerated in the Constitution.

These labour welfare guarantees are categorized as civil-political and socio-economic rights under the Constitution. Civil-political rights such as right to equality, right to speech and expression, right to assembly, right to form association and union are categorized under the Fundamental Rights chapter. Socio-economic rights such as right to work, right to unemployment assistance, right to livelihood, equal pay for equal work, right to appropriate conditions of work, maternity relief are listed under the category of Directive Principles of State Policy. While fundamental rights are enforceable by the judiciary, directive principles of state policy are goals set for the government(s) and are not enforceable by the judiciary.

The Constitution of India envisages that constitutionally guaranteed labour rights are to be enforced through legislative enactment. However, as the NCEUS report indicates, legislative enactment realizing constitutional guarantees are inadequate so far as informal workers are concerned. In absence of legislative protection of their constitutional rights, informal workers have themselves undertaken to ameliorate their working conditions and living standards. Informal workers have organized themselves as trade unions, cooperatives, registered societies, and companies in order to promote their constitutionally guaranteed rights. In this chapter, I discuss how organization initiatives of informal workers in India are promoting constitutional guarantees for informal workers. By providing comprehensive socio-economic resources and promoting civil-political rights of informal workers, organizations of informal workers in India are becoming instrumental in facilitating a dignified life for informal workers, a stated goal of the Constitution. I point out that a dignified life for informal workers means an overall human development of such workers. I use my discussion in this chapter as a launching pad for my discussion of a theoretical

---

2 Part IV of the Constitution of India.
approach to human development, which I argue organizations of informal workers are promoting. In the next chapter, I move on to the discussion of human development, which I envisage as a normative goal of labour law.

The rest of this chapter is divided into four sections apart from the conclusion. In section 2, I discuss the constitutional provisions that provide for the basis of labour jurisprudence in India. I analyze whether the Constitution of India has been able to secure a better life for informal workers in the country. In this respect, I particularly look into the judicially mediated evolution of the relationship between the civil-political rights (fundamental rights) and social-economic rights (directive principles). This discussion is relevant for the purpose of this chapter because apart from rights such as right to association or right against forced labour, most constitutional labour guarantees are part of directive principles (and not fundamental rights). It is useful to ascertain what these directive principles entail for informal workers in reality. While there have been instances where the supreme court of the country has invoked directive principles in promoting informal workers' interests, directive principles have largely remained unrealized for informal workers. In this section of the chapter, I also discuss how the positive right to equality (a fundamental right) has remained unrealized for informal workers in India. Informal workers are unequally treated from formal workers so far as legislative provisioning is concerned. Using such unequal treatment as a jumping off point, in section 3, I describe the extent to which informal workers are protected under different labour legislation in India. I show that informal workers in India have largely remained excluded from legislative protection. In section 4, through a description of labour union, and non-government organization (NGO) activities, I show that the existing legislative vacuum is being filled by these private unions, and NGO initiatives in order to improve the condition of informal workers in India. While discussing organization initiative of informal workers, I have chosen organizations that vary in their legal status – trade union,^3 company,^4 cooperative,^5 registered society,^6 and trust^7 – in representing informal

^3 Registered under the Trade Unions Act, 1926. However, trade unions can exist in India even if such unions are not registered under the 1926 Act.
^4 Registered under the Companies Act, 1956.
^5 Registered under the Co-operative Societies Act, 1912. As per the mandate of the Act “[A] society which has as its object the promotion of the economic interests of its members in accordance with co-operative principles, or a society established with the object of facilitating the operations of such a society may be registered under this Act .... ” See section 4 of the 1912 Act.
^6 Registered under the Societies Registration Act, 1860.
^7 The Indian Trusts Act, 1882 interprets “trust” as “an obligation annexed to the ownership of property, and arising out of a confidence reposed in and accepted by the owner, or declared and accepted by him, for the benefit of another, or of another and the owner.” See section 3 of the 1882 Act. A trust can be registered under the Societies Registration Act, 1860, and subject to the regulation of the Charitable and Religious Trusts Act.
workers. I have also chosen organizations that are representative of self-employed informal workers. I do so for two reasons: first, because self-employed informal workers receive less protection under existing legislation; and second, because I undertake a case study of self-employed informal waste-pickers in Kolkata, India, which I report in chapter 7. In this section, I also discuss waste-pickers' activism in particular – I look into how organizations of waste-pickers are seeking to promote a dignified life for waste-pickers in India. In section 5, I link the concept of dignified life envisaged in the Constitution of India to a concept of human development in order to examine the role of resources provided by unions, and NGOs to improve the lives of informal workers. I conclude this chapter with a roadmap leading to the next chapter.

2. Constitutional Protection for Labour

The constitutional protection afforded to labour is the basis of labour jurisprudence in India. In this section of the chapter, I analyze how far constitutional guarantees for labour have been able to promote informal workers' interests in the country. Labour rights are categorized under two different Parts of the Constitution of India. One of these parts of the Constitution enlists civil and political rights; the other part enumerates social and economic rights. While civil and political rights could be enforced through the judiciary, there is no provision for judicial enforcement against social and economic rights. However, most of the constitutional guarantees for labour are made of social and economic rights. The Supreme Court of India, by innovatively reading socio-economic guarantees as part of the civil-political rights, has tried to promote interests of the weaker sections of the society. In this section, I analyze whether the Supreme Court has been able to promote informal workers’ constitutional rights in India. I also analyze whether the right to equality, which is a fundamental civil-political right that can be enforced by the judiciary, can be used by informal workers to compare themselves to formal workers so far as legislative and executive benefits are concerned.

In this section of the chapter, I first introduce the socialist orientation of the Constitution of India and discuss how such orientation finds expression in parts III and IV of the Constitution. I then discuss the relationship between the civil-political and socio-economic rights in the Constitution. The relationship between the civil-political and socio-

1920, which enables “obtaining of information regarding trusts created for public purposes of a charitable or religious nature, and to enable the trustees of such trusts to obtain the directions of a court on certain matters ...” See section Preamble to the Charitable and Religious Trusts Act, 1920.
economic rights has evolved since the adoption of the constitution. I chart this evolution in order to show that the Supreme Court has sought to protect weaker sections of the population, including informal workers, through an innovative interplay of civil-political and socio-economic rights. However, I argue that the Supreme Court has failed to realize equal treatment of informal workers vis-a-vis formal workers and accordingly, judicial action falls short of ensuring a dignified life for informal workers. My discussion in this section leads to the discussion of the next section on the coverage of informal workers under labour laws in India.

Workers in India are protected under the socialist Constitution of India, one that envisages providing social justice for its citizens.\(^8\) The term socialist was introduced into the Constitution through the Forty-second Amendment of the Constitution of India in 1976.\(^9\) The Constitution (Forty-fifth Amendments) Bill, 1978 defined socialist as “a republic in which there is freedom from all forms of exploitation, social, political and economic.”\(^10\) While this definition was not adopted, the Constitution of India declared its socialist philosophy in the governance of the country in its preamble.\(^11\)

The philosophy declared in the preamble has been elaborated throughout the rest of the document. The Constitution of India distinguishes between rights and goals.\(^12\) The fundamental rights guaranteed in Part III of the Constitution are enforceable rights, whereas the directive principles in Part IV are unenforceable goals or aspirations.\(^13\) If a citizen of (or a person in) the country is deprived of her fundamental rights (which are mostly civil and political rights, for which the state does not need to undertake a positive act to avail the citizen/person of the right), the deprived person can ask the Court to enforce her rights.

---

\(^8\) See Preamble to the Constitution of India. Jawaharlal Nehru, India’s first Prime Minister, addressing the Constituent Assembly members, noted: The first task of this Assembly is to free India through a new constitution to feed the starving people and cloth the naked masses and to give every Indian fullest opportunity to develop himself according to his capacity. ... [A]t present the greatest and most important question in India is how to solve the problem of the poor and the starving Wherever we turn, we are confronted with this problem. If we cannot solve this problem soon, all our paper constitutions will become useless and purposeless. See Constituent Assembly of India Debates (Proceedings), Vol. II, No. 3, 22 January, 1947, available at http://164.100.47.132/issnew/constituent/vol2p3.html (site visited 5 March 2012).


\(^10\) The Constitution (Forty-fifth Amendments) Bill 1978, however, could not introduce the proposed definition in Article 367 (Interpretation) of the Constitution.

\(^11\) See Preamble to the Constitution of India.

\(^12\) See Shylashri Shankar, Scaling Justice – India’s Supreme Court, Anti-Terror Laws, and Social Rights (New Delhi: Oxford University Press, 2009) at xiii.

\(^13\) Even though the Constituent Assembly vigorously debated whether directive principles of state policy should be made enforceable or not, they finally settled on the unenforceability of directive principles. See generally Granville Austin, The Indian Constitution: Cornerstone of a Nation (Bombay: Oxford University Press, 1976) at 75–83.
through the issuance of appropriate Writs (such as habeas corpus, mandamus, quo warranto, prohibition, certiorari). But on the other hand, the directives in Part IV (which are principally economic and social rights) need some proactive action, and economic expenditure on the state’s part. Therefore, these rights have been made conditional upon the availability of resources at the state’s disposal. Accordingly, the Courts cannot enforce goals declared under this Part of the Constitution.

The chapters on the fundamental rights and directive principles of state policy constitute the heart and soul of the preamble's philosophy. The enforceable fundamental rights chapter guarantees principles of equality and non-discrimination, protection of life and liberty; freedom of expression, assembly, union formation, movement, vocation; the right to free education; protection from forced labour; and a prohibition on employment of children. Directives, on the other hand, are fundamental in the governance of the country. States are directed to ensure (to the reasonable extent possible within economic and other limitations) the right to work, adequate means of livelihood, equality of wages, fair distribution of material resources, adequate protection of workers (especially children), provision for living wage, decent standard of life, provision for education, leisure and social and cultural development, appropriate conditions of work, maternity relief, assistance during old age and unemployment, promotion of weaker sections of the population, appropriate nutrition and health provision, workers participation in management, and equal justice and legal aid.

14 Articles 14, 15, 16 of the Constitution of India.
15 Article 21 of the Constitution of India.
16 Article 19 of the Constitution of India.
17 Article 21-A of the Constitution of India.
18 Article 23 of the Constitution of India.
19 Article 24 of the Constitution of India.
20 Article 37 of the Constitution of India.
21 Article 41 of the Constitution of India.
22 Article 39 of the Constitution of India.
23 Articles 38, 39 of the Constitution of India.
24 Article 42 of the Constitution of India.
25 Article 43 of the Constitution of India.
26 Article 41 of the Constitution of India.
27 Article 42 of the Constitution of India.
28 Article 39 of the Constitution of India.
29 Article 46 of the Constitution of India.
30 Article 47 of the Constitution of India.
31 Articles 38, 39-A of the Constitution of India.
By providing for constitutional rights to life, health, education, social protection etc., the Constitution of India seeks to provide enabling conditions for dignified human existence.\textsuperscript{36} A careful perusal of the fundamental rights and the directive principles with respect to work and workers would clarify that most of the guarantees are aimed at promoting a well-rounded dignified human life for workers. Provision for means of livelihood, equality of wages, protection from forced labour, prohibition on employment of children, distribution of resources, protection of workers, provision for living wage, decent standard of life, appropriate conditions of work, health and maternity relief, appropriate nutrition, old age assistance, and workers participation in management, are to be ensured by the state at the individual or the community level. Upendra Baxi notes that despite the uncomfortable juxtaposition of unenforceable directive principles with enforceable fundamental rights, “at least upon the fulfillment of some of the major directives now depends not merely the “success” of the Constitution but also the destiny of India.”\textsuperscript{37} Granville Austin terms directive principles as “statement of the social revolution”, which aim to promote positive freedom of the masses.\textsuperscript{38}

The distinction between rights and goals (or directives) is premised on certain theoretical underpinnings. Rights signify the absence of state interference in matters of “autonomous and fully capable agent[s]”.\textsuperscript{39} Goals, on the other hand, imply dependent agents requiring positive action initiated by the state for their assistance.\textsuperscript{40} Accordingly, rights could be enforced by the Courts in the sense that the state could be compelled to refrain from interfering in individual (and collective) fundamental rights. It would be difficult on the Courts’ part to enforce goals because goals would require the state to invest resources and undertake proactive initiatives. Therefore, judgment on goals is left to the electorate – the electorate can judge the performance of the governments on the basis of the directive principles.\textsuperscript{41} Directive principles have been variously termed as: election manifesto, new year

\textsuperscript{36} See Justice Bhagwati in \textit{Francis Coralie v. Union Territory of Delhi}, (1981) MANU 0517 (SC), at para 8 [\textit{Manupatra} is an online reporter of Indian Court judgments, abbreviated as MANU. The database cites cases in the style: MANU/SC/0517/1981; however, I shall be citing the reported cases as (1981) MANU 0517 (SC)].

\textsuperscript{37} The concept of dignified human life was developed by the Supreme Court in \textit{Francis Coralie} in order to determine the content of the right to life and liberty under Article 21 of the \textit{Constitution of India}.

\textsuperscript{38} See Upendra Baxi, \textit{“The Little Done, the Vast Undone” - Some Reflections on Reading Granville Austin's The Indian Constitution} (1967) 9 Journal of the Indian Law Institute 323 at 344.

\textsuperscript{39} See Austin, \textit{Cornerstone of a Nation}, supra note 13 at 51.

\textsuperscript{40} See Shankar, supra note 12 at 120.

\textsuperscript{41} See ibid at 123. While a section of the Constituent Assembly proposed enforceability of goals enumerated in the directive principles, the majority of the Constituent Assembly members were not in favour of making directive principles enforceable. See ibid at 121-123. Explaining the justification of directive principles, Chairman of the Constituent Assembly B.R. Ambedkar observed:
resolution, pious superfluities, and veritable dustbin of sentiment.\textsuperscript{42} Even though fundamental rights directly or indirectly promote workers’ interest under the Constitution of India, directive principles are principal repositories of labour welfare guarantees, and constitute the source of industrial jurisprudence in India.\textsuperscript{43} The unenforceability of directive principles posed a challenge to the judiciary in promoting labour welfare. From its early years, the Indian judiciary had to face the challenge of determining the relationship between directive principles and fundamental rights in order to facilitate labour welfare. If directive principles could be enforced like fundamental rights, states could be compelled to ensure labour welfare; but if directive principles were only aspirational goals, workers could have no effective remedy for their (directive principles’) violation.

The Indian Supreme Court’s approach in establishing the relationship between fundamental rights and directive principles evolved over three phases.\textsuperscript{44} During the first three decades after Indian independence, the Supreme Court held that directive principles were subservient to fundamental rights.\textsuperscript{45} During the 1970s, the Court proposed harmonious relationships between directive principles and fundamental rights.\textsuperscript{46} During the 1980s and 1990s, the Court interpreted several directive principles as part of the fundamental rights in order to make those directive principles enforceable.\textsuperscript{47}

In a judgment delivered in 1951, \textit{State of Madras v. Champakam Dorairajan},\textsuperscript{48} the Supreme Court, established a hierarchy between the directive principles and fundamental rights, observing that:

The directive principles of the State policy, which by article 37 are expressly made unenforceable by a Court, cannot override the provisions found in Part

---

\textsuperscript{42} See Reddy, ibid at 17.


\textsuperscript{44} See Shankar, supra note 12 at 124.

\textsuperscript{45} See ibid at 124-128.

\textsuperscript{46} Ibid.

\textsuperscript{47} Ibid.

\textsuperscript{48} (1951) MANU 0007 (SC).
III [fundamental rights] …. The directive principles of State policy have to conform to and run as subsidiary to the Chapter of Fundamental Rights.  

However, the early 1970s witnessed one of the most famous decisions of the Supreme Court, popularly known as the Fundamental Rights case, in which a thirteen-judge bench of the Supreme Court re-wrote the relation between fundamental rights and directive principles. The Court noted that in order to achieve dignity of people as enshrined in the Constitution of India, Part III (fundamental rights), and Part IV (directive principles) have to be balanced and harmoniously construed. Fundamental rights and directive principles supplement each other – fundamental rights are not superior to directive principles. Fundamental rights and directive principles are the conscience of the constitution, and are constitutive of the basic structure of the Constitution of India. While directive principles lay down goals to be achieved, fundamental rights provide for the means of achieving such goals. The Court noted:

The object of the people in establishing the Constitution was to promote justice, social and economic, liberty and equality. The modus operandi to achieve these objectives is set out in Parts III and IV of the Constitution. Both Part III and IV enumerate certain moral rights. … … Many of the articles, whether in Part III or Part IV, represent moral rights which they have recognized as inherent in every human being in this country. The task of protecting and realizing these rights is imposed upon all the organs of the State, namely, legislative, executive and judicial. What then is the importance to be attached to the fact that the provisions of Part III are enforceable in a Court and the provisions in Part IV are not? Is it that the rights reflected in the provisions of Part III are somehow superior to the moral claims and aspirations reflected in the provisions of Part IV? I think not. … … Freedom from starvation is as important as right to life.

Thus, in the Fundamental Rights case, both fundamental rights and directive principles were held to be part of the basic structure of the Constitution. Several years later, the Court elaborated in the Minerva Mills Ltd. v. Union of India case: the “harmony and
balance” between fundamental rights and directive principles were also parts of that basic structure.\(^{58}\) Justice P.N. Bhagwati asserted:

I may also point out that simply because the Directive Principles do not create rights enforceable in a court of law, it does not follow that they do not create any obligations on the State. …. There may be a rule which imposes an obligation on an individual or authority and yet it may not be enforceable in a court of law and therefore not give rise to a corresponding enforceable right in another person. But it would still be a legal rule because it prescribes a norm of conduct to be followed by such individual or authority. …. It is therefore, to my mind, clear beyond doubt that merely because the Directive Principles are not enforceable in a court of law, it does not mean that they cannot create obligations or duties binding on the State. The crucial test which has to be applied is whether the Directive Principles impose any obligations or duties on the State; if they do, the State would be bound by a constitutional mandate to carry out such obligations or duties, even though no corresponding right is created in any one which can be enforced in a court of law.\(^{59}\)

Following the *Fundamental Rights* case, and *Minerva Mills Ltd.*, the Supreme Court held that courts should seek assistance from directive principles while interpreting fundamental rights, and that directive principles should be read into fundamental rights whenever possible.\(^{60}\) Accordingly, the Court began to read directive principles as part of fundamental rights. The advantage of interpreting directive principles as part of fundamental rights is that directive principles would become enforceable as part of fundamental rights. The Supreme Court read directive principles as part of Article 21 of the Constitution, protecting right to life and liberty. In a number of judgments,\(^{61}\) the Supreme Court of India quoted the US Supreme Court in *Munn v. Illinois*,\(^{62}\) noting that the right to life (under Article 21) means more than mere animal existence. The Supreme Court of India elaborated:

> We think that the right to life includes the right to live with human dignity and all that goes along with it, namely, the bare necessaries of life such as

\(^{58}\) (1980) MANU 0075 (SC) at para 61.  
\(^{60}\) See *Akhil Bharatiya Soshit Karamchari Sangh (Railway) v. Union of India*, (1980) MANU 0058 (SC), at para 122.  
\(^{62}\) 1876 WL 19615 (U.S.Ill.). In his dissenting opinion Mr. Justice Field observed: By the term ‘life,’ as here used, something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. ... The deprivation not only of life, but of whatever God has given to every one with life, for its growth and enjoyment, is prohibited by the provision in question, if its efficacy be not frittered away by judicial decision. ... [Liberty] means freedom to go where one may choose, and to act in such manner, not inconsistent with the equal rights of others, as his judgment may dictate for the promotion of his happiness; that is, to pursue such callings and avocations as may be most suitable to develop his capacities, and give to them their highest enjoyment.
adequate nutrition, clothing and shelter and facilities for reading, writing and expressing one-self in diverse forms, freely moving about and mixing and commingling with fellow human beings. Of course, the magnitude and content of the components of this right would depend upon the extent of the economic development of the country, but it must, in any view of the matter, include the right to the basic necessities of life and also the right to carry on such functions and activities as constitute the bare minimum expression of the human-self.63

A dignified human existence requires adequate nutrition, clothing, shelter, education, socialization, socio-political participation, freedom of movement, economic development etc.

Following the trend, the Supreme Court in Bandhua Mukti Morcha v. Union of India,64 developed a direct relation between Article 21, and directive principles such as Articles 39, 41 and 42. This case specifically dealt with informal forced labour under a debt bond system.65 The Court noted that right to live with human dignity derives its content from Clauses (e) and (f) of Article 39, Article 41, and Article 42.66 Therefore, the right to life (Article 21) includes protection of the health and strength of workers, protection of children against abuse, all-round development of children, educational facilities, just and humane conditions of work, and maternity relief.67 According to the Court these directives are minimum necessities for a life with human dignity.68 This interpretation shows an indirect way of enforcing directive principles with the help of the fundamental rights. Similarly, the Supreme Court has held that right to health and medical assistance, which promotes dignified life to workers, is part of Article 21 (a fundamental right), and derives its content from Articles 39(e), 41, 43, and 48(a) (directive principles).69 In Olga Tellis v. Bombay Municipal Corporation,70 dealing with the plight of pavement dwellers, the Supreme Court held that right to life (under Article 21) includes right to livelihood (Article 39(a)), because “no person can live without the means of living, that is, the means of livelihood.”71 The Court further noted that directive principles enshrined in Article 39(a) and Article 41 are fundamental in the understanding and interpretation of fundamental rights.72

63 Justice Bhagwati in Francis Coralie, supra note 36 at para 8.
64 (1983) MANU 0051 (SC).
65 Ibid at para 6.
66 Ibid at para 14.
67 Ibid at para 14.
68 Ibid at para 14.
70 (1985) MANU 0039 (SC).
71 Ibid at para 32.
72 Ibid at para 33.
In another decision protecting informal workers’ right to work, *Sodan Singh v. New Delhi Municipal Committee*, the Supreme Court held that street vending constitutes a profession, occupation, trade, or business (Article 19(1) (g)), and therefore is a fundamental right protected under a citizen’s right “to practice any profession, or to carry on any occupation, trade or business”. The Supreme Court has delineated a comprehensive list of factors in order to formulate the idea of dignified life for workers. But the problem with interpretation-based judicial innovation in promoting workers’ interests is that it suffers from several limitations. A primary limitation is that Courts can provide relief through judicial policy-making only when an aggrieved party moves the Court. In this sense, the Courts are ill-equipped to address systematic deprivations that cause informal workers' suffering. There is, however, another more fundamental, and structural limitation in any judicial (constitutional) enforcement-based model of worker welfare. This limitation of the judiciary-dependant promotion of workers’ benefits has been partially described by the Supreme Court in the *Fundamental Rights* case: “[I]f a State voluntarily were to implement the Directive Principles, a Court would be failing in its duty, if it did not give effect to the provisions of the law at the instance of a person who has obtained a right under the legislation.” In *Bandhua Mukti Morcha*, the Court further noted: “[N]o State neither the Central Government nor any State Government has the right to take any action which will deprive a person of the enjoyment of these (workers’ constitutional rights enshrined in directive principles) basic essentials”.

The Court in *Bandhua Mukti Morcha* noted that government(s) cannot interfere to deprive an individual of her constitutional rights enumerated as directives under the Constitution of India. This assertion is problematic at two levels. First, since directive principles are not enforceable by the judiciary, even if a government deprives an individual from the enjoyment of these rights (i.e. directives), courts are in no position to enforce these rights. Second, since these constitutional rights are directives, and therefore, not realizable as fundamental rights, in order to enjoy these constitutional rights (such as right to work or

---

Upendra Baxi commends the judiciary for asserting directive principles through fundamental rights, and thereby upholding their (directive principles, and fundamental rights) basic *unity*. See Baxi, “The Little Done, the Vast Undone”, supra note 37 at 367, 409.

However, M P Singh sounds a note of caution against the judicial strategy. He argues that by increasingly reading directive principles into fundamental rights, the judiciary is diluting the seriousness, and effectiveness of directive principles. See generally M P Singh, “The Statics and the Dynamics of the Fundamental Rights and the Directive Principles – A Human Rights Perspective” (2003) 5 Supreme Court Cases (Journal) 1.

74 (1973) MANU 0445 (SC), at para 1764.
maternity benefit) people need to possess legal rights emanating from a statute. It is only when directive principles are enumerated in law, courts can enforce such constitutional rights “at the instance of a person who has obtained a right under the legislation”, as noted by the Supreme Court in the Fundamental Rights case.76

When combined, these two observations of the Supreme Court reveal the fundamental limitation in enforcing constitutional labour welfare guarantees for workers, (including informal workers). The Court pointed out that the judiciary can only enforce directive principles when such principles find expression in enacted legislation. So, even when workers’ benefits (provided as directive principles) are read into fundamental rights, and even when specific workers are willing and able to move the Court, the judiciary can enforce workers’ rights only when such rights are obtained under legislation.77 The Court has also noted that the state’s responsibility in promoting workers’ constitutional rights is, at best, a negative responsibility of non-interference in the enjoyment of workers’ rights. In the context of labour rights, which are mainly directive principles, however, such a question arises only when workers have legal right arising from a statute that seeks to implement specific directive principles. It is only when the state undertakes any action depriving workers of their constitutional rights that find expression in statute(s) the Courts can step in to protect such rights. Thus, in order to realize constitutional labour rights, such rights need to be enumerated in statute(s) and the judiciary can enforce them only at the instance of an individual who possess a legal right and moves the court to realize her legal right.

Informal workers suffer from systematic deprivations in part because of the juridical nature of constitutional labour welfare guarantees. Even though the Supreme Court has taken progressive steps, such as upholding informal street vendors’ fundamental right to carry on their economic activity, judicial remedies remain far too inadequate in addressing the overall human-development concerns of informal workers in India. Apart from upholding informal workers’ right to livelihood and freedom of trade in certain parts of the country, the judiciary has been unable to promote constitutional welfare guarantees for informal workers as a class.78 The Supreme Court, therefore, lamented:

76 (1973) MANU 0445 (SC), at para 1764.
77 Madhav Khosla shows that in absence of state formulated policy implementing directive principles, the judiciary is unable to enforce such directives even when the judiciary agrees that such directives are part of fundamental rights. See generally Madhav Khosla, “Making social rights conditional: Lessons from India” (2010) 8: 4 I.CON 739.
78 I use “class” as synonymous with “group”, rather than to suggest a distinction from an employer class. My choice of the expression “class” is based on the Equality Clause of the Constitution of India (Article 14), which permits justifiable classification and class legislation (discussed presently).
“Justice, social, economic and political” and “citizens, men and women equally, have the right to an adequate means to livelihood” which the Constitution of India promises is still a distant dream. This Court, in various judgments, has reminded the Government of its constitutional obligations to ameliorate the lot of the poor in India. Nothing much has been achieved. An alarming percentage of population in India is still living below poverty-line. There are millions of registered unemployed. The Government, in spite of constitutional mandate is unable to provide them with employment.79

The Court noted that equality in matters of an adequate means of livelihood is still a distant dream for an alarming percentage of population in India, who live below the poverty line. It is mainly informal workers who live below the poverty line in India. Informal workers have failed to receive equal treatment to that of their formal counterparts from the government(s) in India so far as protection and promotion of their means of livelihood are concerned. As a class, informal workers suffer from multiple deprivations compared to formal workers in India. There are more than one hundred pieces of (Central, and State) labour welfare legislations in force in the country, mostly targeted towards formal workers. Formal workers receive comprehensive benefits ranging from employees’ state insurance to maternity benefits under a plethora of labour welfare statutes. Informal workers, on the other hand, mostly remain outside the scope of these laws.80 Such inequality between informal and formal workers exists in spite of the fact that the right to equality is a fundamental right under Article 14 of the Constitution.

Article 14 of the Constitution of India declares: “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.” Thus, the fundamental right to equality, available to any person living in India, is expressed in two ways forming a corollary to each other.81 The first part of the provision reads that the state shall not deny to any person equality before the law, suggesting a negative burden of non-interference, while the second part of the Article reads that the state shall not deny to any person equal protection of the laws, imposing a positive responsibility on the


state to protect all persons equally. The positive responsibility imposed on the state is reinforced by Articles 15 and 16, which call upon the state to make “special provision for the advancement of any socially and educationally backward classes of citizens”. Further, Article 14 envisages a “classless egalitarian socio-economic order”. For the promotion of the right to equality, the state may undertake reasonable classification systems distinguishing people similarly situated from people differently situated. Any such classifications must have a nexus to the purpose sought to be achieved through legislation.

The Supreme Court laid down conditions for reasonable classification in State of West Bengal v. Anwar Ali Sarkar: i. such classification “must be founded on an intelligible differentia which distinguishes” persons or things “that are grouped together from others” left out of the group, and ii. the “differentia must have a rational relation to the object sought to be achieved” by the statute in question. What should ideally follow from these conditions is that all persons under similar circumstances should receive equal protection from laws. However, Courts in India determine reasonable classification within a very narrow range that is based on technical considerations relevant to an impugned legislation. The principle of reasonable classification is relevant only to judge the constitutionality of an existing legislation.

Therefore, even if informal workers are unequally treated in comparison to formal workers as far as employment, working conditions and social protection are concerned, it would be very difficult to enforce their right to equality through the judiciary in absence of a (beneficial) legislation. The principle of reasonable classification would be of no help in dealing with such unequal treatment. The approach of the Courts in India has shown that they might be able to judge inequality between one group of informal workers and another when they possess legal rights, but when they do not possess legal rights, the judiciary is unwilling.

---

83 See Article 15(4) of the Constitution of India. Also see Reddy, ibid.
85 St. Stephen’s College v. The University of Delhi, (1991) MANU 0319 (SC) at para 103.
86 (1952) MANU 0033 (SC) at para 58
87 Also see Shri Ram Krishna Dalmia v. Justice S.R. Tendolkar, (1958) MANU 0024 (SC) at paras 13, 16.
88 State of West Bengal, (1952) MANU 0033 at paras 25, 38, 45, 47, 58, supra note ----
89 See K. Kunhikoman v. State of Kerala, (1961) MANU 0095 (SC), for a debate on classification between rubber, tea, and coffee plantation owners on one hand, and pepper and areca plantation owners on the other; also see (1959) S.C.R. 629, for a classification between butchers who slaughter cattle on one hand, and butchers who slaughter sheep or goats (on usefulness of different animals to society).
to promote constitutional labour guarantees for informal workers.\textsuperscript{90} In this context, justice Chinnappa Reddy, a former judge of the Supreme Court, argues that the Indian Supreme Court wrongly perceived that by merely laying down the principle of reasonable classification the Court is able to secure the fundamental right to equality of Indian masses.\textsuperscript{91} Justice Reddy asserts that \textit{real equality} “requires and provides for the establishment of a just society in which no one is hungry or despised or deprived of the decencies and amenities of life, and all men are free from insecurity and oppression and are allowed to enjoy the plenitude of life.”\textsuperscript{92} Such a broad understanding of equality is missing from the Indian judiciary's approach towards informal workers, even though the judiciary has promoted equality amongst formal workers, albeit within the narrow juridical framework of reasonable classification.

In striking down a law on unequal pay, the Supreme Court in \textit{the State of Madhya Pradesh v. Pramod Bhartiya}\textsuperscript{93} declared that equal pay for equal work, irrespective of the technical details or designation of employees, flows from Article 14. Further, in \textit{the State of Utter Pradesh v. J.P. Chaurasia}\textsuperscript{94} the Supreme Court noted:

\begin{quote}
In matters of employment the government of socialist State must protect the weaker sections. It must be ensured that there is no exploitation of poor and ignorant. It is the duty of the State to see that the underprivileged or weaker sections get their due. Even if they have voluntarily accepted the employment on unequal terms, the State should not deny their basic rights of equal treatment.
\end{quote}

Thus, even though the judiciary has been concerned with the exploitation of workers who are compelled to work on unequal terms, the judiciary can play only a very limited role in improving the lot of vulnerable workers. However, the real problem is that such judicial concern has not percolated through the government or to the legislature. The abovementioned observation of the Supreme Court urges the government and the state to improve conditions of workers who are at a disadvantageous bargaining position. However, as I will show in the next section the government and the legislature of the country have largely failed to promote interests of informal workers in India.

\textsuperscript{90} It should be noted here that the judiciary may be unwilling, but, is not unable to develop beneficial guarantees for people/workers. The case of \textit{Vishaka v. State of Rajasthan}, (1997) MANU 0786 (SC), is a case on the point (discussed presently).
\textsuperscript{91} See Reddy, supra note 41 at 89-95.
\textsuperscript{92} See ibid at 90.
\textsuperscript{93} See generally (1993) MANU 0060 (SC).
\textsuperscript{94} (1988) MANU 0502 (SC) at para 29.
In spite of the fact that informal workers suffer from vulnerability and marginalization when their formal counterparts enjoy comprehensive labour welfare guarantees, informal workers who are in dire need of legislative protection have not received equal treatment with their formal counterparts for the matter of legislative protection. I discuss the absence of legislative protection for informal workers in the next section. By analyzing labour laws in India, I show that informal workers are mostly left out of the country's legislative framework. It is only very recently that the government and the legislature have become active in order to promote social protection for informal workers.

3. Coverage of Informal Economic Activities (Informal Workers) under Labour Law in India

As a general rule, the Parliament of India makes laws for the entire territory of India, while the state legislatures make laws for the whole or part of the state.\(^{95}\) Thus, there is an overlap of law-making powers with respect to a state where both the Parliament and the state legislature are entitled to make laws. This overlap is resolved by Article 246 of the Constitution, which lists subject matters into three categories to divide law-making power between the Parliament and the states.\(^{96}\) The Parliament has exclusive law-making power with respect to the Union List (List I), state legislatures have exclusive power to make laws on subject matters listed in the State List (List II), and both the Parliament and the state legislature(s) are entitled to make laws on subject matters specified in the Concurrent List (List III).\(^{97}\) Labour welfare and industrial relations are part of the Concurrent List of Schedule VII, enabling both the Parliament and the state legislature(s) to enact laws for workers.\(^{98}\) Accordingly, in addition to numerous pieces of state legislation regulating industrial relations, and promoting workers’ welfare, there are about forty-three central statutes on labour and industrial relations.\(^{99}\)

---

\(^{95}\) Article 245 of the Constitution of India.

\(^{96}\) See Article 246 of the Constitution of India.

\(^{97}\) See Seventh Schedule of the Constitution of India.

\(^{98}\) Entry 22 of the Concurrent List enumerates: “trade unions, industrial and labour disputes”; Entry 23 of the List enumerates: “social security and social insurance; employment and unemployment”; and Entry 24 provides: “welfare of labour including conditions of work, provident funds, employers’ liability, workmen’s compensation, invalidity and old age pensions and maternity benefits.”

The NCEUS defined informal sector on the basis of two criteria: an ownership criterion and a size criterion.\textsuperscript{100} According to the ownership criterion, an enterprise must not be a separate legal entity, such as a company,\textsuperscript{101} or a registered society,\textsuperscript{102} apart from its owner, to qualify as an informal sector enterprise. Additionally, such proprietary enterprise must have a maximum of nine total workers engaged in its activity. The NCEUS reached the ownership and size criteria on the basis of legislative coverage of establishments and protection of workers. While establishments such as a company or a registered society are to adhere to legislative requirements, establishments employing ten or more workers are covered by labour and social security legislation. Similarly, the NCEUS defines informal workers as workers who are excluded from “any employment and social security benefits”,\textsuperscript{103} irrespective of the fact that they are employed in either informal or formal sector, and includes self-employed own-account workers.\textsuperscript{104}

In its different Reports, the NCEUS has conducted comprehensive reviews of Indian labour welfare and social protection laws in order to ascertain the coverage of informal workers under those laws. In one of its Reports,\textsuperscript{105} the Commission divides Central legislation into three groups, based on their applicability to informal economic activities. The first of these groups contains laws that “apply to all sections of the unorganised sector


\textsuperscript{101} Registered under the \textit{Companies Act, 1956}.

\textsuperscript{102} Registered under the \textit{Societies Registration Act, 1860}. The Societies Registration Act is an “Act for the Registration of Literary, Scientific, and Charitable Societies.” See \textit{Short Title of the Act}.

Section 1 of the Act explains the legal status of a Society: “[a]ny seven or more persons associated for any literary, scientific, or charitable purpose, or for any such purpose as is described in section 20 of this Act, may, by subscribing their names to a memorandum of association, and filing the same with Registrar of Joint-stock Companies form themselves into a society under this Act.”

Section 20 delineates the different kinds of Societies, which could be registered under the Act: “[c]haritable societies, the military orphan fund or societies established at the several presidencies of India, societies established for the promotion of science, literature, or the fine arts ....”

\textsuperscript{103} NCEUS, \textit{Definitional and Statistical Issues}, supra note 100 at 27.

\textsuperscript{104} Ibid at 26-27, 35. Own-account workers are a sub-category of self-employed workers. For statistical purposes the ILO defines self-employment as “jobs where the remuneration is directly dependent upon the profits (or the potential for profits) derived from the goods and services produced (where own consumption is considered to be part of profits). The incumbents make the operational decisions affecting the enterprise, or delegate such decisions while retaining responsibility for the welfare of the enterprise.” In this conceptualisation an enterprise includes a one person establishment. See ILO, \textit{Resolution concerning the International Classification of Status in Employment (ICSE), adopted by the Fifteenth International Conference of Labour Statisticians}, The Fifteenth International Conference of Labour Statisticians, January 1993 at para 7, available at http://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/normativeinstrument/wcms_087562.pdf (site visited 5 June 2012).

The ILO defines own-account workers as workers “who, working on their own account or with one or more partners, hold the type of job defined as a ‘self-employment job’ ..., and have not engaged on a continuous basis any ‘employees’ ... to work for them during the reference period. ... The partners may or may not be members of the same family or household. See ibid at para 7.3.

labour” such as the Equal Remuneration Act, 1976, and the Bonded Labour System (Abolition) Act, 1976.\textsuperscript{106} The second of these groups consists of “laws which apply to some sections of the unorganised sector labour” such as the Minimum Wages Act, 1948, Child Labour (Prohibition and Regulation) Act, 1986, Dangerous Machines (Regulation) Act, 1983, The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, Motor Transport Workers Act, 1961, Sales Promotion Employees (Conditions of Service) Act, 1976, and the Trade Unions Act, 1926.\textsuperscript{107} The third of these groups consists of legislation “which can be extended to the unorganised sector” such as the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, Payment of Wages Act, 1936, The Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, the Contract Labour (Regulation and Abolition) Act, 1970, The Maternity Benefit Act, 1961, Workmen’s Compensation Act, 1923, and the Weekly Holidays Act, 1942.\textsuperscript{108}

For example, with respect to the first of the three groups, the Commission notes that under the Equal Remuneration Act, 1976, employers cannot discriminate between men and women workers in hiring or payment, irrespective of the fact that such workers are engaged formally or informally.\textsuperscript{109} Likewise, the Commission notes that the bonded labour system, whether employed formally or informally, is abolished under the Bonded Labour System (Abolition) Act, 1976.\textsuperscript{110}

With respect to the second group of laws, the Commission observes that the Minimum Wages Act, 1948 specifies the categories of employment in its Schedule, and determines wages for workers engaged in specific activities.\textsuperscript{111} The categories of employment listed in the Act’s Schedule could be modified at any time by the government.\textsuperscript{112} The Act lists both agricultural and non-agricultural activities, where employers are mandated to pay specified wages to their employees.\textsuperscript{113} Since the Act lists certain informal economic activities in its Schedule, the Commission groups it under laws that are applicable to some sections of informal sector workers. Similarly, the Commission shows that other legislation grouped

\begin{itemize}
  \item \textsuperscript{106} Ibid at 155.
  \item \textsuperscript{107} Ibid at 155.
  \item \textsuperscript{108} Ibid at 155, 157.
  \item \textsuperscript{109} Ibid at 158.
  \item \textsuperscript{110} Ibid at 158.
  \item \textsuperscript{111} Ibid at 158.
  \item \textsuperscript{112} Minimum Wages Act, 1948, section 27 (Power of State Government to add to Schedule).
  \item \textsuperscript{113} For example, “Employment in any rice mill, flour mill or dal mill” (Part I), or “Employment in agriculture” (Part II), The Schedule, Minimum Wages Act, 1948. Also see section 2 (g) and section 27 of the 1948 Act.
\end{itemize}
under the second category address some sections of informal workers. However, it is surprising that the Commission places the Trade Unions Act, 1926 in this second group of laws instead of the first group because the Trade Unions Act is one of the very few pieces of legislation that is applicable to all formal as well as informal workers. I will discuss the scope of the Trade Unions Act in a later part of this section.

Finally, the Commission lists legislation that could be extended to informal workers, even if the laws do not specifically address informal workers. In this category, the Commission lists laws such as the Contract Labour (Regulation and Abolition) Act, 1970, Maternity Benefit Act, 1961, etc. Under the Contract Labour Act, both the principal employer and the contractor employing contract labour are responsible to ensure appropriate conditions at work and payment of wages to workers who they employ. Such protection is available to all workers, formal or informal. Likewise, the Maternity Benefit Act mandates that employers ensure maternity benefits to women workers formally or informally employed. Even though these statutes are applicable to establishments employing a specified minimum number of workers (ten or twenty), the government, by order, can extend these statutory requirements to any group of formal or informal workers.

The Commission also surveys state legislation having a bearing on informal workers, and is quick to note that these laws afford protection to only a small section of informal workers in the country. The NCEUS also documents the “abysmally poor” implementation of labour laws in India. The small size of labour administration personnel, the exclusive focus on the formal sector, the inadequacy of infrastructure, and the lack of representative voices for informal workers are factors responsible for poor enforcement of labour law. Thus, the exclusion of informal workers from legislative protection happens at two stages.

\[114\] NCEUS, Conditions of Work, supra note 105 at 158-160.
\[115\] Ibid at 161-163.
\[116\] Section 20 of the Contract Labour (Regulation and Abolition) Act, 1970, mandates that in case of failure of a contractor to provide legally mandated benefits to contract workers it is the responsibility of the principal employer to provide those benefits to such workers.
\[117\] According to section 1 (4) of the Contract Labour (Regulation and Abolition) Act, 1970, the statue is applicable to all establishments where twenty or more workers are employed, and all employers (contractors) who employs twenty or more workers.
\[118\] According to section 2 of the Maternity Benefit Act, 1961, the statute is applicable to every factory, mine or plantation, and to any other establishment employing at least ten workers.
\[119\] See section 31 (Power to exempt in special cases) of the Contract Labour (Regulation and Abolition) Act, 1970, and section 2(1) Proviso (Application of Act) of the Maternity Benefit Act, 1961.
\[121\] NCEUS, Conditions of Work, ibid at 164-171; also see NCEUS, Challenge of Employment, supra note 99 at 186-187.
\[122\] NCEUS, Conditions of Work, ibid at 166-167.
First, informal workers are largely excluded from beneficial legislation, and second, even when they are allowed legislative protection, such protection does not materialize because of non-enforcement.\textsuperscript{123}

In 2009 Report prepared by the NCEUS, named \textit{The Challenge of Employment in India – An Informal Economy Perspective},\textsuperscript{124} the Commission discusses three of the major labour laws that regulate industrial relations and labour welfare in India.\textsuperscript{125} Those are the Industrial Disputes Act, 1947, Industrial Employment (Standing Orders) Act, 1946, and the Factories Act, 1948. These statutes, however, are problematic so far as informal workers are concerned. These Acts are meant to protect conditions of service, employment security for formal workers,\textsuperscript{126} promote amicable industrial relations in the formal sector,\textsuperscript{127} and they are concerned with factories or industries where employers are mandated to provide for workers’ benefits. These Acts are based on the juridical concept of an employment relationship between workers and the employer and, as such, self-employed own-account workers are excluded from the scope of these statutes. Similarly, statutes categorized by the NCEUS \textit{Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector}\textsuperscript{129} (such as the Equal Remuneration Act, Contract Labour Act etc.) as applicable to informal workers are also based on an employment relationship between workers and employer. Most of the legislation surveyed in that NCEUS Report excludes self-employed own-account informal workers. By contrast, laws such as the Trade Unions Act, 1926, apply to both formal and informal workers (including self-employed informal workers), even though there are indications that this legislation is also biased towards formal workers.\textsuperscript{130}

What follows from the Commission’s review of Indian labour laws is that labour laws in India are biased towards formal workers employed in an industry. Even though it is possible to argue that some of these laws address some informal workers, the majority of the

\textsuperscript{123} NCEUS, \textit{Challenge of Employment}, supra note 99 at 180; also see Hensman, supra note 120 at 193-196.
\textsuperscript{124} See generally NCEUS, \textit{Challenge of Employment}, ibid.
\textsuperscript{125} Ibid at 169-170.
\textsuperscript{126} See \textit{The Factories Act, 1948}; also see \textit{The Industrial Disputes Act, 1947}.
\textsuperscript{127} See \textit{The Industrial Disputes Act, 1947}, Chapter VA (Lay-off and Retrenchment) and Chapter VB (Special Provisions Relating to Lay-off, Retrenchment and Closure in Certain Establishments).
\textsuperscript{128} See \textit{The Industrial Disputes Act, 1947}, Chapter IIB (Grievance Redressal Machinery) and Chapter III (Reference of Disputes to Boards, Courts or Tribunals).
\textsuperscript{129} See generally NCEUS, \textit{Conditions of Work}, supra note 105.
\textsuperscript{130} See the \textit{Trade Unions Act, 1926}. It defines a trade union as “any combination ... formed ... for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers ... .” See section 2 (h). The Act defines a trade dispute as “any dispute between employers and workmen or between workmen and workmen, or between employers and employers which is connected with the employment or non-employment, or the terms of employment or the conditions of labour, of any person ... .” See section 2 (g). Both of these definitions are centered on employment relationship and waged workers. However, there is scope to argue that the Act is applicable to self-employed informal workers as well.
statutes are not designed for them. Many of the Acts mentioned earlier have a numerical threshold for their applicability; they apply to an industry where at least twenty workers are employed (ten workers if electricity is used, and five workers for the applicability of the Migrant Workmen Act, and the Motor Transport Workers Act).\(^\text{131}\) Therefore, even though it is possible to argue that some of the labour laws are applicable to informal workers who are in an employment relationship (or disguised employment relationship), once the legislative threshold is set for industries employing at least ten or twenty workers, 92% of the total workforce remains outside such legislative protection.\(^\text{132}\)

In this context it is worthwhile to take note of how the judiciary has defined industry, which has reduced the strict numerical threshold for the applicability of the Industrial Disputes Act. In *Bangalore Water Supply & Sewerage Board, v. A. Rajappa and Others*,\(^\text{133}\) the Supreme Court was called upon to determine the true import of the term *industry* as used in the 1947 statute.\(^\text{134}\) Working under a socialist constitution and a context in which a significant majority of the workers were (and still are) excluded from legislative protection, the Court could have interpreted the term “industry” in such a manner so that the majority of the work-relations (and thereby, majority of the workers) could be brought under its definition, and, thereby, brought under the protective umbrella of the statute. The majority of the Court, speaking through Justice Krishna Iyer, interpreted the definition provided in the statute in the following manner:

(i) systematic activity, (ii) organized by co-operation between employer and employee … (iii) for the production and/or distribution of goods and services … … The true focus is functional and the decisive test is the nature of the activity with special emphasis on employer-employee relations.\(^\text{135}\)

Though the definition would still go on to exclude self-employed informal workers because of its focus on the employment relationship, it broadens the coverage of the term industry. The term industry now embraces waged workers who were left outside the beneficial scope of statutes that have numerical threshold for their applicability. This definition makes the Industrial Disputes Act applicable to even small establishments where

---


\(^{132}\) Ibid at 180.

\(^{133}\) (1978) MANU 0257 (SC).

\(^{134}\) *The Industrial Disputes Act 1947* in section 2(j) defines: “‘industry’ means any business, trade, undertaking, manufacture or calling of employers and includes any calling service, employment, handicraft, or industrial occupation or avocation of workmen.”

\(^{135}\) (1978) MANU 0257 (SC) at para 111.
employer-employee relation exists. Justice Iyer passionately asserted one of the foundational aspects of Indian labour jurisprudence:

[The] personality of the whole statute has a welfare basis. The mechanism of the Act is geared to conferment of benefits to workmen and resolution of conflicts. Its goal is amelioration of the conditions of workers, not from a neutral position but from a concern for the welfare of the weaker lot.\(^{136}\) (emphasis added)

Thus, in accordance with the 1978 decision of the Supreme Court, it could be argued that informal waged workers should receive protection under the Industrial Disputes Act. Likewise, the Supreme Court and some of the High Courts have held that the expression “employees”\(^{137}\) in the Employee’s State Insurance Act, 1948 is wide enough to include casual and temporary workers such as canteen workers or bicycle stand operators, even if such workers are employed for only a day.\(^{138}\) However, the Employee’s State Insurance Act is applicable to establishments employing at least ten workers.\(^{139}\)

Thus, even though it is possible to argue that informal waged workers could be brought within the purview of some of the major labour welfare legislation in India, the NCEUS Reports demonstrate that enforcement of these Acts effectively excludes the majority of informal workers. Moreover, these Acts ignore self-employed informal workers, who are significant in number.\(^{140}\) In view of the widespread exclusion of informal workers from legislative protection, the NCEUS proposed two Bills to the Government of India: the Unorganised Sector Workers Social Security Bill 2005, and the Unorganised Sector Workers

\(^{136}\) Bangalore, at para 43. However, it must be noted that even though the Supreme Court has given an extremely liberal interpretation to the concept of “industry” so that the term can cover even small establishments, the expression “worker” under the Act still have limiting effect on worker’s rights. The Supreme Court has repeatedly observed that everyone who is employed in an “industry” need not be workers. For example, the Supreme Court has excluded “teachers” from being workers under the law even when an educational institution has been held to be an “industry” and administrative staff of such institution has been held to be “workers”. Ibid at paras 117-125. However, without overruling the 1978 decision of the Court, the Supreme Court in 2005 challenged the expansive interpretation given to the definition of industry by the 1978 decision. See State of U.P. v. Jai Bir Singh, (2005) MANU 0360 (SC) at paras 35-42.

\(^{137}\) See Section 2(9) of the Employee’s State Insurance Act, 1948.


\(^{139}\) See section 1 (Short title, extent, commencement and application) and section 2 (12) (Definitions) of the Employee’s State Insurance Act, 1948. Prior to the Employees’ State Insurance (Amendment) Act, 2010, the statute was applicable to establishments employing ten or more workers if electricity was used, or twenty or more workers if electricity was not used (in the particular establishment).

\(^{140}\) See Barbara Harriss-White, “Globalization, the Financial Crisis and Petty Commodity Production in India’s Socially Regulated Informal Economy” in Bowles & Harriss eds, supra note 120, 131 at 134; also see Kalyan Sanyal & Rajesh Bhattacharya, “Beyond the Factory: Globalization, Informalization of Production and the Changing Locations of Labour” in Bowles & Harriss eds, supra note 120, 151 at 152, 158, 160.
(Conditions of Work and Livelihood Promotion) Bill 2005. Based on the Commission’s recommended Bill on social security, the Indian Parliament enacted the Unorganised Sector Social Security Act, 2008. Now, even though the Central Government and some of the state governments have executed social protection schemes for informal workers, a large number of informal workers remain excluded from the purview of such schemes because of inappropriate and inefficient implementation of the schemes. Social security schemes in India are mainly targeted towards the poor rather than workers. Even when social protection schemes are targeted towards workers, they do not provide any legal right to social security for informal workers, something that the Unorganised Sector Social Security Act, 2008 purportedly seeks to guarantee.

The 2008 Act is applicable to both waged and self-employed informal workers who work either in the informal sector or the formal sector. The Central Government is

---

144 See Harriss-White, “Socially Regulated Informal Economy”, supra note 140 at 145; also see Ramgopal Agarwala, Nagesh Kumar & Michelle Riboud, “Reforms, Labour Markets, and Social Security Policy in India: An Introduction” in Agarwala, Kumar & Riboud eds, ibid, 1 at 2-3, 5, 8; also see R. K. A. Subrahmanya & Renana Jhabvala, “Meeting Basic Needs: The Unorganised Sector and Social Security” in Jhabvala & Subrahmanya eds, The Unorganised Sector, ibid, 17 at 19; also see Swaminathan, ibid at 124.
145 Many of the social protection schemes are rendered ineffective because of the rampant corruption during the implementation of the schemes; see Wouter van Ginnekenn, “Social Protection for the Informal Sector in India” in Agarwala, Kumar & Riboud eds, ibid, 186 at 194.
147 This is because most of the existing social protection schemes do not emanate from legislative mandate.
148 In section 2(a) the Act defines an employer as “a person or an association of persons, who has engaged or employed an unorganized worker either directly or otherwise for remuneration.” According to section 2(n) a wage worker is “a person employed for remuneration in the unorganized sector, directly by an employer or through any contractor, irrespective of place of work, whether exclusively for one employer or for one or more employers, whether in cash or in kind, whether as a home-based worker, or as a temporary or casual worker, or as a migrant worker, or workers employed by households including domestic workers, with a monthly wage of an amount as may be notified by the Central Government and State Government, as the case may be.”
to formulate social protection schemes providing for “life and disability cover”, “health and maternity benefits”, “old age protection”, and “any other benefit” under the law.\textsuperscript{151} The state governments are mandated to provide for “provident fund”, “employment injury benefit”, “housing”, “educational schemes for children”, “skill upgradation of workers”, “funeral assistance”, and “old age homes” under the law.\textsuperscript{152} The law requires the composition of National and State Social Security Boards for Unorganised Workers (Chapter III, IV) in order to implement the legislative mandate.\textsuperscript{153} Upon a self-declaration, informal workers are registered under the law, and an identity card is issued against such registration.\textsuperscript{154} However, the law excludes informal workers who are receiving benefits under the Workmen’s Compensation Act, Industrial Disputes Act, Employees’ State Insurance Act, Employees’ Provident Fund and Miscellaneous Provisions Act, Maternity Benefit Act, and Payment of Gratuity Act from its purview.\textsuperscript{155} In July 2011 the Central Government approved Rupees 1000 Crore (10,000,000,000) as a national social security fund for the execution of the law.\textsuperscript{156}

Apart from the exclusion of informal workers who are covered under other social protection statutes, Kamala Sankaran points out that the 2008 Act excludes “unpaid family workers”, a vital sub-group of informal workers, from its purview.\textsuperscript{157} She is also sceptical as to whether the diverse range of self-employed informal workers (such as informal entrepreneurs, and own-account workers) would be covered under the 2008 Act, even though

Further in section 2(b) a \textit{home-based worker} is defined as “a person engaged in the production of goods or services for an employer in his or her home or other premises of his or her choice other than the workplace of the employer, for remuneration, irrespective of whether or not the employer provides the equipment, materials or other inputs.”\textsuperscript{147} As per section 2(k) a \textit{self-employed worker} is a “person who is not employed by an employer, but engages himself or herself in any occupation in the unorganized sector subject to a monthly earning of an amount as may be notified by the Central Government or the State Government from time to time or holds cultivable land subject to such ceiling as may be notified by the State Government.”\textsuperscript{148} Section 2(m) defines informal worker as “a home-based worker, self-employed worker or a wage worker in the unorganized sector and includes a worker in the organized sector who is not covered by any of the Acts [laws] mentioned in Schedule II to this Act …”\textsuperscript{149} According to section 2(l) informal sector “means an enterprise owned by individuals or self-employed workers and engaged in the 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.”\textsuperscript{150} Formal sector is an enterprise excluding an informal sector (section 2(f)).

\begin{itemize}
  \item Section 3(1) of the \textit{Unorganised Sector Social Security Act, 2008}.\textsuperscript{151}
  \item Section 3(4) of the \textit{Unorganised Sector Social Security Act, 2008}.\textsuperscript{152}
  \item See Chapter III and Chapter IV of the \textit{Unorganised Sector Social Security Act, 2008}. In particular, see section 5(8) and section 6(8) of the \textit{Unorganised Sector Social Security Act, 2008}.\textsuperscript{153}
  \item Section 10 of the \textit{Unorganised Sector Social Security Act, 2008}.\textsuperscript{154}
  \item See Section 2(m) and Schedule II of the \textit{Unorganised Sector Social Security Act, 2008}.\textsuperscript{155}
\end{itemize}
the law does not expressly exclude any category of self-employed informal workers from its purview.\footnote{158} Rohini Hensman argues that lumping informal employees and informal self-employed workers together in the same legislation is a recipe for the failure because the needs of informal waged workers and informal self-employed workers are different.\footnote{159} She also points out that in the absence of the more powerful formal sector unions’ interest in the legislation, “it has less chance of success”.\footnote{160} Even if successful, Hensman notes, the law will leave informal workers with much weaker rights than their formal counterparts.\footnote{161}

Sankaran points out that the labour law is inadequate for the promotion of workers’ interests in the Indian context.\footnote{162} She observes that Indian labour laws exclude informal workers on the basis of numerical thresholds, functional criteria, and wage ceiling criteria.\footnote{163} Poor enforcement of labour laws adds to the exclusion of informal workers in India.\footnote{164} According to Sankaran, a multiplicity of labour laws dealing with the same or similar concepts and terminologies differently\footnote{165} further complicates their application to informal workers.\footnote{166} This multiplicity of competing concepts means that informal workers may receive coverage under one statute (such as the Trade Unions Act), while being excluded from the purview of other statutes (such as the Factories Act).

The global research and advocacy network, Women in Informal Employment Globalizing and Organizing (WEIGO), has conducted law pilot projects on informal economic activities in India.\footnote{167} The law pilot project on waste-pickers shows how, in the absence of labour laws and appropriate policy,\footnote{168} waste-pickers’ organizations have innovatively leveraged the existing waste management law and policy to their best

\footnote{158} Ibid at 232.
\footnote{159} Hensman, supra note 120 at 198.
\footnote{160} Ibid.
\footnote{161} Ibid.
\footnote{164} Ibid; also see Sankaran, The need for an inclusive approach, supra note 162 at 7, 14-16.
\footnote{165} Such as the concepts of worker, employee, employer, establishment, industry, are defined differently under different statutes. See Sankaran, The need for an inclusive approach, ibid at 6.
\footnote{166} Sankaran, The need for an inclusive approach, ibid.
advantage.169 However, the law pilot project on domestic workers points towards the inadequacy of law and policy for the promotion of domestic workers’ interests.170 Even though some states such as Kerala and Karnataka have minimum wage laws for domestic workers,171 there are no central or state statutes regulating service conditions or social protection for domestic workers.172

Thus, existing labour and social protection laws in India have largely failed to protect informal workers’ interests, and promote their dignified life, which is a constitutional goal.173 Sankaran points out that despite the inadequacy of labour laws in the informal work context in India, some existing labour laws could prove to be vital in promoting informal workers’ interests. She notes that the Trade Unions Act, 1926, is one such statute.174 Citing the example of the Self Employed Women’s Association, Sankaran argues that the Trade Unions Act has evolved to include self-employment within the scope of the expression “worker” under the Act.175 In the absence of legal protection for informal workers’ constitutional rights, workers have undertaken to promote their (well-rounded) dignified life by themselves, through organizational initiatives. In this respect, informal workers have used the Trade Unions Act to their advantage. Informal workers have not only organized themselves under the Trade Unions Act, they have also organized themselves as co-operatives (under the Cooperative Societies Act, 1912), societies (under the Societies Registration Act, 1860), and trusts (under the Charitable and Religious Trusts Act, 1920), thereby innovatively using the existing legislative framework in the country. These workers’ organizations promote dignified life of workers by providing for comprehensive social, economic, political, and cultural resources that are guaranteed to workers under the Constitution of India. In the absence of adequate state initiatives for the promotion of the constitutional rights of informal workers,


171 See ibid at 3.

172 See ibid at 1-3, 9.

173 Francis Coralie, supra note 36.


175 Ibid at 227; also see Sankaran, “Protecting the Worker”, supra note 163 at 211.
the private membership-based and non-membership organizations seek to promote workers’ constitutional rights. In the next section of the chapter I discuss private initiatives aimed at realizing constitutional guarantees, which the workers derive through the formation of membership-based and non-membership organizations.


As I have shown in the previous sections, the Indian constitutional and legislative frameworks have failed to meet expectations of its large working population, with the result that there is growing inequality between formal and informal workers. In the absence of legislative protection for informal workers generally and self-employed workers in particular, informal workers have organized themselves into trade unions and co-operatives in order to attain a life of dignity. In this section of the chapter, I discuss the modus operandi of informal workers’ organizations in India. Informal workers organizations in India simultaneously perform multiple functions for the overall development of informal workers. On one hand, these organizations make provision for socio-economic resources for informal workers, on the other, they enable informal workers to effectively exercise their civil-political rights. Organizations of informal workers do not always take the legal form of trade unions – informal workers' organize themselves as co-operatives, registered societies, charitable trusts, and companies. In this section, I show that despite having different legal statuses, functionally informal workers organizations in India are strikingly similar. I discuss the nature and functioning of five self-employed informal workers organizations. These five organizations represent different legal statuses – two trade unions, one registered society, one charitable trust, and one co-operative – and are some of the biggest organization initiatives of informal workers.

For reasons mentioned earlier, my focus is on self-employed informal workers organizations. I conclude this section with a discussion of informal waste-pickers’ organization initiatives in India. I hope to show that by organizing themselves into trade-based associations waste-pickers have been able to achieve conditions that are capable of promoting their dignified life. My discussion of waste-pickers organization initiatives will set


177 See Vaidyanathan, ibid at 290; also see Kaveri Gill, Of Poverty and Plastic – Scavenging and Scrap Trading Entrepreneurs in India's Urban Informal Economy (New Delhi: Oxford University Press, 2010) at 98-100, 107.

178 See Austin, “The Expected and the Unintended”, supra note 176 at 337. Also see Vaidyanathan, ibid at 300.
the stage for my analysis of work-lives of waste-pickers in Kolkata, India, which I will present in chapter 7.

The Self Employed Women’s Association (SEWA) is an internationally renowned organization for women informal workers.\textsuperscript{179} SEWA is a trade union registered under the Trade Unions Act, 1926. Registered in 1972, SEWA is an organization of self-employed poor women workers.\textsuperscript{180} Based on the ideals of satya (truth), ahimsa (non-violence), sarvadharma (integration of all faiths), and khadi (self-reliance), SEWA aims to promote full employment for its members “whereby workers obtain work security, income security, food security, and social security (at least health care, child care and shelter).”\textsuperscript{181} In 2009, SEWA had 1,256,944 members across India, and 631,345 members in the state of Gujarat.

Despite its large membership SEWA’s registration as a trade union was not smooth. According to the Trade Unions Act 1926, “[t]rade [u]nion means any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen, or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more [t]rade [u]nions.”\textsuperscript{182} On the basis of this definition the Labour Department refused to register SEWA as a trade union, reasoning that since there were no recognized employers, workers of the union would have no one to bargain or struggle against.\textsuperscript{183} SEWA argued that a trade union does not need to be posed against employer(s) since the primary purpose of a trade union is the promotion of unity amongst workers.\textsuperscript{184}

The SEWA is a trade union that organizes self-employed women workers engaged in various economic activities.\textsuperscript{185} SEWA members pay an annual membership fee of 5 rupees;\textsuperscript{186}

\textsuperscript{179} See generally Self Employed Women’s Association (SEWA), at http://www.sewa.org/ (site visited 5 January 2012); also see Aditi Kapoor, “The SEWA way: Shaping another future for informal labour” (2007) 39 Futures 554 at 555.

\textsuperscript{180} See Self Employed Women's Association (SEWA), ibid; also see Kapoor, ibid at 560, for the different kinds of informal economic activities that SEWA members are engaged in.


\textsuperscript{182} Section 2 (h) of the \textit{Trade Unions Act 1926}.

\textsuperscript{183} See SEWA, “About Us”, supra note 181.

\textsuperscript{184} See Ela R. Bhat, \textit{We Are Poor but So Many: The Story of Self-Employed Women in India} (New York: Oxford University Press, 2006) at 9-10, 17-18; also see SEWA, “About Us”, ibid; also see Kapoor, supra note 179 at 561.

SEWA also accepts donations from a range of government and private donors, Indian and foreign. The union is governed by a two-tier representation model. SEWA members directly elect Trade Council representatives and members of the Executive Committee. However, the SEWA is different from the traditional concept of a trade union. SEWA’s functional emphasis is on an internally constructive role, rather than an external adversarial agenda. High levels of participation in all aspects of the union characterize SEWA membership – SEWA offers specialist skills such as legal advocacy, financial and vocational training, and, organization and policy orientation to its members. SEWA functions through the constitution of trade and service cooperatives and it is composed of around ninety trade and service cooperatives in India. The Swashrayi Mahila Sewa Sahakari Bank (SEW A Bank) is the largest cooperative of SEWA members with 93,000 savings accounts, and it is run by the members themselves. SEWA’s health care initiative is a combination of health education and curative care, which is also run by the members. SEWA’s child care initiatives are run by local cooperatives and organizations. SEWA initiated its integrated insurance scheme in 1992 with the help of the national insurance companies. SEWA also provides legal services including legal education and legal

assistance during litigation through its legal advisory centre.\textsuperscript{200} The SEWA Academy promotes its members’ education and capacity building.\textsuperscript{201} SEWA established the \textit{Mahila Housing SEWA Trust} in 1994 in order to improve “housing and infrastructural conditions” of women engaged in informal economic activities.\textsuperscript{202}

SEWA’s role is not limited to the services it provides to its members. SEWA has a strong external presence (both national and international) in the policy-development sphere.\textsuperscript{203} With the members’ full participation, SEWA lobbies the government on several issues.\textsuperscript{204} SEWA has lobbied the government on matters such as the inclusion of informal economy in official government statistics and policy; ascertainment of the contribution that informal economic activities make to the economy; promotion of legislative protection of informal economic activities; and promotion of institutional platforms for women’s participation in the public sphere.\textsuperscript{205} As a matter of strategy, SEWA also resorts to direct struggle and agitation against myriad forms of discrimination against women informal workers.\textsuperscript{206} Moreover, at a fundamental level, SEWA unionization provides for the much needed legitimation and recognition of informal workers and their activities.\textsuperscript{207} Based on her extensive study of SEWA unionization, Elizabeth Hill demonstrates that SEWA intervenes at three levels in the work-lives of informal workers.\textsuperscript{208} The three levels are the \textit{macro} or societal level, the \textit{meso} or industry (enterprise) level, and the \textit{micro} or individual worker (inter-personal) level.\textsuperscript{209}

From this summary, it is clear that SEWA organizes to provide a range of socio-economic services to its members.\textsuperscript{210} SEWA banking, insurance, health care, child care, and housing services are remarkable as social protection schemes. SEWA also promotes its members’ education, financial and vocational training, capacity building, and legal advocacy. Moreover, SEWA is active in direct action (such as street action and agitation) and lobbying

\begin{thebibliography}{99}
\bibitem{203} See Bhat, supra note 184 at 70, 213; also see Hill, \textit{Worker Identity}, supra note 181 at 139-142; also see Kapoor, supra note 179 at 564-566.
\bibitem{204} See Bhat, ibid at 70; also see Hill, ibid at 76-77, 139-142; also see Dave, Shah & Parikh, “The Self-Employed Women’s Association”, supra note 194 at 32.
\bibitem{205} Hill, ibid at 76-77; also see generally Bhat, ibid.
\bibitem{206} See Bhat, ibid at 70; also see generally Hill, ibid at 76-77, 89-93.
\bibitem{207} Hill, ibid at 76-83.
\bibitem{208} Ibid at 58-72, 76-94.
\bibitem{209} Ibid at 59-72, 77.
\bibitem{210} Kapoor, supra note 179 at 556-557, 559.
\end{thebibliography}
nationally and internationally. In effect, SEWA aims at socio-economic-political justice for informal women workers, consistent with the foundational principles of the Indian Constitution.

Even though SEWA’s socio-economic program initiatives are the most visible ones, Hill argues that SEWA performs a significantly more important function. By organizing the most vulnerable, marginalized, and impoverished women workers, SEWA addresses their inherent insecurity, hesitation, fear, exclusion, anxiety, and oppression. Such a role for SEWA is acknowledged by a SEWA member:

Earlier if anyone [police and other officials] spoke to me or tried to fight with me I was scared – I didn’t know what to do or what to say, but now I know. I can talk to the police, I can talk to the officers. The change has definitely come in me. I am not scared of anybody now.

According to Hill, SEWA’s collective action has a positive psychological impact on its members, which is central for multidimensional human development. SEWA membership is a source of recognition and respect for women informal workers. Hill shows how psychological well-being becomes a source of overall human development of women informal workers, thanks to their recognition as workers and respect emanating from economic independence.

Hill documents the confidence, self-respect, poise, self-assurance, sense of public status, identity, and esteem amongst members of SEWA. She makes a connection between these positive psychological traits and SEWA members’ agency or reflexive human action. Agency, according to Hill, is important for informal workers because agency enables workers to formulate strategies to effectively bargain “relations of production, social security and political participation” [footnote omitted]. Agency is, therefore, a primary factor in the socio-economic transformation of informal workers. In this sense, SEWA is not only responsible for socio-economic provisioning for informal workers, it also promotes psychological well-being of workers and enable them to act as independent agents in improving their lives and livelihoods.

211 Ibid at 561; also see Dave, Shah & Parikh, “The Self-Employed Women’s Association”, supra note 194 at 32.
212 Hill, Worker Identity, supra note 181 at 98.
213 Saibibi, bidi roller, as cited in Hill, ibid.
214 Hill, ibid at 95.
215 Ibid at 96.
216 Ibid at 95-99, 104-113.
217 Ibid at 104-112.
218 Ibid at 107-112, 115-117.
219 Ibid at 117.
220 Ibid at 119-125.

32
While SEWA is a trade union of self-employed informal women workers engaged in a diverse range of activities, the *Kagad Kach Patra Kashtakari Panchayat* (KKPKP) is a trade union of waste-pickers in Pune, Maharashtra. KKPKP registered itself as a trade union in 1993. Unlike SEWA, KKPKP admits both men and women members. A membership-based organization, annual fee paying KKPKP members elect their Representative Council for the governance of the union. While the Council membership is mainly drawn from waste-picker members, there are a few members who do not share the socio-economic background of waste-pickers, but are involved in the governance of the union. One of the principal purposes of the union is to promote waste-picking as productive, valuable, and meaningful work in order to ensure that waste-pickers are recognized and respected as workers. The KKPKP works on the same principles as SEWA. While on one hand the KKPKP organizes to provide for socio-economic benefits to its members, on the other, it mobilizes its members for direct political action and lobbying. In order to promote recognition of waste-pickers, KKPKP persuaded the municipalities of Pune and Pimpri Chinchwad to endorse identity cards for its members. Identity cards are not only important for the recognition of workers; the cards also secure access to waste and public services (including medical services) for waste-pickers.

The KKPKP has institutionalized socio-economic promotion programs for its members. The union has instituted credit co-operatives, group insurance, and a co-operative store for its members. The KKPKP has also promoted self-help groups for its members. Members receive loans under reasonable interest rates from the credit co-operative registered by the KKPKP. In 1995 the KKPKP established a co-operative shop for waste trade run by its members. Twenty to thirty members are engaged in the shop that sells waste for

---

224 See ibid at 5, 7-8.
225 See ibid at 7-8.
227 Antony, ibid at 63.
228 Ibid at 63, 66.
229 Chikarmane & Narayan, “Organising”, supra note 223 at 37-40; also see ibid at 63.
230 Antony, ibid at 63.
231 Ibid.
recycling. This co-operative enterprise (i.e., the ‘waste shop’) arranges for provision of paid leave, provident funds, bonuses, and other social security benefits to the workers engaged in the shop. Additionally, in collaboration with the Life Insurance Corporation in India the KKPKP has arranged for a contributory group insurance program, whereby its members are insured against disability, accidental death, and natural death. All credit takers are automatically insured under the insurance scheme.

The KKPKP undertakes educational and literacy programs. While adult members of the union pursue functional literacy (so that they can sign and maintain their accounts) and vocational training, non-formal educational initiatives are also undertaken for the children of the waste-pickers. The union undertakes awareness initiatives on issues such as child labour, discrimination of girl-child, domestic violence, child marriage etc.; the union also pressures its members to refrain from child marriage. The KKPKP also organizes direct action and protest marches against the government. From 1999 onwards, the KKPKP has been organizing annual protest rallies with its members. The KKPKP has been lobbying the government for the incorporation of waste-pickers under the scope of the Maharashtra Hamal Mathadi and Unprotected Manual Workers (Regulation of Employment and Welfare) Act. Although the union has so far been unsuccessful in its attempt to include waste-pickers under the purview of that law, the union has kept up pressure on the government by organizing annual rallies, networking with other organizations, and publishing a newspaper. As a testimony to the KKPKP’s growing influence, the union is represented in a number of decision making bodies such as the Collector’s Child Labour Committee, Apex Committee on Sanitation (Pune Municipal Corporation), Advisory Committee on Domestic Workers Act, and others.

The Sramajibee Mahila Samiti (SMS) is a registered society of women agricultural workers in West Bengal. According to 2004-2005 data, 98.9% of workers in the

---

232 Ibid.
233 Ibid at 63-64.
234 Ibid at 64.
235 Ibid at 63-64, 66.
236 Ibid at 62-63.
237 Ibid at 63.
238 Ibid.
239 Ibid at 65.
240 Ibid.
241 Ibid at 22, 32, 75; The Sramajibee Mahila Samiti (SMS) is a Society registered under the Societies Registration Act.
242 Antony, ibid at 22.
agricultural sector in India are informal workers.\textsuperscript{243} A leftist ideology underlies the SMS’s functioning; class and gender based political action is more important than socio-economic provisioning in the SMS’s day-to-day functioning.\textsuperscript{244} In 1990, the SMS was created out of the \textit{Paschim Banga Khet Majdoor Samity} (PBKMS) as a separate organization for women workers.\textsuperscript{245} Women agricultural workers can become members of the SMS upon the payment of a membership fee of two rupees per annum; SMS generates its own fund through village-level contributions.\textsuperscript{246} The organization functions through six elected committees at different levels.\textsuperscript{247} Through direct political action the SMS has taken up issues such as women’s employment, government corruption, and minimum wages.\textsuperscript{248} The SMS has successfully organized rallies, agitations, and picketing in order to pressure the government of West Bengal to implement government welfare schemes in a fair and transparent manner.\textsuperscript{249} The SMS has successfully lobbied the government to implement an employment generation scheme for agricultural workers during the non-agricultural season in southern districts of West Bengal.\textsuperscript{250} The SMS has also initiated an open forum bringing together all stakeholders involved in the development of local areas in the four districts of the SMS’s operation.\textsuperscript{251} The SMS mobilizes local people to participate in such forums along with representatives of political parties, and civil society.\textsuperscript{252}

Even though predominantly political, the SMS’s activities are not limited to direct political mobilization. The SMS undertakes a range of socio-economic programs. The voluntary organization \textit{Jan Sangati Kendra} (JSK) that promoted PBKMS (SMS’s parent organization) has established a dairy farm, a training centre, residential villas, a mess, and a child care facility.\textsuperscript{253} The SMS separately owns land where full-time workers live in a community.\textsuperscript{254} SMS members have access to the JSK facilities. Members of the community draw from the community as per their need.\textsuperscript{255} Community living is devised to ensure stakeholder participation in management (workers’ participation in management is a

\textsuperscript{243} NCEUS, \textit{Definitional and Statistical Issues}, supra note 100 at 44.
\textsuperscript{244} Antony, supra note 222 at 22.
\textsuperscript{245} Ibid at 75.
\textsuperscript{246} Ibid at 22.
\textsuperscript{247} Ibid.
\textsuperscript{248} Ibid at 75, 78-80.
\textsuperscript{249} Ibid at 77.
\textsuperscript{250} Ibid at 77-78.
\textsuperscript{251} Ibid at 78.
\textsuperscript{252} Ibid.
\textsuperscript{253} Ibid at 76.
\textsuperscript{254} Ibid.
\textsuperscript{255} Ibid.
constitutional right). While the JSK provides for food, education (of children), and health needs, the SMS organizes training of new members, imparts social education, and promotes self-help groups. The SMS has also promoted village level arbitration by organizing salishi sessions in matters such as divorce, compensation etc. The SMS undertakes development works such as road repair by successfully establishing relations with the government. The SMS is part of a network of forty women’s organizations named Maitri.

Quite contrary to the SMS’s orientation, the Annapurna Mahila Mandal (AMM) is more concerned with informal workers’ socio-economic betterment, rather than their political empowerment. The AMM is a charitable trust and society registered in Mumbai. The AMM has more than 200,000 members in the state of Maharashtra. AMM membership is not subscription-based membership – membership is granted while workers avail credit from the organization. The AMM members engage in a variety of informal economic activities such as cooking and serving food; selling fruits, vegetables, fish, flowers, bangles, and grain; stitching; and beading. The AMM’s principal activity is their micro-credit program for these informal workers. However, apart from the micro-credit program, the AMM undertakes a range of socio-economic initiatives for informal women workers. The AMM imparts leadership and vocational training to its members; the society also sensitizes its members on matters such as health, sanitation, family planning, domestic violence, child marriage, access to electricity, access to water, and access to gas. The society (i.e., AMM) also educates and trains its members’ daughters, and encourages them to join the society.

The society has also established food processing units such as a catering unit and a fast-food counter, and a department store, and it engages women workers in these enterprises. The department store sells products prepared by the AMM members in their homes. Apart from income generating programs for its members, the AMM houses destitute women, such as victims of domestic violence and physically and mentally disabled

---

256 Ibid; also see Article 43A, Part IV of the Constitution of India.
257 Antony, ibid at 76-77.
258 Ibid at 78-79.
259 Ibid at 79.
260 Ibid at 91.
261 Ibid at 92.
262 Ibid at 27.
263 Ibid at 92.
264 Ibid at 28, 91-93.
265 Ibid at 92-95.
266 Ibid at 93.
267 Ibid at 94.
268 Ibid.
persons, in its rehabilitation centre at Vashi Nagar in Navi Mumbai. 269 The society also provides medical and legal aid to its members, and mediates in domestic disputes. 270 The AMM runs a crèche for its members’ children; it also bears the cost for their education and sometimes arranges their marriages. 271 Apart from running a hostel for working women with government collaboration, the AMM has established two co-operative housing societies in Mumbai. 272 The Secretary of the AMM, Prema Purao is an influential organizer – she represents the AMM in various government and non-government bodies. 273

A final form of organizing of self-employed informal workers that I want to discuss is a co-operative society, the Sakti Mahila Vikas Swavlambi Co-operative Society (SMVSS), registered in the state of Bihar. 274 The SMVSS was established by an NGO called the Sakti Mahila Vikas Swavlambi Sarkari Samiti (SMVSSS). 275 Members of the co-operative society are engaged in creative activities such as traditional Maithili painting, appliqué work, manufacturing of paper toys, and carpet manufacturing. 276 The SMVSS has established fruitful relations with the government agency Housing and Urban Development Corporation (HUDCO). 277 HUDCO promotes the work done by the members of the cooperative by providing them loans, offering training to them, and marketing their work. 278

Even though the SMVSS’s initiatives are limited to the economic sphere, the parent NGO (i.e., the SMVSSS) undertakes a range of social empowerment strategies. 279 By collaborating with the government, the NGO avails itself of government welfare schemes for the cooperative members; it undertakes awareness programs on health and nutrition, specifically focused on children; it conducts awareness drives to promote girl-child education and prevent child marriage. 280 The SMVSS networks with government agencies and NGOs in order to enhance its visibility and strengthen its voice. 281

I have provided a brief overview of five organizational initiatives amongst self-employed informal workers. Most of these organizations are organizations of women informal workers. In selecting organizational initiatives of informal workers, I wanted to
identify the range of legal status of these organizations. Amongst the abovementioned organizations, while SEWA and KKPKP are trade unions, SMS is a society, AMM is a charitable trust, and SMVSS is a co-operative. Thus, there is a great diversity of legal status amongst the different organizations of informal workers. However, despite this diversity within the informal workers’ organizations, functionally the organizations are strikingly similar. The organizations undertake a range of socio-economic-political activities with the active involvement of their members. Many of the programs undertaken by these organizations are different from programs traditionally associated with trade unions.

Traditionally, trade unions have primarily undertaken political mobilization through direct political action. The principal purpose of trade unions has been to redress the power imbalance between workers and employer(s). Such balancing of (bargaining) power is the result of trade union activity mainly in the formal industry-based framework characterized by employment relationships. Employment relationships are, however, conspicuous by their absence in informal economic activities in India. Waged workers receiving wages from an employer constitute only a small section of informal workers. Moreover, there exists high mobility of informal workers between one activity and another. Accordingly, organizations of informal workers cannot function in the same manner as traditional trade unions do with a reasonably fixed number of members employed in the same job for a long period of time. Therefore, economic support and protection become central to informal workers’ organizations.

 Organizations of self-employed informal workers in India provide comprehensive services to their members. Amongst economic services, informal self-employed workers’ organizations provide credit opportunities to their members, which have been acknowledged as central in the development of informal self-employed workers in India. By organizing themselves into trade or service-specific cooperatives, informal workers bargain with the government and other private agencies in order to attain security and continuity in their respective works. Cooperative business and financial entities ensure that cooperative members have uninterrupted access to resources and places that are essential for the performance of their work. Another important (economic) security-enhancing factor is group insurance for informal workers that the membership-based informal workers’ organizations

\[282\] Kapoor, supra note 179 at 561-565.
\[283\] Ibid at 561-562.
\[284\] NCEUS, Conditions of Work, supra note 105 at 54-55, 62-63, 66, 68, 74, 135-139; also see generally Chikarmane & Narayan, “Organising”, supra note 223; also see Jhabvala, “Participatory Approaches”, supra note 144 at 35; also see Subrahmany, “Support”, supra note 142 at 59-62.
promote. At a minimum, such insurance schemes cover disability and death. These organizations also provide for health care, child care, and sometimes low-cost housing services for their members. Some organizations provide legal services to their members.

Amongst social empowerment services, informal workers’ organizations attach central importance to awareness promotion initiatives. Members of these organizations are not only made aware of the government and non-government support programs that are available to them, they are also sensitized about the significance of their work and its value to society. Most informal workers suffer from an inferiority complex and undervalue their contribution to society. They do not consider their activity as valuable work.\(^{285}\) Therefore, one of the primary responsibilities of informal workers’ organizations is to inculcate amongst members a sense of dignity and relevance to the society.\(^{286}\) Members are also sensitized on social issues such as child labour, domestic violence, child marriage etc. Additionally, organizations impart vocational training to their members. The organizations undertake sustained educational and training drives amongst their members’ children. Informal workers’ organizations also impart health education, and legal awareness amongst their members.

Direct political actions such as rallies, picketing, demonstrations, and strikes are also strategic to some of the informal workers’ organizations. Some of the informal workers’ organizations have also been successful in lobbying local administrative bodies and governments to secure improvements in the lives of informal workers. There are instances where governments, under pressure from informal workers’ organizations, have enacted beneficial legislation for informal workers. Informal workers’ organizations in India, therefore, organize workers in furtherance of political participation, social empowerment, and economic security. By providing for a range of comprehensive resources, and services, these organizations promote informal workers’ dignified life.

In Chapter 7, based on a fieldwork in Kolkata (Calcutta), India, I report working conditions and living standards of the specific group of self-employed informal waste-pickers, who do not belong to any membership-based organization. Even though waste-pickers belong to membership-based organizations in Indian cities like Pune, Ahmedabad, and Delhi, they are not organized in Kolkata. Waste-pickers’ organizations in these other cities have been able to secure better working conditions and living standards for informal waste-pickers. Accordingly, in the next section, I briefly discuss some of the initiatives undertaken by waste-pickers’ organizations in different parts of India. On the one hand, the

\(^{286}\) Ibid at 103-107, 109, 116-117, 119.
next section will demonstrate how organization initiative can improve working and living conditions of specific groups of informal workers, on the other, it will also help me contextualize my case study of waste-pickers in Kolkata.

4.1. Waste-picker activism in India

In this section of the chapter, I document organization initiative of waste-pickers by analyzing four organizations promoting waste-pickers’ interests. I have already introduced SEWA and KKPKP, two of the four organizations that I will discuss in this section. The other two organizations are CHINTAN Environmental Research and Action Group (Chintan) and Nidan, registered societies organizing waste-pickers. In this section, my purpose is to show how organizations of waste-pickers (whether trade unions or not) are making improvements in the lives of waste-pickers by intervening in their work arrangements, their relationship with the society, and their interactions with government(s) at different levels (local, provincial, federal). I propose to link this discussion on waste-picker activism and organization initiative in India to the report from my fieldwork in Kolkata in chapter 7.

The KKPKP is a remarkable instance of waste-pickers’ activism in India. The KKPKP has been able to significantly improve working and living conditions for its members through its multi-dimensional initiatives.287 The KKPKP campaigned for segregation of waste at its source for recycling purposes; got identity cards issued to its members;288 arranged for credit facilities and education; and advocated child labour issues.289 The union successfully lobbied with the Pune Municipality and the Pimpri Chinchwad Municipality to recognize and register waste-pickers, and endorse their identity cards.290 Such official recognition and registration helped promote unhindered collection of waste by waste-pickers in the respective cities.291 Pune Municipality became the first municipality in India to institutionalize a medical insurance scheme for registered waste-pickers.292 The KKPKP has also been able to influence policy on solid waste management of the country by contributing to an expert committee on solid waste management constituted by the Supreme Court of India.293

The KKPKP’s door-to-door collection mechanism is a remarkable achievement where municipal authorities and municipal residents are made participants in the promotion of

---

289 Ibid at 8.
290 Ibid at 16.
291 Ibid.
292 Ibid at 17.
293 Ibid at 18.
waste-pickers’ livelihood. With the endorsement of the Pune Municipal Corporation, the KKPKP has arranged door-to-door waste collection by its members from residential and commercial complexes.\(^{294}\) The added benefit of such an arrangement is that waste-pickers receive payment from the apartment complexes in addition to the money they earn by selling their collect. The KKPKP initiative is extraordinary in this regard: although some NGOs in some parts of the country have door-to-door collection arrangements, they do not involve waste-pickers in such activities.\(^{295}\) The KKPKP also mobilizes its members around political agendas such as legislative and social protection of waste-pickers.\(^{296}\)

During its early years of operation, the SEWA contracted with textile mills in Ahmedabad city so as to enable the union’s waste-picker members to undertake mill-to-mill collection of paper waste.\(^{297}\) Over the years, the mill-to-mill collection of waste fell short of the increasing demand of the SEWA waste-picker members for productive work.\(^{298}\) The SEWA then established waste-pickers’ cooperatives that diversified the waste recycling business into waste-collection, waste-segregation, and sale; waste-collection negotiation, and contract; weaving, and waste-recycling.\(^{299}\) The SEWA engaged their waste-picker members into these cooperatives.\(^{300}\) The SEWA currently operates three cooperatives of waste-picker members.\(^{301}\) The SEWA cooperatives have contracted with the Vejalpur Nagarpali (Vejalpur Municipality) to provide door-to-door waste collection services to 46,842 households.\(^{302}\) The SEWA has also successfully mobilized waste-pickers in order to secure government-issued identity cards, medical assistance, skills training, tool kits, and financial benefits for its members.\(^{303}\)

Similarly an NGO named Chintan,\(^{304}\) based in Delhi, has arranged for door-to-door waste collection by waste-pickers in Delhi.\(^{305}\) Chintan has collaborated with municipal authorities in order to contract waste-picking services on behalf of waste-pickers.\(^{306}\) Another

\(^{294}\) Ibid at 18-20.
\(^{295}\) Ibid at 20.
\(^{296}\) Ibid at 23, 42-43.
\(^{298}\) Ibid.
\(^{299}\) Ibid at 29-30.
\(^{300}\) Ibid.
\(^{301}\) Ibid at 30.
\(^{302}\) Ibid.
\(^{303}\) Ibid at 30-32.
\(^{304}\) Chintan is a registered society under the Societies Registration Act, 1860.
\(^{306}\) See “Scavengers to Managers”, ibid.
NGO, named Nidan, which is itself a registered society, established and registered a
company, the **NIDAN Swachdhara Private Limited Company** of waste-pickers.\(^{307}\) Run by
waste-pickers themselves, the Company has successfully contracted the delivery of door-to-
door waste collection services to 68,000 households in three municipalities.\(^{308}\) The
Company’s contracts with three municipalities also include provisions for weekly leave,
health check-ups, and health, accidental and death insurance for waste-pickers.\(^{309}\)

Both the membership-based organizations (such as the KKPKP and the SEWA), and
the NGOs (such as the Chintan and the Nidan) adopt a two-pronged approach in promoting
dignified life of waste-pickers in India. At one level, these organizations negotiate with local
administration (i.e. municipalities) in furtherance of the recognition of waste-pickers and
facilitation of waste-collection.\(^{310}\) At another level, these organizations provide for social
security, and skills training for waste-pickers either by themselves or in collaboration with the
government. Formal integration of waste-pickers into the government waste-management
system follows different patterns.\(^{311}\) In Delhi, through an understanding between Chintan and
the New Delhi Municipal Council (NDMC), waste-pickers provide door-to-door waste-
collection services.\(^{312}\) Waste-pickers are directly paid by the households for their services.\(^{313}\)
The NDMC supports the waste-collection by providing for segregation spaces, and vehicles
for waste-collection and removal.\(^{314}\)

In Pune, under pressure from the KKPKP, the Pune Municipal Corporation has
abandoned the contract model of waste-disposal, and has instead left door-to-door waste
collection to the waste-pickers’ cooperative.\(^{315}\) The waste-pickers’ cooperative in Pune is an
autonomous body working independently, and is accountable to the households directly.\(^{316}\)
Neither the municipality nor the KKPKP has any ownership over the cooperative and its
functioning.\(^{317}\) The municipality has also determined the rate of pay, to be directly paid by

---

\(^{307}\) See Nidan, “Activities, Empowering the Informal Workers and Children”, available at
http://www.nidan.in/otherpage.php?page_code_no=3 (site visited 16 January 2012); See Arbind Singh & Rakesh
Saran, “NIDAN Swachdhara Private Ltd. Forming a Company with Waste Pickers in India” in Samson ed, supra
note 194, 17 at 18.

\(^{308}\) Singh & Saran, “NIDAN”, ibid at 18.

\(^{309}\) Ibid at 18-19.

\(^{310}\) See generally “Municipal and Organizational Arrangements”, supra note 169.

\(^{311}\) See Melanie Samson, “Chapter 4: Formal Integration into Municipal Waste Management Systems” in
Samson ed, supra note 194, 50; also see Melanie Samson, “Chapter 5: Using the Law” in Samson ed, ibid, 60 at
72-74.

\(^{312}\) Samson, “Chapter 4: Formal Integration” ibid at 50-51.

\(^{313}\) Ibid at 50.

\(^{314}\) Ibid at 52.

\(^{315}\) Ibid at 50, 57-59; Samson, “Chapter 5: Using the Law”, supra note 311 at 72.

\(^{316}\) Samson, “Chapter 4: Formal Integration” ibid at 58-59.

\(^{317}\) Ibid.
households to the cooperative for the services rendered. However, for door-to-door waste-collection service provided in slums, the municipality takes the responsibility for payment to the cooperative. The municipality has also provided segregation space, and other support to the cooperative. While the cooperative is supported by the municipality, it is controlled by its members.

In 2005 a group of eight waste-pickers’ organizations from the states of Bihar, Delhi, Gujarat, Karnataka, Madhya Pradesh, and Maharashtra forged an alliance called SWACHH. The KKPKP functions as the secretariat for the alliance. SWACHH currently has twenty-four organizations working with issues involving waste-pickers. The alliance developed a national policy on solid waste management, and proposes to lobby with government(s) in order to implement their policy proposal. Agendas such as gender discrimination, door-to-door waste collection, mode of waste-pickers’ organization, organizational assistance, and networking in furtherance of common purposes are central to the alliance’s mandate. Thus, waste-pickers are increasingly becoming a visible group amongst informal workers in India. Both membership-based and NGO-based waste-picker movements are spreading around the country. However, despite this activism and visibility of waste-pickers in some pockets in India, a large section of waste-pickers around the country live at the margins of society. Waste-pickers in the city of Kolkata are one such group (which I will document in chapter 7). Organizing waste-pickers is not an easy task, and such effort is fraught with significant problems. However, the above examples show that some organizations are facilitating waste-pickers’ access to a range of resources, from credit and insurance to municipal contracts. This is true, not only for waste-pickers, but also for other informal workers who are part of an organization.

Thus, as Hill notes, informal workers’ organizations have multidimensional impact on workers. These organizations do not only provide socio-economic resources, they are also responsible for the development of agency amongst informal workers. Agency emanating

318 Ibid.
319 Ibid.
320 Ibid at 59.
321 Ibid at 50.
323 Ibid.
324 Ibid.
325 Ibid.
326 Ibid at 38-39.
327 Gill, Of Poverty and Plastic, supra note 177 at 25.
328 Hill, Worker Identity, supra note 181 at 117-125.
from the moral condition of psychological well-being, along with socio-economic provisions, enables informal workers to lead a life of dignity, a celebrated constitutional goal in India. A dignified life is a fundamental right under the Constitution of India. The right to life under the Constitution of India does not mean mere animal existence, it guarantees a dignified life with freedom and entitlements. Although the state has failed to secure a dignified life for the majority of the Indian working class who toil in informal economic activities, this void is being increasingly filled by trade unions and organizations such as SEWA, KKPKP, SMS, AMM, Chintan. These organizations are attempting to secure institutional guarantees for the exercise of fundamental rights, together with the well being contemplated under the directive principles of the Constitution in order to promote dignified life of informal workers in India.

The Supreme Court of India reflected that a dignified life requires resources (or factors) such as adequate nutrition, clothing, shelter, education, socialization, socio-political participation, freedom of movement, economic development etc. By providing for these comprehensive resources informal workers' organizations are seeking to promote dignified life of informal workers. However, development economist, and philosopher Amartya Sen argues that these resources alone cannot ensure human development, and therefore dignified life. The value and importance of resources, Sen notes, lies on what resources “can do for people.” Goods, and services are important for people only when they use such goods and services in furtherance of their development. Accordingly, people not only need to exercise command over resources, they also need the ability to use such resources for their

---

331 Ibid.
332 Ibid.
333 Ibid.
334 Francis Coralie, supra note 36.
336 Ibid at 510.
337 Ibid at 30-31, 495-504.
338 Ibid at 30-31, 516.
development. According to Sen, human development signifies freedom of people to choose the kind of life that they value. The following section briefly looks at the idea of human development as freedom in the context of the present chapter.

5. A Dignified Life for Informal Workers through Human Development

In this section, I establish a conceptual link between the ideas of dignified life as propounded by the Supreme Court of India and human development as conceptualized by Sen. The Supreme Court of India envisaged a dignified life as emanating from a diverse range of civil-political rights and socio-economic resources. Through its concept of dignified life, the Supreme Court sought to de-prioritize civil-political rights over socio-economic resources and strike a balance between these two generations of rights. Sen develops this agenda further. He argues that human development cannot be ensured only through the availability of rights and provision for resources. Sen’s focus is on the actual outcome of rights and resources on individual human beings. Based on Sen’s conceptualization, I briefly outline how human development can be the determining factor for a dignified life.

Sen notes that human development ensues through the combination of an individual’s command over resources and the individual’s ability to beneficially use such resources. The ability to convert resources into human development depends on a number of factors such as “age, sex, health, social relations, class background, education, ideology, and a variety of other interrelated factors.” Informal workers’ organizations in India are seeking to provide for both of these conditions in furtherance of promoting workers’ development. These organizations provide for resources such as loans, raw materials, insurance, provision for medical services, provision for child care services, provision for legal services, low-cost housing etc. The organizations also promote their members’ ability to convert resources into human development. Initiatives such as imparting child and adult education, vocational training, social awareness programs (e.g., on child labour or domestic violence), health education, legal awareness etc. develop the members’ individual and collective character. Political agendas pursued by these organizations (through rallies, demonstrations etc.) also inculcate individual and collective identity amongst the members. Direct political action undertaken by these organizations helps overcome their members’ fear, insecurity and

---

341 See Sen, Resources, supra note 335 at 316-317, 510-511, 516; also see generally Amartya Sen, Commodities and Capabilities (Amsterdam & New York: North Holland, 1985).
342 Sen, Resources, ibid at 511.
hesitation; members develop a sense of right; they bargain with the government and employers; they make demands of the state. Political action, therefore, promotes psychological development of members, which contributes to the overall personality development of members.

Thus, informal workers’ organizations in India are instrumental in promoting individual abilities that can convert resources into human development. These organizations also make resources (such as credit or housing services) available to their members. What follows is that informal workers’ organizations in India facilitate social-economic-political conditions in which their members convert their command over resources into their development in furtherance of a dignified life.

The Constitution of India envisages socio-economic-political conditions in which human development and dignified life can flourish. However, the constitution enumerates factors providing for such socio-economic-political conditions in terms of rights and directives. To review, Part III of the Constitution enumerates fundamental rights such as right to life and personal liberty, right to equality, right to association (organization), prohibition of child and forced labour, right to education etc. Part IV of the Constitution provides for directives (to the federal and state governments) such as right to work and public assistance, just and humane conditions of work, guarantee of living wage to workers, maternity relief, provision for public health, workers’ participation in management etc. Even though fundamental in the governance of the country, directives of the constitution are not enforceable by the judiciary, except to a limited degree through the interpretation of Part III rights. Therefore, while civil and political rights enumerated in Part III of the Constitution are guaranteed, social and economic rights enumerated in Part IV of the Constitution are not. This constitutional hierarchy is reflected in the absence of socio-economic provisioning for informal workers in India. Governments cannot be taken to court even if they are unable to provide living wages or humane conditions of work to informal workers.

The problem is that this hierarchy of rights misses the central point: human development needs both resources as well as appropriate personal characteristics. The Constitution of India promotes personal characteristics to a great extent in the sense that civil and political rights are enforceable in the court. The Constitution, however, fails to guarantee resources in the sense that economic rights cannot be enforced in the court of law. A human development-based understanding of factors responsible for appropriate socio-economic-

---

343 Article 37 of the Constitution of India.
political conditions provides for a better analytical and strategic framework of informal workers’ development. A human development-based analytical framework makes it evident that both resources and appropriate personal characteristics are central in human development. Provision for only resources or only conversion factors cannot promote the development of marginalized and vulnerable informal workers in India in any meaningful sense. A human development-based understanding, in the sense Sen conceptualizes it, shows that there cannot be any prioritization between fundamental rights and directive principles in the development of informal workers – such prioritization would only stunt the development of informal workers. Appreciating this multi-dimensional framework for human development, informal workers’ organizations have devised their multi-dimensional agenda.

Moreover, whatever economic and social security guarantees are envisaged under the constitution, such guarantees are subject to the economic capacity of the governments.344 Such conditionality attached to social and economic protection makes it difficult to question the governments’ – federal and state – inability to improve conditions of informal workers. Informal workers’ organizations fill this void by strategically building a multi-dimensional framework of services (and resources) around their constituencies. Thus, private entities in the nature of trade union, cooperative, trust, or society are in effect providing for constitutional guarantees to informal workers in India. Such guarantees are important, however, also for the survival and continuous relevance of membership-based informal workers’ organizations.

If informal workers’ organizations lobby the government, and launch rallies, demonstrations, and picketing, and if the government still refuses to grant any tangible benefits to informal workers, then it would be difficult to maintain the momentum of any membership-based informal workers’ organization. If membership-based organizations are unable to secure better working conditions and living standards for their members, there is an imminent possibility that members would soon become disillusioned with their organizations. In view of these practical and strategic considerations, informal workers’ organizations directly provide a range of socio-economic resources and services to its members.

In this chapter, I have primarily discussed self-employed informal workers’ organizations. Functionally self-employed informal workers’ organizations are different from formal trade unions. They are also functionally different from informal waged-workers’ organizations.

344 Article 41 of the Constitution of India states: “The State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want.”
organizations. Informal waged-workers’ organizations are sometimes part of the already existing trade unions. Functionally, informal waged-workers’ unions are similar to traditional trade unions. A distinctive sub-set of informal workers’ organizations is composed of informal self-employed workers’ organizations. Unfortunately, even though a significant number of informal workers are engaged in self-employment, their representative organizations are very few in number. The majority of self-employed informal workers in India are still unrepresented, and do not belong to any membership-based organization.

6. Conclusion

In this chapter, I documented the range of initiatives undertaken by different membership-based and non-membership organizations for the development of informal workers in India. I located the range of socio-economic-political initiatives of these organizations in the backdrop of the Constitutional and legislative guarantees for workers in India. While the Constitution of India provides for comprehensive civil-political and social-economic guarantees, most of these guarantees (especially on the social-economic front) remain unavailable to informal workers. It is only recently that informal workers have begun to receive benefits of social protection statutes. The large scale exclusion of informal workers from government policy making contributes to the marginalization of informal workers. Private entities (such as unions, co-operatives etc.) seek to fill this void in government policy-making. While these entities are doing a commendable work, in view of the enormous numbers of informal workers in India, a lot still needs to be done. I also introduced a concept of human development through which a dignified life for informal workers could be realized. In the next chapter I will elaborate upon the idea of human development as freedom of people to choose the kind of life that they value.