

## NALSA (Legal Services to the Workers in the Unorganized Sector) Scheme, 2015

### 1. Background

- 1.1 One of the major characteristics of the Indian economy is the contribution of a vast majority of labour employed in the unorganised sector. The economic survey of India (2007-2008) and National Sample Survey unorganised sector (2009-2010) have estimated the employment in this sector at about 93-94% of the total workforce. Its contribution to the GDP is estimated to be more than 50%.
- 1.2 Majority of unorganised workers (about 52 per cent) are employed in agriculture. Other major categories include construction workers, workers in small enterprises, workers employed through contractors even in large enterprises, artisans/craftsman, home based workers, workers depending upon forest produce, fisheries, self-employed workers like rickshaw pullers, auto drivers, coolies etc.
- 1.3 The distinguishing feature of the unorganised sector is non-applicability of most of the labour laws and other regulations providing for decent working conditions, job security and social security to the workers. The unorganised workers lack collective bargaining power and are therefore susceptible to excessive exploitation. They work under poor working conditions and receive far lower wages/remuneration as compared to the organised sector, even for comparable jobs. Most of the employment in this sector is seasonal and the workers therefore have no job guarantee. This also leads to large scale migration of workers from one place to another leading to un-stability of work and residence which further often leads to discontinuity of the education of their children. In cities, they live in slums without proper housing and sanitation. Health care and maternity benefits which are statutorily available in the organised sector are not available for them. The

legislations providing for social securities for old-age, health-care and assistance in the event of death, marriage and accidents etc., like the Workmen's Compensation Act, 1923; Employees State Insurance Act, 1948; Maternity Benefits Act, 1961; Industrial Disputes Act, 1974; Payment of Gratuity Act, 1972; Employee Provident Fund and Miscellaneous Provisions Act, 1952 etc., do not apply to them. The combined effect of the above factors is that many of them are generally, forced to lead an undignified and servile life.

#### 1.4 Existing Legal Frame Work

Although there are a large number of categories of employment in the unorganized sector, legislation providing for working conditions etc., have been enacted only in respect of few categories like:-

- Dock Workers (Regulation of Employment) Act, 1948;
- Beedi and Cigar Workers (Condition of Employment) Act, 1966;
- Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979;
- Cine-Workers and Cinema Theatre Workers (Regulation of Employment) Rules, 1984;
- Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996;
- Prohibition Of Employment As Manual Scavengers And Their Rehabilitation Act, 2013.

1.5 In order to provide for social security to all categories of unorganised workers, the Central Government has also enacted an umbrella legislation by the name of Unorganised Workers Social Security Act, 2008. Various social security schemes have been/are required to be floated for the benefit of the workers under the Building and Construction Workers Act, 1996 and Unorganised Workers Social Security Act, 2008.

## 2. Scheme for providing legal services.

2.1 The enactment of the few statues as mentioned herein above does not appear to have made any appreciable difference to the lives of the workers inter-alia, for the following reasons:-

- a) The Social Security Act, 2008 does not statutorily provide any mechanism to implement the schemes and there appears to be no sanction against a refusal of the concerned authorities to extend the benefits of the schemes to eligible workers.
- b) Very few States have constituted the Social Security Boards and have framed rules as envisaged under Section 14 of the Act. The result is that in many states, no welfare schemes are being administered and even where the schemes are in place, there is no effective monitoring. Similarly, all the states have not yet established the Building and other Construction Workers Welfare Boards as mandated under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996 and consequently, no security schemes have been floated for these workers.
- c) Although cess is being collected by many states under Building and Other Construction Workers Welfare Cess Act 1996, utilisation of cess amount for the benefit of the workers is abysmally low. This may be due to very low registration of workers and / or non extension of benefits even to the registered workers.
- d) The schemes and the benefits available thereunder are not being sufficiently publicised. Workers in the unorganized sector being generally uneducated and not unionised are mostly unaware of the schemes.
- e) Workers Facilitation Centres as envisaged under section 19 of the Social Security Act 2008 have not been set up by any State.
- f) There is no responsibility of the employer /contractor to get their workers registered under any of the schemes. It is for the workers

to apply for the same and they are unable to do so due to lack of awareness and complexity of the procedure.

- g) Separate registration is required for each scheme which makes it difficult for workers to avail benefits under all the schemes available to them in case of need.
  - h) The registration under the scheme is generally non-portable and therefore, workers in most of the categories being migrant workers are unable to avail the benefits and are therefore reluctant to register themselves under the scheme.
- 2.2 The Legal Services Institutions can play an important role in bridging the gap between the implementing authorities and target beneficiaries. With this object in view, the National Legal Services Authority had adopted the Scheme i.e. National Legal Services Authority (Legal Services to the Workers in the Unorganised Sector) Scheme, 2010 in the meeting of the Central Authority of NALSA held on 08.12.2010.
- 2.3 However, the magnitude of the problem and the fact that the benefits of the legislations are still elusive to the needy workers even after several years of their enactment has given rise to the need for more focused attention to this sector. The present revised scheme is meant to achieve this purpose.

The terms PLVs, Legal Services Clinics, Front Office, Panel Lawyers and Retainer Lawyers will mean the same as defined under the National Legal Services Authority (Free and Competent Legal Services) Regulations, 2010 and National Legal Services Authority (Legal Services Clinics) Regulations, 2011 and the NALSA Scheme for Para Legal Volunteers (Revised) and Module for the Orientation – Induction – Refresher Courses for PLV Training.

### 3. Name of the Scheme

The Scheme shall be called "NALSA (Legal Services to the Workers in the Unorganized Sector) Scheme, 2015".

## 4. Objectives

1. To institutionalize essential legal services to all unorganized workers.
2. To get the gaps in legislation/implementation plugged through coordination with government authorities and by initiating public interest litigation.
3. To mobilize the machinery of the State Government and the District Administration to identify and register all unorganized workers in all categories and to extend the benefits of all government schemes, as applicable to them.
4. To spread awareness among the employers regarding the statutory provisions and the need for providing decent working conditions, living wages and social security to the workers.
5. To disseminate information among the workers regarding their entitlements under the existing legislations and schemes.
6. To provide counselling and assistance to all categories of unorganized workers for their registration with the concerned authorities under the schemes available for their category.
7. To assist the workers in availing the benefits of the scheme for which they are registered as per their need/entitlements.

## 5. Guiding Principles

The following principles shall be borne in mind by all Legal Service Institutions while implementing the scheme for the unorganized workers:-

- 5.1 The Preamble of the Constitution of India assures equality of status and opportunity to all citizens and to promote among them fraternity, assuring the dignity of the individual. Article 42, mandates that the State shall make provision for securing just and humane conditions of work and for maternity relief. By virtue of

Article 43, the State is obliged to secure to all workers, work, a living wage, condition of work ensuring a decent standard of life and full enjoyment of leisure, social and cultural opportunities.

- 5.2 The Preambular promise of upholding the dignity of the individual cannot be fulfilled unless the dignity of labour is ensured.
- 5.3 The unorganized sector is one of the marginalized sections of the society and they, as citizen of the country, are equally entitled to the right to work, just and humane conditions of work, living wages, maternity relief and a decent standard of life. It is the statutory mandate of the Legal Services Authorities to facilitate realization of this Constitutional assurance. The Legal Services Authorities have to act as watchdogs against administrative inaction.
- 5.4 The welfare measures initiated by the Government in the form of legislations or schemes etc. require the intended beneficiaries or the victims to mobilize the system for realization of their rights/entitlements. The workers in the unorganized sector belonging as they do, to the deprived and vulnerable sections of the society do not possess the capacity to mobilize the system. It is the job of the Legal Services Authorities to provide them support in getting justice to their doorsteps.
- 5.5 The large number of categories of the unorganized workers,, large population in each category and their vast geographical spread necessitates a project-approach to the issue of providing legal services to them. An institutionalized setup, committed work force and sustained efforts for a considerable period of time are required to be able to make them capable of realizing their constitutional rights.

## Plan of Action

### 6. Setting up of Special Cells

- 6.1 In order to provide effective legal services to the workers in this sector, each State Legal Services Authorities (SLSAs) shall

constitute a special cell focusing exclusively on these services. The cell shall be manned by one panel lawyer specialising in Labour Laws, one counsellor/consultant having requisite qualification/experience in relevant field, wherever feasible, representative of an NGO doing demonstrably good work in the area and such number of Para Legal Volunteers, as the SLSA may prescribe.

- 6.2 The functions of the special cell shall be:

- i) to organize and conduct Legal Awareness/Literacy programmes, training programmes and seminars for unorganized workers;
- ii) to co-ordinate with government authorities in relation with registration and extension of the benefits of the schemes to the unorganized workers;
- iii) to facilitate and provide assistance in filing, processing and furnishing application form for registration and in availing benefits of the schemes to the unorganized workers;
- iv) to provide legal assistance and legal aid to the unorganized workers in respect of any claim or defence before any court or other authority;
- v) any other function that the State Authority may prescribe for them.

- 6.3 The special cell shall work under the guidance of the Member Secretary or any other officer of the Authority, as nominated by the State Authority, and shall file periodic reports of the progress of its assigned duties with him.

6.4 The members of the cell shall be paid honorarium for each of the duties at such rates, as may be fixed by the State Authority.

## 7 Identification of Unorganized Workers

7.1 The first job for the Legal Services Institutions is to identify the categories and population of unorganised workers operating in their respective areas, by seeking the data available with the Labour Department/Social Welfare Department of the State and if necessary, conducting surveys either themselves or in collaboration with law students and NGOs operating in the area.

7.2 In the process of identification, special efforts should also be made to identify any child labour or bonded labour and in case any workers in the said prohibited categories are found, the Legal Services Authorities shall inform the concerned authorities and facilitate their rescue, release and rehabilitation, as provided under the Bonded Labour System (Abolition) Act 1976, The Child Labour (Prohibition and Regulation) Act 1986 and Juvenile Justice Act 2000.

7.3 The State Authority may fix timelines for identification of all categories depending upon the area, population and other relevant factors in each state.

## 8 Conditions of work and minimum wages

The State and District Legal Service Authorities shall, in collaboration with the State and District Administration and local NGOs, assess the need of statutory regulation of conditions of work and minimum wages etc., for the categories of Unorganized Workers particularly, of Domestic Workers and if found necessary, the State Legal Services Authority shall take the requisite steps to get the same notified.

## Setting up of State Social Security Board and Building & Other Construction Workers Welfare Boards

Wherever the Social Security Board and Building & Other Construction Workers Welfare Boards have yet not been set up, the State Legal Services Authorities shall coordinate with the State Government and, if necessary, institute, with the approval of the Hon'ble Executive Chairman, SLSA, Public Interest Litigation in the respective High Courts for getting these boards set up, as soon as possible.

## 10 Utilisation of Cess

State Legal Services Authorities shall coordinate with the Building and Construction Workers Welfare Boards to ensure that the cess collected by them does not keep lying in fixed deposits and is actually utilised for the benefit of the needy workers as per the schemes available. The State Authorities shall seek relevant information from the boards, encourage the workers to apply for the benefits and then, coordinate with the boards to provide the said benefits.

In case of denial of due benefits to any worker, legal remedies can be prosecuted on his behalf by the State Legal Services Authority through the Special Cell for Unorganized Workers.

## 11 Government Schemes under the statutes

Legal Services Authorities shall move the State Governments to notify the schemes relevant to the category of unorganised sector operating in the States. This also, if necessary, can be achieved through institution of Public Interest Cases, with the approval of the Hon'ble Executive Chairman.

## 12 Legal Awareness

12.1 After identification of the unorganised workers in each category, legal awareness programmes may be organised about the different schemes and social security measures available for such categories. The special cells for unorganized workers shall

