



Legal and Policy Tools to Meet Informal Workers' Demands: Lessons from India

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This Legal Brief, the first in the series, examines the ways in which informal workers fall outside of traditional employee-employer relationships and the potential for expanding the definition of a “worker” to include them. Drawing on a two-year Indian study, the Brief details how the legal and regulatory framework impacts informal workers—particularly domestic workers, fish workers, forest workers, home-based workers, street vendors and waste pickers—and how legal and policy tools have been used or can be used to address the diverse concerns of different sectors of workers in the informal economy.

Introduction

In 2008, WIEGO initiated the Law & Informal Economy project to contribute to the development of an enabling legal environment for informal workers—one that promotes work and economic opportunity, labour rights, benefits and protection. This paper highlights some of the key lessons learned from the pilot project in India regarding the nature of informal work and the manner in which legal and policy tools can address the concerns of informal workers.

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Around four thousand domestic workers gathered in Marina Beach (Chennai, India) demanding dignity of their work and life. This leader has led a struggle for minimum wages.



The right to access public resources—whether urban spaces, waste or natural resources—is fundamental across all sectors; key legal battlegrounds pit property rights and privatization against the unorganized sectors’ demands for the right to livelihood and social security. A common demand that all sectors have pursued is social protection.

After detailing the statistical definition of the informal economy and the legal characteristics that define (and limit) employer-employee relationships, this brief provides an overview of regulatory frameworks impacting select occupational groups in India. The different groups have engaged in markedly different struggles based on the realities of their work and livelihoods. Domestic workers and home-based workers have focused on obtaining recognition as workers and increasing the social protection or regulation of working conditions afforded by labour law to other workers. Other sectors have focused on regulatory frameworks more directly related to their livelihoods. For instance, the struggles of forest and fish workers centre more on their need for legal access to natural resources. Waste pickers and other informal workers within urban spaces have struggled to transform municipal laws and policies to carve out spaces for the urban working poor.

Options for improving the lives and livelihoods of informal workers through legal channels are multifaceted. Key lessons emerging from the study include:

- Sub-contracted and own-account workers fall within a broad continuum of working arrangements. International instruments have accepted these categories as “workers” even though they fall outside of a traditional employer-employee relationship.
- A broader definition of “worker” must recognize the economic dependency of those outside a traditional employer-employee relationship so as to enable dependent workers who are not employees to obtain claims and benefits from the commercial commodity chain.
- Imposing obligations (such as levying a cess) on traders, eventual buyers and end consumers would recognize the economic dependence of those workers who are neither employees nor independent contractors. Human rights principles and the need to ensure decent work conditions could also be used to impose a welfare obligation on the public.
- Workers who do collecting (such as fish and forest workers) should receive prices for collected goods that reflect the value of the labour and the knowledge used in collecting. In some cases, legislation that gives ownership to indigenous gatherers may be used to leverage more favourable prices.
- Including as workers within an industry those involved in primary collection (e.g. natural resources, waste)—not just those in the final stages of production or value addition—would have far-reaching benefits across all sectors.

The right to access public resources—whether urban spaces, waste or natural resources—is fundamental across all sectors; key legal battlegrounds pit property rights and privatization against the unorganized sectors’ demands for the right to livelihood and social security. A common demand that all sectors have pursued is social protection. Both in the policy and legislative domains, there is greater receptiveness to this demand than the other core demands for employment rights. However, the most challenging and contentious of the informal workers’ legal demands are those pertaining to working conditions.

Informal Employment and Economic Dependence

Informal employment encompasses a wide variety of employment arrangements. It includes both (a) *self employment in informal enterprises* (i.e., employment in unincorporated enterprises that might also be unregistered or small, including employers, own account workers, and unpaid family workers); and (b) *wage employment in informal jobs* (i.e., employment without social protection through work in formal or informal firms, for households, or with no fixed employer). The latter category includes informal employees of both informal and formal enterprises; other informal wage workers (such as casual or day labourers, domestic workers, unregistered or undeclared workers, and temporary or part-time workers); and industrial outworkers/home workers (Chen 2006).

The International Conference of Labour Statisticians' expanded conceptual framework on the informal economy (2003) has allowed for important advances in conceptual clarity and in the availability of official statistics on informal employment (Vanek et al. forthcoming). Yet understanding informal workers vis-à-vis legal regulatory regimes requires attention to the many intricacies and nuances that abound in informal employment relations – in particular, those that relate to economic dependence. Many informal economy workers are neither truly self employed, in the sense of entrepreneurs who can develop their own independent markets, nor truly wage employed in the sense that they fall under a clear employer-employee relationship.

Indeed, a critical legal characteristic in identifying many informal workers is their inability to access employment rights in the absence of an exclusive legal relationship of “employer-employee.” The latter has been narrowly defined across the world by labour jurisprudence, influenced primarily by the early industrial era. Since a lot depends on the legal definition of an “employee” or “worker,” we first identify employment relations that fall outside this traditional category.

- **Contract or sub-contracted workers:** Driven largely by trade liberalisation, and the need to cut costs to be competitive, formal employers are increasingly farming out jobs through a process of sub-contracting to small firms or home-based workers. These workers may enjoy some degree of employment rights through an established legal relationship with the principal employer, but typically lack the range of benefits that would accrue to a permanent formal worker.
- **Self-employed workers:** Many workers turn to self-employment in the absence of wage employment opportunities. Self-employed workers can be further classified into these categories:
 - **Own account workers:** workers who are employed in their own (typically informal, single-person or family) enterprises who do not hire others
 - **Employers:** workers who hire others and are employed in their own enterprises
 - **Unpaid contributing family workers:** workers who contribute to the enterprise whether formal or informal.

Developing countries such as India are characterized by a high proportion of workers who can be classified as self-employed, with a high proportion of them working as own account workers.

Employment relations outside of the traditional categories fall into two broad categories: Contract or sub-contracted workers and self-employed workers. Self-employed workers can be further classified into own account workers, employers, and unpaid contributing family workers.



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WIEGO set out to examine the legal demands of informal economy workers in five occupational groups in India. The India Pilot project – a two-year study – examined the following occupational groups: domestic workers, fish workers, forest workers, street vendors and waste pickers.

With this background in mind, WIEGO set out to examine the legal demands of informal economy workers in five occupational groups in India. The India Pilot project – a two-year study – examined the following occupational groups in India: domestic workers, fish workers, forest workers, street vendors and waste pickers. With the exception of domestic workers, who generally fall within the traditional employer-employee relationship, the other sectors were chosen because they broadly fall within the categories of own account workers, with or without employees. Domestic workers were selected keeping in mind the (then) ongoing mobilization around the campaign for an ILO Convention on domestic work, which was passed by the International Labour Conference in June 2011.

Study into the chosen sectors involved looking closely at the work processes, the dependence between the parties, the manner in which the work is controlled, control over the process of production, degree of economic risk, and the remuneration systems to understand how many could be deemed to be in an employment relationship. For those who cannot be brought into such relationships and who are in self-employment, the project looked at how far other laws could be utilized to improve their conditions.²

Informality and the Legal Regulatory Framework

Traditionally, debates around informal economy and law have focused on the limited protection accorded by labour law to those in the informal economy. Struggles of certain workers in the informal economy, such as domestic workers or home-based workers, have centred around obtaining recognition as workers and increasing the social protection or regulation of working conditions afforded by labour law to other workers. Other sectors of informal workers have focused their efforts on regulatory frameworks that have a direct impact on their livelihoods. For instance, resource-based workers such as forest workers, fish workers and waste pickers depend heavily on legislation that determines their access to resources or public spaces such as forest laws, coastal regulations or municipal legislations. This section, therefore, explores the question of law and informality in two parts: a) labour law and the informal economy; and b) applicable regulatory laws and the occupational groups.

Labour Law and the Informal Economy³

The contract of employment has been the primary means through which a person is recognized as an employee and is granted benefits and protection. One of the challenges for informal workers, therefore, has been to extend the definition of employee to those who are not directly employed by the principal employer or user enterprise (contract labour, or labour employed via intermediaries) and also to extend the definition to those who appear self-employed but who continue to display characteristics of subordination, economic dependency or vulnerability akin to employees. Bringing self-employed persons who share “employee-like” characteristics within the province of labour law would allow for social protection and regulation of working conditions to be governed by standards set by the labour law.

² The various background papers on the India pilot project discuss the legal and policy environment affecting these workers in greater detail. These papers can be accessed at http://wiego.org/informal_economy_law/india-pilot-project.

³ The distinction between labour and employment laws as applicable in some jurisdictions is not followed in this paper.



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Among the groups of workers covered by the WIEGO pilot project, domestic workers have been most successful in getting their status as workers recognized under the specific laws enacted by some states in India, conferring certain welfare measures. In addition, the recently enacted Unorganised Workers Social Security Act, 2008 has the potential to cover all “workers” including the self-employed (both dependent and independent) for the purposes of ensuring access to basic social security. However, working hours, safety and employment relations continue to be unregulated for these workers.

Even when informal workers are covered by labour law *de jure*, this does not ensure that their position is immediately on par with formal workers. Erratic working hours, variable working conditions and poorly demarcated work spaces have meant that many of the minimum standards contained in the labour laws are incapable of being applied to the majority of these workers. For these reasons, social security and recognition as workers are often the principal benefits that are afforded to these workers in India.

Applicable Regulatory Laws and the Occupational Groups

A complex range of sector-specific regulatory laws impact workers in the informal economy, especially own account workers and the self-employed more generally, including laws relating to natural resources and the use of public resources such as forests and urban space. The laws that impinge on workers in the informal economy can be broadly categorized as follows.

Regulations that determine access to – and sustainable use of – resources

A large number of self-employed or own account workers are resource-based workers who rely on the land, forests, water bodies and waste dumps for access to resources that enable their livelihood. Whether the access

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A complex range of sector-specific regulatory laws impacting workers in the informal economy can be broadly categorized as: regulations that determine access to and sustainable use of resources; regulations that balance conflicting needs and users; and regulations that impact markets and pricing.

relates to *tendu* leaves,⁴ fish, or plastics in waste dumps, the laws and policies that enable or limit such access have a direct impact on many livelihoods. Related to access are legislations and policies that seek to protect sustainable use of the resource, thus contributing to protecting livelihoods. For instance, a policy or legislative choice that encourages composting and recovery of recyclables can protect a greater number of waste related livelihoods than would a policy choice in favour of incinerators.

Regulations that balance conflicting needs and users

Several regulatory frameworks seek to balance competing interests of workers and citizens, thus impacting workers in the informal economy. This is again best illustrated with an example. The right of the citizen to access pavements competes with the rights of street vendors to use pavements to carry out their business. Likewise, public health or pollution concerns have a direct bearing on several informal economy livelihoods. The legal strategies and demands of informal economy workers in such instances need to be carefully chosen to balance these competing interests.

Regulations that impact markets and pricing

Markets and pricing form an important component of work for nearly all informal workers. Ensuring steady markets and reasonable prices for the inputs and products of informal workers is an unmet challenge. Invariably, access to credit, markets, and support prices are critical issues that are rarely addressed as important to determining sustainable livelihoods. Existing regulatory frameworks either do not address issues of markets and pricing or are not necessarily sensitive to the specific needs of informal workers. Transforming the debates on markets and pricing for informal economy workers needs to be prioritized.

Securing livelihoods of workers in the informal economy requires focused and sustained attention on all policies and legislations that have a direct or indirect impact on the workers in each occupational group. Thus, while broad demands for strengthening labour rights and working conditions are maintained, specific sectoral demands of each occupational group need to be pursued independently.

Regulations that determine access to and sustainable use of resources, for instance, a policy or legislative choice that encourages composting and recovery of recyclables, can protect a greater number of waste related livelihoods than would a policy choice in favour of incinerators.



⁴ Also called *kendu* leaves, these are used in the wrapping of *bidis*, thin hand-rolled cigarettes.

Mapping the Legal Demands and Strategies

Three of the chosen sectors in the India law pilot project indicate the need to develop arguments for those who work even outside an extended notion of employee or wage employment. Where there is only a clear commercial relationship, we argue that the idea of a worker needs to be developed further in order to obtain some claims and benefits from the commercial commodity chain.

Case 1: Fish Workers

The fish worker is a case in point. Attempts in the state of Kerala to cast liability through legislation on fish traders and exporters for welfare benefits payable to fish workers was struck down as unconstitutional by the court in India recently. The court held that the burden by way of a cess (tax) or impost could not be placed on a person who did not stand in the relationship of an employer⁵. The economic dependence of the fish workers, who may hire a boat from such traders and who are often under an obligation to sell their catch exclusively to those traders, was not noticed by the court. The court merely examined if there was an employee-employer relationship between the parties, and on the basis that there was no such relationship, struck down a cess upon traders as falling outside the province of labour law and hence unconstitutional. (To overcome the court judgement, the Kerala government recently promulgated a separate law that imposes a cess on them as a contribution to the Labour Welfare Fund.)



The assumption of the Supreme Court in this case was that liability to contribute to the welfare and social protection of workers arises only within an employer-employee relationship. Yet we have instances in India where this is not entirely the case. Governments typically contribute to welfare funds and the liability is not upon the workers and employers alone. The Unorganised Workers Social Security Act, passed by the Parliament in December 2008, is funded primarily by the central and state governments. The funding for this is to be mobilized by a cess on a concerned industry or a general tax to be levied on the population as a whole. This approach of casting an obligation on industries, in a broad-based manner, to meet the welfare needs of the small producers and workers is an important innovation to protect “workers.” It casts liability upon traders and vendors who are part of the industry that benefits from such work but may be tied to workers only by commercial relationships.

⁵ Koluthara Exports Ltd. v. State of Kerala & Ors (2002(2) SCC 459), Hindustan Times v. State of Uttar Pradesh decided 1/11/2002.

Case 2: Forest Workers

Our study of the forest workers reveals that many forest workers are engaged in gathering of Non Timber Forest Products (NTFPs). These are sold to the forest development corporations or cooperatives, such as in the case of the *tendu/kendu* leaf in those states where the trade is nationalized, or to middle men who process or sell to the eventual consumer, as in the case of *mahua*, *gum*, *amla*, etc. A small fraction of these forest workers are in employment relationships with the forest corporations. Their minimum wages are determined by the state government under the Minimum Wages Act, 1948. For most others, they are placed in commercial arrangements vis-à-vis the trader or collection agents.

Given the characteristics of such collection of NTFPs where there is no stipulation over place/time of work, or where there is no supply of equipment or resources by the trader/buyer, or where the forest worker is not integrated in any manner in the enterprise of the trader/buyer, the defining characteristics needed to bring such workers within the scope of an employment relationship may be missing. Yet the economic dependency of such forest workers on the eventual trader remains. They are not self-employed persons in the sense of entrepreneurs who can develop their own independent markets. Their position as forest workers, living deep within the forest, with very fragile rights over the natural resources they collect and a high level of dependence on the traders/buyers, cannot place them as self-employed persons or entrepreneurs.



Case 3: Waste Pickers

This is also the case of waste pickers whom we have studied in this project. Their access to waste in the public domain is very contingent: they are neither in a relationship of employment with the households whose waste they collect nor are they in a relationship with the municipalities whose waste they sort and segregate. The draft policy that the WIEGO pilot project developed for the alliance of waste picker organizations in India, as part of the project activity, characterizes waste pickers as workers working in the recycling industry and points to the need for households, municipalities, itinerant waste traders, and recyclers in the recycling industry to contribute towards a fund that will provide welfare benefits for such waste pickers.

Key Lessons: Defining “Workers,” Rights and Obligations in Commercial Relationships

Defining Workers

The idea that such forest workers, fish workers and waste pickers are “workers,” outside of an employment relationship but nevertheless capable of claiming a right (for the present, albeit a moral right) based upon a commercial contract is a crucial one that needs to be lobbied for and taken further if vulnerable own-account workers studied in the project are to enjoy even a modicum of what the ILO calls “decent work.”

Sub-contracted workers and own-account workers, who do not enjoy an employee status but are also not fully independent, have been accepted as “workers” in the 1996 ILO Home Workers Convention as well as in the 2002 International Labour Conference Resolution and Conclusions on Decent Work and the Informal Economy. This recognizes the broad continuum of working arrangements within which workers in the informal economy may fall.

Setting Prices

Forest, fish and waste workers expend their labour, but very little capital, and they obtain a poor price for the forest, fish or waste they collect. In the case of forest and fish workers, the price at which their produce is bought does not reflect their deep traditional knowledge of the oceans and forest they bring to bear in their harvesting of fish or collection of forest products. Further, the newly enacted Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 makes many such forest workers the *owners* of such NTFPs; this should allow them to compete in the market in which prices have largely been fixed unilaterally by state governments that carry out annual price-fixing for some forest produce.

Claiming Rights and Imposing Obligations

Apart from rationalization of the price fixation process, the economic dependence of such workers upon traders and eventual buyers implies that they cannot be viewed as independent contractors. Levying of a cess upon traders and buyers of such goods and services, even though there is no employment relationship, requires the recognition of a category of “workers” that is distinct from both an employee on the one hand and a truly self-employed person who is not solely dependent upon a trader or buyer for his/her economic survival on the other. This economic dependence provides the basis for arguing that the eventual user/consumer, perhaps through a cess/impost, should bear the cost in some form for the work performed at the primary stage. Such a claim can also arise from human rights principles and the need to ensure decent work conditions, which will then permit the claim to be placed upon not only the user/consumers, but upon the public at large through a general tax. Such a cess then moves away from the purview of labour law and bases the claim upon human rights principles of ensuring fair and reasonable contractual terms arising from broad public policy considerations.

Establishing Rights of Access

Across all sectors of this project, access to markets (public spaces for street vendors, waste for waste pickers, oceans for artisan fish workers) emerges as a crucial requirement. How the various urban renewal missions view urban land and the geography (and cleanliness) of the city, for example, emerge as major concerns for waste pickers and street vendors. The right to access natural resources also emerges as a condition precedent to the concerns of labour law.



Sub-contracted workers and own-account workers, who do not enjoy an employee status but are also not fully independent, have been accepted as “workers” in the 1996 ILO Home Workers Convention as well as in the 2002 International Labour Conference Resolution and Conclusions on Decent Work and the Informal Economy.

An expanded “worker” concept would include not just those in the final stages of production or value addition, or those who work in what the labour law understands as an “industry”, but also those engaged in the collection of natural resources or waste material which constitute the vital inputs for these industries e.g. forest workers, fish workers, and waste pickers.

Important issues raised included trade-related aspects of Intellectual Property Rights (TRIPs) and the impact on fishing rights, the impact of the Kyoto Protocol and carbon trading on forest cover, privatization and licensing of inland water resources, and the conversion of commons into private or state property.

The quantum of remuneration or quality of livelihood or “returns” for bearing risks (a concomitant of an own account worker), safety in the workplace, and other traditional concerns of labour/worker rights appear to be secondary compared to demands that arise around laws governing the environment, natural resources, and urban planning. This is one of the reasons why the draft legislations for unorganized sector workers, such as the bills proposed by the National Campaign Committee for Unorganised Sector Workers and the National Commission for Enterprises in the Unorganised Sector (NCEUS), view the right to livelihood and social security as encompassing claims to use natural resources in a judicious manner, entitlement to urban spaces, and access to resources and markets.

Including Collectors as Workers

Expanding the law to deal broadly with all those working for instance in the bidi industry would enormously benefit large numbers of own-account and sub-contracted workers. *Tendu/kendu* leaf collectors, instead of merely bidi rollers, as at present, could get included under this conceptualization. As in the case of forest workers, fish workers, and waste pickers, an expanded “worker” concept would include not just those in the final stages of production or value addition, or those who work in what the labour law understands as an “industry”, but also those engaged in the collection of natural resources or waste material which constitute the vital inputs for these industries. Based on the experience of the recent Kerala law relating to fish workers, one could argue that an industry-wide cess could be levied to help the traditional own-account forest collectors (sal, gum, *chironji*, *mahua*, etc.) or the own-account waste pickers.



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Overview of Regulatory Frameworks Impacting Select Occupational Groups in India

LEGAL REGULATORY FRAMEWORK	OCCUPATIONAL GROUPS				
	Forest Workers	Fish Workers	Waste Pickers	Street Vendors	Domestic Workers
Constitutional Framework	Right to life and livelihood; non discrimination	Right to life and livelihood; non discrimination	Right to life and livelihood	Right to life and livelihood	Right to life and livelihood
Labour Laws	Several states provide for minimum wages through notification but no effective regulation of working conditions	State Welfare Fund Act ensures some welfare protection.	No effective protection of wages or working conditions	No effective protection of wages or working conditions	Some states ensure minimum wage payment and social welfare measures; Inter-state migrant laws that protect migrant workers
National Laws	Forest Laws; Environmental Laws	Coastal Regulations; Trade laws that impact export and import of fish and fish products	Environmental Regulations on solid waste management and pollution	National Policy on Street Vendors	Several national level bills pertaining to domestic workers floated; Health coverage for domestic workers extended under National Health Insurance Scheme (RSBY)
State Laws	State Regulations on access to Non-Timber Produce	State Marine Fishing Regulation Acts	Regulations on Solid Waste Management and Pollution	State Police Acts; State laws that determine access to urban land and water	State laws such as Shops and Establishments Act invoked to regulate placement agencies
Municipal Laws	–	Vending laws that impact fisher women who sell directly	Municipal laws vest primary task of waste management in municipalities; Tendering of waste collection determines access to waste	Municipal Regulations on Street Vending, Licensing and Health	–



During the pilot study period, two national level bills, initiated both by the government and civil society groups, were the subject of extensive debate and discussion. In 2008, the State of Maharashtra enacted a welfare board providing social security to domestic workers in the state.

Common Themes and Issues

Legal Recognition

Underpinning the many legal demands raised by the occupational groups was a primary demand for legal status or recognition as workers under the law. This demand was more pronounced within two occupational groups, domestic workers and waste pickers, as they battled their invisibility as workers. Strategies for taking forward the demand for legal recognition have largely centred on law and policy initiatives. In the case of domestic workers, the debates and advocacy work informing the ILO Convention provided the impetus for several efforts – both national and sub-national – to take forth the domestic debates on legislation for the sector. During the pilot study period, two national level bills, initiated both by the government and civil society groups, were the subject of extensive debate and discussion. In 2008, the State of Maharashtra enacted a welfare board providing social security to domestic workers in the state.

Access Rights

As argued above, the struggles of forest and fish workers are intricately linked to their access to resources, more particularly natural resources (While waste pickers also depend heavily on their access to waste as a resource, the same needs to be distinguished as being a resource generated by human use and largely operating within an urban context). These workers are largely on their own account but heavily depend on natural resources as primary capital for their very survival. The legal demands raised by these occupational groups revolve around protecting traditional and existing access rights to their capital resources in a manner that ensures sustainable use.⁶ A related battle is also to ensure a decent price and market for their products; this legal demand could take the form of a minimum support price.

Municipal Regulations

Informal workers within urban spaces invariably struggle to transform municipal laws and policies to carve out spaces for the urban working poor. These struggles include issues of recognition, licensing, land and private monopoly over urban resources, including urban public land. In the case of waste pickers in India, the pilot study found that the legal demands vary from recognition and access to waste as a resource to municipal policy on disposal of waste, environmental law and regulations, mechanization through privatization of waste collection, and tendering policies and practices for solid waste management. Similarly with street vendors, the efforts have been to regularize their access to urban land, negotiating for licenses that allow them better markets and, more importantly, struggling to transform municipal policies that privilege formal commercial enterprises and marginalize the urban poor further. In both these instances of urban occupational groups, collectivization has been a critical strategy for negotiating and reordering the law and policy landscape of municipal fiat that governs who can do what and where it can be done, to the disadvantage of large numbers of informal enterprises and workers in urban areas.

⁶ In India, the fish workers have adopted several strategies. At the policy level, this includes lobbying for regulations ranging from those that have a bearing on traditional fisher folk to regulations that permit deep sea and commercial fishing. On the legislative front, they include lobbying for laws that protect the traditional and community rights of access to resources.



Efforts have been to regularize street vendors' access to urban land, negotiating for licenses that allow them better markets and, more importantly, struggling to transform municipal policies that privilege formal commercial enterprises and marginalize the urban poor further.

Social Security Protection

A demand that all sectors have raised and successfully lobbied for is social protection. Both in the policy and legislative domains, there is greater receptiveness to this demand of the workers than the other core demands for employment rights. As the India pilot study records, states have been willing to set up welfare funds, expand existing funds and schemes to cover workers in these occupational groups, invite employers to contribute to welfare cess funds, and set up new health and welfare schemes that have an overarching reach for all workers in the informal sector.

Regulation of Working Conditions

The most challenging and contentious of all the legal demands raised and critical to all sectors is the one pertaining to working conditions. Despite this being a persistent demand for many years, both government and unions (and perhaps even civil society groups and NGOs) have struggled to formulate and respond to this demand innovatively. Instead, they operate within the bounds of traditional labour jurisprudence of establishing “employer-employee” relations or remain focused on the state being the arbiter and regulator of working conditions across all sectors.

The most challenging and contentious of all the legal demands raised and critical to all sectors is the one pertaining to working conditions. Both government and unions have struggled to formulate and respond to this demand innovatively.

Conclusion: Political and Economic Implications of Legal Demands for Informal Workers



Although merely representative of the legal demands of the informal economy, the broad themes discussed in the preceding section point to wide ranging political and economic implications. We discuss a few vital issues here.

Collectivization

Collectivization is critical to realizing any legal demand raised by an occupational group. Unionization trends in the informal economy are gradually transforming, but remain weak. Critical to collectivization is the expansion of the traditional union base to include informal workers and the re-politicization of the traditional union understanding of the role of informal workers in the economy. Transforming traditional unions can lend voice to informal economy workers and their legal demands, while conversely, new forms of informal economy organizing can look beyond the traditional triad of employer-employee-state to the formal enterprise-informal enterprise-state triad for addressing legal demands. Also, the legal demands indicate that union strategies need to expand and engage at the level of policymaking, not merely for labour rights but in the arena of environment, trade and market, to ensure effective protection.

Representation and Negotiation

Labour jurisprudence needs to expand to include broader notions of collective bargaining and dispute resolutions. Current legislation on the rights to representation and negotiations with an appropriate counterpart (i.e. collective bargaining) should not be seen as only applicable to employees but could be legislated as a right for own-account workers to be able to negotiate with municipalities, governments and policymaking bodies that have an impact on their livelihoods. Similarly, access to dispute resolution processes outside of the traditional court process can also be envisaged.

Alliance Building

Acknowledging the links between resource-based workers and sustainable resource use has huge implications for the political alliances that can be forged between environmental movements and labour movements. The legal demands indicate the need to protect resources and environment from a livelihoods perspective, thus re-examining the collective rights-based demands of workers.

Growth from Below

The legal demands identified in the pilot study suggest the need to expand the jurisdiction of markets and pricing policies to ensure a level playing field for workers in the informal economy and the need to review credit and marketing policies to strengthen the protection accorded to workers. Moreover, acceding to the legal demands of recognition, regulation and social security for workers would have an upward-spiralling effect on the growth and the economic wellbeing of the economy, thus expanding the arena of the registered workforce in the country. Finally, and critically, recognition of occupational groups dominated largely by women will have a direct and dramatic bearing on increased earnings and diminished poverty levels of this class of workers.

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WIEGO LEGAL BRIEFS describe and analyze the legal environment facing informal workers, and the legal strategies and precedent-setting cases that may lead to more secure livelihoods.

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