

Informal Workers in India: Reconceptualizing Labour Law to Promote Capabilities

by

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LL.M., Vanderbilt University Law School, 2008

LL.M., The West Bengal National University of Juridical Sciences, 2006

B.A., LL.B., University of North Bengal, 2003

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of the Requirements for the Degree of

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University of Victoria

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## **Supervisory Committee**

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**Departmental Member**

## **Abstract**

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The Constitution of India provides the basis of labour jurisprudence in the country. It promises right to work, right to livelihood, right against forced labour, right against child labour, equal treatment of all workers, equal pay for equal work, appropriate conditions at work, and the overall social, economic and political justice to the people. These constitutional promises find specific expression in the numerous labour-related statutes enacted in furtherance of workers' welfare. However, the constitutional promises remain unrealized for the approximately 92% of informal workers who are largely excluded from the purview of the labour laws and accordingly, lead marginalized and precarious lives devoid of dignity. Against this backdrop, I analyze whether a capabilities-inspired approach to labour law can address the concerns of informal workers in India and promote their dignified life.

After reviewing the literature around informal economic activities, I argue that it is important to adopt a worker-centered approach that focuses on informal employment. Informal employment is varied and because of this the problems and concerns associated with the different categories of informal workers differ. For this reason, I focus on one specific category of informal activity – waste-picking – in one city – Kolkata – in order to ascertain whether a human development approach to labour law is capable of addressing the specific concerns of these waste-pickers. Drawing on the work of labour law scholars who develop the capability approach formulated by Amartya Sen, I consider whether it is suitable as a basis for labour law designed for informal workers in general and waste-pickers in particular. Using a case study of the informal activity of waste picking in

Kolkata, I identify the specific capability deprivations suffered by waste-pickers and argue that the capabilities approach can supplement the International Labour Organization's social dialogue pillar of its Decent Work Agenda to address the work-related concerns of waste-pickers. Based on the International Labour Organization's social dialogue strategy, I envisage a mechanism through which waste-pickers along with other stakeholders could be integrated in a democratic dialogue process leading to the formulation of a capability-promoting labour law.

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## **Dedication**

To Sumangal, Sandhya, & Gangotri

## Abbreviations

- AMM: Annapurna Mahila Mandal
- ASI: Annual Survey of Industries
- AWWRI: Association of Workers engaged in Waste Recycling Industry
- BMS: Bharatiya Mazdoor Sangh
- BPL: Below Poverty Line
- BPSSS: Barjya Punarbyawaharikaran Shilpa Shramik Sangathan
- CITU: Centre of Indian Trade Unions
- Congress-I: Indian National Congress Party
- CPI: Communist Party of India
- CPM: Communist Party of India (Marxist)
- DGET: Directorate General of Employment and Training
- DW: Decent Work
- EMI: Employment Market Information
- EU: European Union
- FB: Forward Block
- GDP: Gross Domestic Product
- HMS: Hind Mazdoor Sabha
- HUDCO: Housing and Urban Development Corporation
- ICLS: International Conference of Labour Statisticians
- ILC: International Labour Conference
- ILO: International Labour Organization
- IMF: International Monetary Fund
- INTUC: Indian National Trade Union Congress
- IRC: Interest Reconciliation Council
- JSK: Jan Sangati Kendra
- KKPKP: Kagad Kach Patra Kashtakari Panchayat
- KMC: Kolkata Municipal Corporation
- NAS: National Accounts Statistics
- NCEUS: National Commission for Enterprises in the Unorganised Sector

NGO: non government organization  
NSS: National Sample Surveys  
NSSO: National Sample Survey Organisation  
PBKMS: Paschim Banga Khet Majdoor Samity  
RIHS: Revised Integrated Housing Scheme  
RSBY: Rashtriya Swastha Bima Yojana  
RSP: Revolutionary Socialist Party  
SASPFUW: State Assisted Scheme of Provident Fund for Unorganised Workers in West Bengal  
SEWA: Self Employed Women's Association  
SEWA Bank: Swashrayi Mahila Sewa Sahakari Bank  
SMS: Sramajibee Mahila Samiti  
SMVSS: Sakti Mahila Vikas Swavlambi Co-operative Society  
SMVSSS: Sakti Mahila Vikas Swavlambi Sarkari Samiti  
SNA: System of National Accounts  
UF: United Front  
UN: United Nations  
UNDP: United Nations Development Programme  
USA: United States of America  
WB: West Bengal  
WBBWWS: West Bengal Beedi Workers' Welfare Scheme  
WBNUJS: West Bengal National University of Juridical Sciences  
WBUSWHS: West Bengal Unorganised Sector Workers Health Security Scheme  
WBUSWWB: West Bengal Unorganised Sector Workers' Welfare Board  
WIEGO: Women in Informal Employment: Globalizing and Organizing  
WTO: World Trade Organization

# Chapter 1

## Introduction

When the term informal sector was used by Keith Hart in the early 1970s,<sup>1</sup> it referred to the wide range of activities that were not regulated, documented, or required government permission and interference to operate.<sup>2</sup> The International Labour Organization (ILO) hoped that through informal self-employment and small-scale entrepreneurship workers would have more control over their working conditions and living standards.<sup>3</sup> Accordingly, the ILO's policy stand was to encourage and promote informal economic activities in developing countries.<sup>4</sup> At this time scholars predicted that informal economic activities were only a transient phase, and that, along with industrial and economic development, workers engaged in informal economic activities would eventually become part of the formal economy.<sup>5</sup>

However, this prediction of formal economy assimilating informal workers in the course of development did not materialize. Instead of withering away, informal economic activities have experienced enormous growth around the globe.<sup>6</sup> Developing countries experienced the majority of this expansion of informal economic activities,<sup>7</sup> which was

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<sup>1</sup> Keith Hart, "Informal Income Opportunities and Urban Employment in Ghana" (1973) 11: 1 *The Journal of Modern African Studies* 61.

<sup>2</sup> ILO, *Employment, Incomes and Equality – a strategy for increasing productive employment in Kenya*, Report of an Inter-Agency Team Financed by the United Nations Development Programme and Organised by the International Labour Office (Geneva: ILO, 1972).

<sup>3</sup> Hart, "Ghana" supra note 1 at 68-70; *ibid* at 6, 503-504.

<sup>4</sup> Keith Hart, "Bureaucratic form and the informal economy" in Basudeb Guha-Khasnobis, Ravi Kanbur & Elinor Ostrom eds, *Linking the Formal and Informal Economy Concepts and Policies* (New York: Oxford University Press, 2006) 23 at 25-26.

<sup>5</sup> See Neema Kudva & Lourdes Beneria, "Introduction" in Neema Kudva & Lourdes Beneria eds, *Rethinking Informalization – Poverty, Precarious Jobs and Social Protection* (Cornell University Open Access Repository, 2005) 6 at 6-7; Judy Fudge, "Blurring Legal Boundaries" in Judy Fudge, Shae McCrystal & Kamala Sankaran eds, *Challenging the Legal Boundaries of Work Regulation* (Oxford & Portland, Oregon: Hart Publishing, 2012) 1 at 5-6; also see Martha Alter Chen, "The Informal Economy: Definitions, Theories and Policies" (2012) WIEGO Working Paper No. 1, available at [http://wiego.org/sites/wiego.org/files/publications/files/Chen\\_WIEGO\\_WP1.pdf](http://wiego.org/sites/wiego.org/files/publications/files/Chen_WIEGO_WP1.pdf) (site visited 2 November 2012).

<sup>6</sup> Kudva & Beneria, *ibid* at 6; also see James Heintz & Robert Pollin, "Informalization, economic growth, and the challenge of creating viable labor standards in developing countries" in Kudva & Beneria eds, *ibid* 44 at 52-57; also see Martha Alter Chen, Renana Jhabvala & Frances Lund, *Supporting Workers in the Informal Economy*, Working Paper on the Informal Economy, Employment Sector 2002/2 (Geneva: International Labour Office, 2002) at 1-3.

<sup>7</sup> See ILO, *Women and Men in the Informal Economy: A Statistical Picture* (Geneva: ILO, 2002) at 17-25.

coupled with deteriorating working conditions and living standards of informal workers.<sup>8</sup> In view of the deplorable working conditions and living standards of informal workers, the ILO's initial enthusiasm for the informal sector was short-lived.<sup>9</sup>

In 1991, the ILO noted that even though the informal sector is an easily available alternative to job creation in the formal economy, conditions of work in the informal sector are far from appropriate.<sup>10</sup> Accordingly, the ILO declared that easy informal job creation cannot help workers if such jobs do not provide decent work.<sup>11</sup> In 1999, the ILO developed the Decent Work (DW) Agenda, which constitutes the ILO's "[m]ission and objectives", and is comprised of the pillars of decent employment and income, rights at work, effective social protection and social dialogue.<sup>12</sup> Noting that decent work deficiency is a problem for informal workers globally, in its 2002 Report titled *Decent work and the informal economy*, the ILO calls for the need to integrate the DW Agenda in informal economic activities.<sup>13</sup>

Such a call by the ILO is urgent in the context of countries such as India, where approximately 92 per cent of the workers are engaged in informal economic activities.<sup>14</sup> Informal workers in India suffer from multiple deprivations such as insecurity, uncertainty, longer work-hours, lower wages, poor living standards, poor health, illiteracy, and lower life expectancy in connection with their work-lives.<sup>15</sup> There is a

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<sup>8</sup> See generally ILO, *The dilemma of the informal sector*, Report of the Director-General, International Labour Conference, 78<sup>th</sup> Session (Geneva: ILO, 1991).

<sup>9</sup> See generally *ibid.*

<sup>10</sup> See generally *ibid.*

<sup>11</sup> See ILO, *Decent work and the informal economy*, International Labour Conference, 90<sup>th</sup> Session, 2002 (Geneva: International Labour Office, 2002) at 4-5, 29-32, available at <http://www.ilo.org/public/english/standards/relm/ilc/ilc90/pdf/rep-vi.pdf> (site visited 20 July 2010). The Decent Work agenda developed by the ILO envisages a strategy to improve the living and working conditions of workers globally irrespective of their formal or informal status. See generally ILO, *Decent work agenda – Promoting Decent work for all*, available at <http://www.ilo.org/global/about-the-ilo/decent-work-agenda/lang--en/index.htm> (site visited 1 Dec, 2010); also see generally Dharam Ghai ed, *Decent Work: Objectives and Strategies* (Geneva: ILO, 2006).

<sup>12</sup> ILO, "Mission and objectives", available at <http://www.ilo.org/global/about-the-ilo/mission-and-objectives/lang--en/index.htm> (site visited 4 August 2012).

<sup>13</sup> See ILO, *informal economy*, *supra* note 11.

<sup>14</sup> NCEUS, *Report on Definitional and Statistical Issues Relating to Informal Economy*, National Commission for Enterprises in the Unorganised Sector (New Delhi: NCEUS, 2008) at 44.

<sup>15</sup> Jan Breman describes the precarious plight of informal workers in India. Based on his case study of workers in Ahmedabad, Gujarat, he describes how informality contributes to precariousness by tracing the shift of workers from formal textile industry to informal economic activities. He lays specific emphasis on deskilling of informal workers, increasing working hours, decreasing income, and the absence of unionization. See Jan Breman, *The Making and Unmaking of an Industrial Working Class – Sliding Down*

definite link between informal economic activity and abject economic poverty in India.<sup>16</sup> Scholarly studies on India have mainly been concerned with the effects of the increasing, economic-policy induced informality on conditions of informal workers.<sup>17</sup> Even though these studies focus on the working and living conditions of informal workers, they do not explore the possibility of, or mechanism for introducing and institutionalizing the DW Agenda for informal workers in India. Some recent studies conclude that informal economic activities in India are far from being compliant with the DW Agenda.<sup>18</sup> Some studies point out that there is desperate need of law to regulate the informal activities in India.<sup>19</sup> Others indicate that informal workers' organizations are strategically significant in improving conditions for the workers in India.<sup>20</sup>

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*the Labour Hierarchy in Ahmedabad, India* (New Delhi: Oxford University Press, 2004) at 174-189, 260-268, 279; also see Jeemol Unni & Uma Rani, *Insecurities of Informal Workers in Gujarat, India* (Geneva: ILO, 2002).

<sup>16</sup> NCEUS, *Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector*, National Commission for Enterprises in the Unorganised Sector's (NCEUS) (New Delhi: NCEUS, 2007), available at [http://nceus.gov.in/Condition\\_of\\_workers\\_sep\\_2007.pdf](http://nceus.gov.in/Condition_of_workers_sep_2007.pdf) (site visited 21 June 2010) at 1, 8-9, 24-25, 43, 114; also see Breman, *ibid* at 254-258; also see Babara Harriss-White, "Globalization, The Financial Crisis and Petty Production in India's Socially Regulated Informal Economy" (2010) 1: 1 *Global Labour Journal* 152; also see R. K. A. Subrahmanya & Renana Jhabvala, "Meeting Basic Needs: The Unorganised Sector and Social Security" in Renana Jhabvala & R. K. A. Subrahmanya eds, *The Unorganised Sector – Work Security and Social Protection* (New Delhi: Sage Publications, 2001) 17 at 18; 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 59, 70-72.

<sup>17</sup> See Barbara Harriss-White & Anushree Sinha eds, *Trade Liberalization and India's Informal Economy* (New Delhi: Oxford University Press, 2007); also see Jan Breman, *Footloose labour – Working in India's informal economy* (Cambridge: Cambridge University Press, 1996); also see Uma Rani & Jeemol Unni, "Do Economic Reforms Influence Home-Based Work? Evidence from India", (2009) 15: 3 *Feminist Economics* 191; also see Jeemol Unni & Namrata Bali, "Subcontracted Women Workers in the Garment Industry in India" in R Balakrishnan ed, *The Hidden Assembly Line: Gender Dynamics of subcontracted Work in a Global Economy* (Bloomfield, Connecticut: Kumarian Press, 2002) 115; also see Sujata Gothoskar, *New Initiatives in Organizing Strategy in the Informal Economy: A Case Study of Domestic Workers Organizing in India* (Bangkok: Committee for Asian Women, 2005).

<sup>18</sup> See Rina Agarwala, *From Work to Welfare: Informal Worker's Organizations and the State in India* (PhD Thesis, Faculty of Princeton University, 2006) [unpublished]; also see Bharati Chaturvedi, "Santraj Maurya and Lipi in India — Tales of Two Waste Pickers in Delhi, India" in Melanie Samson ed, *Refusing to be Cast Aside: Waste Pickers Organising Around the World* (Cambridge: WIEGO, 2009) 8.

<sup>19</sup> See Kamala Sankaran, Shalini Sinha & Roopa Madhav, "WIEGO Law Pilot Project on the Informal Economy Domestic Workers - Background Document", available at [http://www.wiego.org/informal\\_economy\\_law/india/content/dw\\_background\\_note.pdf](http://www.wiego.org/informal_economy_law/india/content/dw_background_note.pdf) (visited on 24rd April 2010); also see Kamala Sankaran, Shalini Sinha & Roopa Madhav, "WIEGO Law Pilot Project on the Informal Economy Waste Pickers Background Note", available at [http://www.wiego.org/informal\\_economy\\_law/india/content/wp\\_background\\_note.pdf](http://www.wiego.org/informal_economy_law/india/content/wp_background_note.pdf) (visited on 24th April 2010).

<sup>20</sup> See Agarwala, *supra* note 18; also see Elizabeth Hill, *Worker Identity, Agency and Economic Development: Women's empowerment in the Indian informal economy* (New York: Routledge, 2010); also see Poornima Chikarmane & Laxmi Narayan, "Organising the Unorganised: A Case Study of the Kagad Kach Patra Kashtakari Panchayat" (Trade Union of Waste-pickers), available at

The Government of India's response to the conditions of informal workers in the country has been a delayed one. While the First National Commission on Labour (1969) did not mention informal workers, the Second National Commission on Labour (2002) was constituted "to suggest an Umbrella Legislation for ensuring a minimum level of protection to the workers in the unorganised [informal] sector."<sup>21</sup> The enormity of the size of informal workers in India and their poor predicament, which is comprehensively charted by the recently constituted Government of India commission, the National Commission for Enterprises in the Unorganised Sector (NCEUS), demonstrate the need for legislative protection for informal workers.<sup>22</sup>

Even though some groups of informal workers, such as *bidi*<sup>23</sup> workers, construction workers etc., enjoy legislative protection, such protections are principally directed towards waged informal workers.<sup>24</sup> The majority of informal workers in India do not enjoy productive employment in any meaningful sense; they encounter extremely adverse conditions at work, they are excluded from social protection mechanism of the state, and do not have any voice to air their grievances.<sup>25</sup> Many of these conditions could be secured for informal workers with the help of protective legislation. However, as the NCEUS shows, precarious conditions of informal workers in India are fallout of the workers' exclusion from legislative protection in the country.<sup>26</sup>

In view of the decent work deficiency, and deplorable working and living conditions of informal workers in India, this dissertation is concerned with ameliorating conditions of informal workers in India. More specifically, the objective of this dissertation is to see if a human development-inspired legislative framework might be able to promote overall development of a specific category of informal workers in India.

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[http://www.wiego.org/program\\_areas/org\\_rep/case-kkpkp.pdf](http://www.wiego.org/program_areas/org_rep/case-kkpkp.pdf) (visited on 23rd April 2010); also see Nalini Shekar, "Suman More – KKP KP, Pune, India" in Samson ed, supra note 18, 11; also see Arbind Singh & Rakesh Saran, "NIDAN Swachdhara Private Ltd – Forming a Company with Waste Pickers in India" in Samson ed, *ibid*, 17; also see Janhavi Dave, Manali Shah & Yamini Parikh, Through Union and Co-operative in India, SEWA, in Samson ed, *ibid*, 27.

<sup>21</sup> See "The Terms of Reference", Chapter-I, *Report of the National Commission on Labour* (New Delhi: Government of India, 2002) at 6, available at <http://labour.nic.in/lcomm2/2nlc-pdfs/Chap1-2.pdf> (site visited 28 May 2012).

<sup>22</sup> See generally NCEUS, *Definitional and Statistical Issues*, supra note 14; also see generally NCEUS, *Conditions of Work*, supra note 16.

<sup>23</sup> *Bidi* means hand-rolled cigarette in many Indian languages.

<sup>24</sup> See generally NCEUS, *Conditions of Work*, supra note 16.

<sup>25</sup> *Ibid*.

<sup>26</sup> *Ibid*.

As I will discuss later, informal economic activities manifest activity-specific and region-specific heterogeneity. Because of this heterogeneity it is difficult, if not impossible, to categorize all informal economic activities together for analytical purposes. Accordingly, I adopt the approach of selecting one specific informal economic activity – waste-picking – as my informal activity frame of reference.

In this introductory chapter, I situate my study within the existing scholarly and policy debates, and identify the research questions guiding my study. I explain how my theoretical and conceptual approaches will help me answer my research questions, and contribute to the debates on informal economic activities, human development and DW, and law. In the following section, I identify scholarly contributions to the debates I mentioned above. In section 1.1, I locate my study within the law and policy debates on informal economic activities in India. In section 1.2, I discuss my theoretical frame of reference, which is Amartya Sen's capability approach. As I will explain, since the objective of my study is to promote overall development of informal workers in India, I adopt the capability approach, which is a non-paternalistic and multi-dimensional approach to human development. I also discuss the existing scholarship that employs the capability approach in reconceptualizing labour law and I identify the gaps left unaddressed by such studies. In section 1.3, I outline some of the literature on the ILO's DW Agenda and specifically, the social dialogue pillar of that Agenda. As I will argue in chapters 5 and 6, the democratic underpinning of the capability approach as conceived by Sen is compatible with the social dialogue pillar of the DW Agenda. In section 2, I identify the research questions guiding my dissertation. In section 3, I discuss my methodology and refer to my fieldwork in India. I adopt an integrated methodology for my study, which employs both textual analysis and empirical fieldwork to answer the key questions of the study. Finally, in section 4, I provide an outline of my dissertation.

## **1. Informal Economic Activities, Human Development and Decent Work, and Law**

My dissertation relies on the contribution of other scholars engaged in the analysis of working conditions and living standards of informal workers, the ILO formulated DW Agenda, and the capability approach-based labour law reconceptualization. Since the aim

of my dissertation is human development of informal workers through legislative means, I have primarily relied on legal and socio-legal studies on labour law and how such law can promote human development of informal workers. I have also drawn upon sociological studies looking at the conditions of informal workers in developing countries and specifically in India, and economic studies engaged in the analysis of the capability-based human development approach. Since I am also interested in analyzing the role of the social dialogue pillar of the DW Agenda in the overall development of informal workers, I draw on policy studies on the DW Agenda.

Despite the prominence of informal economic activities and informal workers in scholarly and policy debates<sup>27</sup> there is a dearth of legal studies on the topic. Very few legal studies have attempted to look at the role of law on conditions of informal workers. Prominent exceptions are Hernando de Soto and Kamala Sankaran's work on the relationship between law and informal economic activities in Peru and in India respectively.<sup>28</sup> De Soto looks at how complicated, costly, and time consuming laws and legal frameworks force entrepreneurs to operate informally.<sup>29</sup> He, however, is not concerned about ways in which law might be able to improve conditions of informal workers.<sup>30</sup> On the other hand, even though Sankaran analyzes the exclusion of informal workers from the scope of labour law in India, she does not look at how an effective legislative framework could be developed in order to improve conditions of informal workers in India.<sup>31</sup> Legal scholar and former ILO official Anne Trebilcock indicates how

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<sup>27</sup> See for example, ILO, *informal economy*, supra note 11; see Marc Bacchetta, Ekkehard Ernst & Juana P. Bustamante, *Globalization and Informal Jobs in Developing Countries* (Geneva: WTO & ILO, 2009); also see Kudva & Beneria eds, supra note 5; also see Women in Informal Employment: Globalizing & Organizing (WIEGO), available at <http://wiego.org> (site visited 20 October 2010), for research and advocacy on comprehensive issues related to informal workers.

<sup>28</sup> See generally Hernando de Soto, *The Other Path – The Invisible Revolution In The Third World* (New York: Harper & Row, 1989); also see generally Kamala Sankaran, "Informal Employment and the Challenges for Labour Law" in Guy Davidov & Brian Langille eds, *The Idea of Labour Law* (Oxford & New York: Oxford University press, 2011) 223; Kamala Sankaran, *Labour Laws in South Asia: The need for an inclusive approach* (Geneva: International Institute for Labour Studies, 2007); Kamala Sankaran, "Protecting the Worker in the Informal Economy: The Role of Labour law" in Guy Davidov & Brian Langille eds, *Boundaries and Frontiers of Labour Law* (Portland: Hart Publishing, 2006) 205; Kamala Sankaran, "Labour laws in South Asia – The need for an inclusive approach" in Tzehainesh Tekle ed, *Labour Law And Worker Protection In Developing Countries* (Oxford and Portland, Oregon: Hart; Geneva: ILO, 2010) 225.

<sup>29</sup> de Soto, *The Other Path*, *ibid*.

<sup>30</sup> *Ibid*.

<sup>31</sup> Sankaran, "Informal Employment", supra note 28; Sankaran, "Protecting the Worker", supra note 28; Sankaran, "The need for an inclusive approach", supra note 28.

different development approaches could become possible candidates for the development of labour law for informal economic activities.<sup>32</sup> However, her study remains inconclusive about the choice of the development approach and does not analyze how a human development-inspired labour law might work in the context of informal economic activities.<sup>33</sup>

Labour law scholars Bob Hepple, Robert Salais, Simon Deakin, Frank Wilkinson, Jude Browne, Judy Fudge, Brian Langille, and Kevin Kolben are interested in the reconceptualization of labour law so that law could promote human development of workers.<sup>34</sup> These scholars invoke the capability approach to human development formulated by Sen in reconceptualizing labour law.<sup>35</sup> However, with the exception of Hepple they are not concerned with informal economic activities in developing countries, and accordingly, their reconceptualization effort remains confined to issues involving workers in developed countries.

On the other hand, sociologists, economists, and development scholars have shown interest in analyzing working conditions and living standards of informal workers from a capability approach-based human development point of view,<sup>36</sup> but their approach remains non-legal. Few ILO reports note the urgency of promoting DW for informal

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<sup>32</sup> See Anne Trebilcock, "Using Development Approaches To Address The Challenge Of The Informal Economy For Labour Law" in Davidov & Langille eds, *Boundaries And Frontiers*, supra note 28, 63.

<sup>33</sup> See generally *ibid*.

<sup>34</sup> See Bob Hepple, *Labour Law, Inequality and Global Trade*, Sinzheimer Lecture 2002 (Amsterdam: Hugo Sinzheimer Instituut, 2002); Robert Salais, "Incorporating the CA into social and employment policies" in Robert Salais & Robert Villeneuve eds, *Europe and the Politics of Capabilities* (New York: Cambridge University Press, 2004) 287; Jude Browne, Simon Deakin, Frank Wilkinson, "Capabilities, Social Rights and European Market Integration" in Salais & Villeneuve eds, *ibid*, 205; Simon Deakin, "The Contribution of Labour Law to Economic and Human Development" in Davidov and Langille eds, *Idea of Labour Law*, supra note 28, 156; Brian A Langille, "Core Labour Rights – The True Story (Reply to Alston)" (2005) 16: 3 *European Journal of International Law* 409; Judy Fudge, "The New Discourse of Labor Rights" (2007) 29 *Comparative Labor Law and Policy Journal* 29; Judy Fudge, "Labour as a 'Fictive Commodity': Radically Reconceptualizing Labour Law" in Langille & Davidov, *Idea of Labour Law*, *ibid*, 120; Brian Langille, "Labour Law's Theory of Justice" in Langille & Davidov, *Idea of Labour Law*, *ibid*, 101; Kevin Kolben, "A Development Approach to Trade and Labor Regimes" (2010) 45: 2 *Wake Forest Law Review* 355.

<sup>35</sup> *Ibid*; also see Amartya Sen, *Development as Freedom* (New York: Alfred A. Knopf, 1999).

<sup>36</sup> Hill, *Worker Identity*, supra note 20; also see Elizabeth Hill, "Women in the Indian Informal Economy: Collective Strategies for Work Life Improvement and Development" (2001) 15: 3 *Work, Employment & Society* 443; Sabina Alkire, *Valuing Freedoms – Sen's CA and Poverty Reduction* (New York: Oxford, 2002); Agarwala, supra note 18.

workers,<sup>37</sup> but the Organization leaves it to the member-states to develop their own mechanism for the same.<sup>38</sup>

As this brief overview of scholarly literature suggests, scholars from different disciplines have been interested in informal economic activities, human development approach, and labour law, but an analysis of informal economic activities with a view to promote human development of informal workers through legislative means remains absent from scholarly debates. Such an analysis is important because informal workers remain excluded from legislative benefits in developing countries,<sup>39</sup> including India.<sup>40</sup> Such an analysis can also indicate whether it is possible to institutionalize human development-enhancing factors through legislative means. Accordingly, in my dissertation, I analyze the informal activity of waste-picking in India as an example of informal economic activity in order to see if it is possible to promote human development of waste-pickers through a human development-inspired labour law conceptualization. In the following sub-sections I locate my study within the three categories of scholarly literatures that I engage with in my study, which are Informal Workers, Law and Policy in India; the capability approach; and the DW Agenda and social dialogue.

### **1.1. Informal Workers, Law and Policy in India**

In India, scholarly studies undertaken mainly by economists focus principally on the contribution of informal sector to the overall economy.<sup>41</sup> Economists are interested in ascertaining the share of informal economic activities on the Gross Domestic Product (GDP) of the country.<sup>42</sup> They are concerned with the productivity and employment generation capacity of the informal sector.<sup>43</sup> Even the recently constituted high powered

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<sup>37</sup> ILO, *The dilemma*, supra note 8; also see ILO, *informal economy*, supra note 11.

<sup>38</sup> ILO, *informal economy*, *ibid.*

<sup>39</sup> See Tekle ed, supra note 28; de Soto, *The Other Path*, supra note 28; Guillermo E. Perry et al, eds, *Informality: Exit and Exclusion* (Washington DC: The World Bank, 2007).

<sup>40</sup> See NCEUS, *Conditions of Work*, supra note 16; Tekle, *ibid.*; also see supra note 31.

<sup>41</sup> See Sugata Marjit & Saibal Kar, *The Outsiders – Economic Reforms and Informal Labour in a Developing Economy* (New Delhi: Oxford University Press, 2011); also see Renana Jhabvala, Ratna M. Sudarshan & Jeemol Unni eds, *Informal Economy Centrestage – New Structures of Employment* (New Delhi: Sage Publications, 2003).

<sup>42</sup> See N. Lalitha, “Unorganised Manufacturing and the Gross Domestic Product” in Jhabvala, Sudarshan & Unni eds, *ibid.*, 157.

<sup>43</sup> See generally Ratna M. Sudarshan & Jeemol Unni, “Measuring the Informal Economy” in Jhabvala,

government commission, the NCEUS, was constituted in order to determine how the informal sector in India can contribute to the growth, employment generation, exports promotion, productivity improvement and competitiveness of the country.<sup>44</sup> Scholarly concern for conditions of informal workers received scant attention in informality debates in India. Such lack of attention led one commentator note that the “ongoing debates” on informal economic activities “are directed almost exclusively by the interests and concerns of the entrepreneurs, and are practically silent on the right of workers to safety and security.”<sup>45</sup>

However, scholars mainly outside India show that workers’ rights, their safety, security, vulnerability, marginalization, and exclusion concerns are central problems in informality debates around the globe.<sup>46</sup> They note that in some countries the majority of informal activities are “moderately or highly precarious” – devoid of stability and security.<sup>47</sup> Some studies document the vulnerability and struggle of specific categories of informal workers.<sup>48</sup> For certain categories of informal workers, such as homeworkers, there is a link between working in the informal activity and being poor.<sup>49</sup> Martha Alter Chen, Renana Jhabvala, and Frances Lund note that informal economic activities are a manifestation of deteriorating bargaining power of workers worldwide.<sup>50</sup>

Through her sociological study in India, Rina Agarwala shows that while some informal workers in India have successfully bargained with the state in order to avail

Sudarshan & Unni eds, *ibid*, 19; also see Jeemol Unni & Uma Rani, “Employment and Income in the Informal Economy: A Micro-Perspective” in Jhabvala, Sudarshan & Unni eds, *ibid*, 39; also see Keshab Das, “Income and Employment in Informal Manufacturing: A Case Study” in Jhabvala, Sudarshan & Unni eds, *ibid*, 62; also see generally Marjit and Kar, *supra* note 41. Such scholarly interest is part of a global trend of linking informal activities with growth and development issues. For example, see Bacchetta, Ernst & Bustamante, *Globalization and Informal Jobs*, *supra* note 27.

<sup>44</sup> “Terms of Reference of the Commission”, Annexure 3 in NCEUS, *Conditions of Work*, *supra* note 16 at 342. However, it is a relief that once constituted the Commission did not strictly adhere to the Terms of Reference, as I will discuss presently.

<sup>45</sup> Das, *supra* note 43 at 98.

<sup>46</sup> Kudva & Beneria eds, *supra* note 5; also see Chen, Jhabvala & Lund, *supra* note 6 at 13-14.

<sup>47</sup> Lourdes Beneria & Maria Floro, “Distribution, gender, and labor market informalization: A conceptual framework with a focus on homeworkers” in Kudva & Beneria eds, *ibid*, 9 at 19.

<sup>48</sup> See Samson ed, *supra* note 18; also see generally Martha Chen, Jennefer Sebstad & Lesley O’Connell, “Counting the Invisible Workforce: The Case of Homebased Workers” (1999) 27: 3 *World Development* 603.

<sup>49</sup> Marty Chen, “Rethinking the informal economy: from enterprise characteristics to employment relations” in Kudva & Beneria eds, *supra* note 5, 28 at 40-42; also see Heintz & Pollin, *supra* note 6, 44 at 44; also see Chen, Jhabvala & Lund, *supra* note 6 at 12.

<sup>50</sup> Chen, Jhabvala & Lund, *ibid* at 29; also see Chen, “Definitions, Theories and Policies”, *supra* note 5.

themselves of some legislative benefits, such benefits remain restricted to certain Indian states, and only to some specific categories of informal workers.<sup>51</sup> Sankaran shows that being based on the juridical notion of employment relationship, Indian labour laws are not particularly suited to the needs of informal workers in the country.<sup>52</sup> However, Sankaran's work did not focus on the possibility of an informal activity-specific labour law model.<sup>53</sup> Like Sankaran, since I am also interested in ascertaining whether informal workers could avail themselves of appropriate legislative safeguard, in this dissertation I examine the possibility of a labour law model suited to the conditions of a specific category of informal workers in India in order to fill the gap in the existing literature that look at the possibility of improving informal workers' conditions through legislative means. Because I am interested in legislation-induced overall human development of informal workers, my theoretical framework in this dissertation is based on Sen's capability approach.

## 1.2. The Capability Approach

Sen offers an encompassing idea of human development that permeates working conditions and living standards of informal workers, making it possible to conceptualize overall development of such workers. Sen's capability approach emerged as a response to the mainstream human development approaches.<sup>54</sup> Different mainstream human development and social justice theories attribute development to the possession and enjoyment of goods, resources, wealth, and measure development in terms of happiness or utility.<sup>55</sup> Some theoretical approaches prioritize institutions, rights and liberties.<sup>56</sup> As an alternative to these approaches that concentrate on the availability of resources, Sen offers a multi-dimensional approach to human development known as the capability

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<sup>51</sup> See generally Agarwala, *supra* note 18.

<sup>52</sup> See *supra* note 31.

<sup>53</sup> *Ibid.*

<sup>54</sup> David A. Clark, "The Capability Approach: Its Development, Critiques and Recent Advances", GPRG-WPS-032, November 2005, 1 at 2-3.

<sup>55</sup> *Ibid.* Also see generally Amartya Sen, "Equality of What?" The Tanner Lecture on Human Values, delivered at Stanford University, May 22, 1979 in *The Tanner Lectures On Human Values, Vol. I* (Salt Lake City: University of Utah Press/Cambridge, London, Melbourne and Sydney: Cambridge University Press, 1980).

<sup>56</sup> See Sen, *ibid.* For example, see John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971).

approach. Instead of prioritizing the role of resources, the capability approach looks at what different resources do for individuals, as I discuss in detail in chapter 4. This approach evaluates development on the basis of multiple factors – resources, institutions, environment, and physical features - that enhance an individual’s opportunity. According to the capability approach, there need not be any predetermined set of resources or institutions which can guarantee human development, as Sen argues that necessary resources and institutions for the purpose of human development will depend on actual circumstances that surround specific individuals. Such a multi-dimensional non-paternalistic idea of human development is especially useful for the purpose of analyzing working conditions and living standards of specific categories of informal workers.

According to Sen, human development entails freedom to choose the life people have reasons to value.<sup>57</sup> The idea of democratic participation and dialogue is central to Sen’s capability approach. He calls for active participation of people mediated by multiple institutions of a democratic society in order to decide conditions that a society should provide to facilitate individual capabilities.<sup>58</sup>

The capability approach offers multiple advantages as a theoretical basis for the analysis of informal economic activities. First, the reference point of the capability approach is the working and living conditions of workers – the approach is concerned with human development. This focus on human development of workers helps in thinking about informal workers as complete individual entities, not necessarily tied to an employment relationship on which the traditional idea of labour law is based. Second, the capability approach is non-paternalistic. Non-paternalism allows workers to decide for themselves what development means to them. Third, according to Sen, policy decisions should be arrived at through a democratic deliberation process with wide participation of all stakeholders in a society.<sup>59</sup> Multiple institutions of the democratic society such as the government, opposition, political parties, legislature, media, civil society, and judiciary should mediate such a democratic culture.<sup>60</sup>

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<sup>57</sup> Sen, *Development*, supra note 35 at 18.

<sup>58</sup> Ibid at 155-157; Amartya Sen, *The Idea of Justice* (Cambridge: Harvard University Press, 2009) at 388-415.

<sup>59</sup> Sen, *Development*, ibid at 155-157; Sen, *Idea of Justice*, ibid at 388-415.

<sup>60</sup> Sen, *Development*, ibid at xii-xiii; Jean Dréze & Amartya Sen, *India Development and Participation* (New Delhi: Oxford University Press, 2002) at 20.

These advantages have drawn labour law scholars such as Hepple, Salais, Deakin, Wilkinson, Browne, Fudge, and Langille to reconceptualize labour law on the basis of the capability approach. However, as Fudge notes, the efforts to reconceptualize labour law's normative foundations through the capability approach are focused on developed countries.<sup>61</sup> Even though some studies employ the capability approach in the context of informal economic activities in the developing world, they do not undertake an analysis of the institution of law itself.<sup>62</sup> The few scholarly studies that are concerned with labour law in this particular context note that there is an urgent need to debate and analyze labour law specifically contextualized in developing country informality issues.<sup>63</sup>

Against this backdrop, I will examine whether the capability approach can be invoked to develop a normative goal of labour law for a particular variety of informal economic activities in India. Since the capability approach as conceptualized by Sen has a strong democratic component I will analyze how far the strategy of social dialogue, which is one of the pillars of the DW Agenda promoted by the ILO,<sup>64</sup> could be successfully employed to integrate informal workers into the process of institutionalization of capability-enhancing factors. My goal is to determine whether, and if so, how the process of social dialogue can promote a non-paternalistic idea of labour law for informal economic activities. For this reason I explore the literature that debates the role of the DW pillar of social dialogue in improving conditions of workers, including informal workers.

### **1.3. The Decent Work Agenda and Social Dialogue**

In 1999, the ILO devised the DW Agenda as a global goal for workers around the world. The DW Agenda was envisaged as a policy goal to improve conditions of workers irrespective of the nature of the work and status of the industry within which they work.<sup>65</sup>

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<sup>61</sup> Fudge, "The New Discourse", supra note 34 at 31.

<sup>62</sup> See for example, Hill, *Worker Identity*, supra note 20; also see Hill, "Women", supra note 36; also see Alkire, supra note 36; also see Trebilcock, "Using Development Approaches", supra note 32, 63.

<sup>63</sup> See generally Tekle ed, supra note 28; also see generally Sankaran, Sinha & Madhav, "Domestic Workers", supra note 19; also see generally Sankaran, Sinha & Madhav, "Waste Pickers", supra note 19.

<sup>64</sup> The ILO defines social dialogue as tripartite negotiation, consultation or exchange of information about social and economic policy between governments, employers and workers. See ILO, "Social Dialogue Sector", available at <http://www.ilo.org/public/english/dialogue/> (site visited 4 August 2012).

<sup>65</sup> ILO, *Promoting Decent work for all*, supra note 11.

It comprises four basic pillars: productive employment, fundamental rights and principles at work, social protection, and social dialogue.<sup>66</sup> Thus, decency of work is dependent on the productive and satisfactory nature of work (or employment), availability of labour rights at work, provision for social security, and effectiveness of social dialogue.<sup>67</sup>

The objective of the DW Agenda is to promote “people’s well-being”.<sup>68</sup> Decent work “can pave the way for broader social and economic advancement, strengthening individuals, their families and communities”.<sup>69</sup> What the capability approach envisages in the larger political context, the DW Agenda conceptualizes in the narrower context of work and worker welfare. Sen’s capability approach can be specified in policy terms with the help of the DW Agenda developed by the ILO.

In Chapter 5, I focus on the social dialogue pillar of the DW Agenda. The ILO asserts that giving voice to informal workers is one of the most important measures in availing decent work to informal workers.<sup>70</sup> Voice (democratic deliberation) and public participation are central to the idea of social dialogue. I will analyze the pillar of social dialogue from a two-pronged perspective. First, I will assess the conditions necessary to institutionalize social dialogue amongst informal workers. Second, I will look at how the pillar of social dialogue might help promote conditions of a specific category of informal workers in India.

The principle of social dialogue is based on the understanding that workers can decide for themselves what constitutes a decent life for them and can help determine the policies that promote their decent life by effective democratic participation. The pillar of social dialogue refers to a wide range of mechanisms of discussion, consultation, negotiation, and information exchange in matters of common interest between the workers, employers and government.<sup>71</sup> The purpose of social dialogue is to promote

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<sup>66</sup> Ghai, *supra* note 11; ILO, *informal economy*, *supra* note 11.

<sup>67</sup> Ghai, *ibid.*

<sup>68</sup> *Ibid.*

<sup>69</sup> *Ibid.*

<sup>70</sup> ILO, *informal economy*, *supra* note 11.

<sup>71</sup> ILO, *Freedom of association and collective bargaining* (Geneva: ILO, 1994); ILO, *Conclusions concerning tripartite consultation at the national level on economic and social policy* (Geneva: ILC, 1996); ILO, *Decent Work: Report of the Director General* (Geneva: ILO, 1999); A. V. Jose, *The ILO Declaration on Fundamental Principles and Rights at Work: Role of social partners in South Asia* (Geneva: ILO, ILS, 2002) at 2.

democratic participation by principal stakeholders in the world of work.<sup>72</sup> Workers' perception of what constitutes a decent life for them, and their capacity to represent their view through the processes of democratic deliberation that are part of social dialogue fit within the capabilities approach developed by Sen.<sup>73</sup> The principle of democratic deliberation and public participation is foundational in Sen's capability approach.<sup>74</sup> Sen envisages a continuous process of democratic deliberation in furtherance of social and economic policy measures that are instrumental in enhancing capabilities of individuals.<sup>75</sup> Thus, it is possible to conceptualize social dialogue as a component of democratic deliberation and public participation process that is central to Sen's capability approach and his idea of justice.<sup>76</sup> Social dialogue, which promotes the idea of effective exchange of information, opinions, and participation in the democratic deliberation process amongst all the stakeholders related to work,<sup>77</sup> is a manifestation of workers' capabilities, and in turn, also promotes capabilities of the workers.

To date, the ILO has not been able to devise mechanisms to promote social dialogue in the informal economy.<sup>78</sup> According to Sarosh Kuruvilla, the ILO's focus on social dialogue is still rooted in the bipartite and tripartite institutional mechanism that has been the reference point of traditional labour law.<sup>79</sup> Even though the ILO recognizes that social dialogue need not be limited only to collective bargaining,<sup>80</sup> in conceptualizing social dialogue the ILO emphasizes on the role of labour unions, employers, and governments.<sup>81</sup> The problem with this bipartite or tripartite conceptualization is that a large number of informal workers are left out because of the absence of labour unions or employers.<sup>82</sup> Therefore, it is imperative to move beyond the limited concepts of bipartite and tripartite dialogue process mediated by unions, to give voice and allow participation

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<sup>72</sup> ILO, 1994, *ibid*; ILO, 1996, *ibid*; ILO, 1999, *ibid*.

<sup>73</sup> Amartya Sen, *Inequality Reexamined* (New York: Russell Sage Foundation/Cambridge: Harvard University Press, 1992); Sen, *Development*, *supra* note 35.

<sup>74</sup> Sen, *Development*, *supra* note 35 at 31-32, 36-40, 51-53, 123, 147-148, 152-155; Sen, *Idea of Justice*, *supra* note 58 at 91, 324-327, 388-415.

<sup>75</sup> Sen, *Development*, *ibid*; Sen, *Idea of Justice*, *ibid*.

<sup>76</sup> Sen, *Idea of Justice*, *ibid* at 388-415.

<sup>77</sup> Ghai, *supra* note 11; ILO, *informal economy*, *supra* note 11.

<sup>78</sup> Sarosh Kuruvilla, "Social dialogue for decent work" in Ghai ed, *supra* note 11 at 179-180.

<sup>79</sup> *Ibid*.

<sup>80</sup> ILO, *informal economy*, *supra* note 11.

<sup>81</sup> Kuruvilla, *supra* note 78 at 180-181.

<sup>82</sup> Kuruvilla, *ibid* at 181-183.

to informal workers. Therefore, in this dissertation I will explore the possibility of integrating a specific group of informal workers into the social dialogue process.

Situated at the intersection of the scholarly literature noted above, the following are the research questions that will guide my dissertation.

## **2. Research Questions**

### Principal Questions

1. To what extent the integrated framework of the capability approach and the social dialogue pillar of the DW Agenda can effectively contribute to the design of a labour law model that is responsive to the problems of informal workers in India?
2. What mechanism might be devised in furtherance of legislative institutionalization of factors that can enhance capabilities of the specific category of informal workers (waste-pickers) in India?

### Subsidiary Questions

1. What are the capability deficiencies of the waste-pickers in Kolkata, India? Which desirable capabilities do the waste-pickers identify as valuable to them?
2. What role can unionization/organization of informal workers play during the legislative institutionalization of capability-enhancing factors?
3. What could be the role of multiple institutions of a democratic society (integrated institutions) in the process of institutionalization of capability-enhancing factors for informal workers in India?

## **3. Methodology**

As I mentioned earlier, in light of the heterogeneity of informal economic activities I have decided to concentrate on a specific case study of informal workers in a state in India – waste-pickers in West Bengal. The informal economic activity of waste-collection is linked to the formal recycling industry through the production process. However, because of the informal nature of the work, waste-pickers are not integrated into the formal recycling industry and remain outside the protective coverage of labour laws. In spite of constitutional and legislative protection afforded to workers in India, the

majority of informal workers remain excluded from such protection because such statutory protections mainly promote the interest of formal workers (as I discuss in chapter 3). Through an analysis of the informal activity of waste-picking in Kolkata my goal is to ascertain if it is possible to devise a labour law framework for informal workers that aims to promote their development in terms of capabilities through a variation of the social dialogue strategy.

I adopt an interdisciplinary approach to my study. My thesis is situated at the intersection of the disciplines of law, sociology, and political economy, with a case study of a specific informal economic activity in India. Even though the central focus of the study is legal, it is not a legal study in the traditional sense of the term. My study is not concerned solely with the analysis and interpretation of legislative texts and judicial decisions, but rather conceptualizes and contextualizes law in social interactions. It understands law as one amongst many of the institutions of society that shapes social interactions. My case study employs the methods of qualitative interviewing and participant observation.

I undertake a socio-legal approach<sup>83</sup> to my study, which analyzes law in the larger context of the society.<sup>84</sup> Such an approach allows me to question the interrelationship between law and society; evolutionary influence of law and society on each other; and assumptions underlying the relation between law and society.<sup>85</sup> The socio-legal approach is specifically important for the purpose of my study because my study questions the fundamental basis of (labour) law – it questions the assumptions underlying labour law and its role in society – it discusses the inadequacies of labour law to address problems of informal economic activities – and it advocates for the reconceptualization of labour law so that it remains a relevant institution for the betterment of the society at large. In order

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<sup>83</sup> Scholars distinguish between socio-legal approach, an interdisciplinary research approach in the United Kingdom from the law and society approach prevalent in the United States, and the legal sociology tradition of continental Western European countries. While these distinctions are based on very subtle premises, what is common in all these traditions is that all of them promote interdisciplinary research involving law - law is studied in the context of the society. See Reza Banakar & Max Travers, “Introduction” in Reza Banakar & Max Travers eds, *Theory and Method in Socio-Legal Research* (Oxford & Portland, Oregon: Hart, 2005) ix at xi-xiii.

<sup>84</sup> Reza Banakar & Max Travers, “Introduction” in Reza Banakar & Max Travers eds, *An Introduction to Law and Social Theory* (Oxford & Portland, Oregon: Hart, 2002) 1 at 1-2.

<sup>85</sup> See Reza Banakar & Max Travers, “Law, Sociology and Method” in Banakar & Travers eds, *Theory and Method*, supra note 83, 1 at 5.

to analyze law in the context of the society, my study undertakes a theoretical analysis, which is supplemented by empirical research.

I develop the theoretical underpinnings of my study in chapters 4, 5 and 6. I employ my theoretical analysis in order to propose a new approach to labour law, which is more attuned to the necessities of informal workers. As I alluded to earlier, the theoretical approach that I propose in the interest of developing a labour law model for informal workers integrates the capability approach formulated by Sen with the strategic pillar of social dialogue developed by the ILO. I then test this theoretical proposal through my empirical study, which I discuss in chapters 7 and 8. Specifically, I employ the analytical perspective of the capability approach in order to evaluate the nature and extent of deprivation of a specific category of informal workers in India. With the help of this empirical study I show how my theoretical approach might work in the specific context of the informal economic activity of waste-collection in India.

Since one of my research objectives is to formulate a mechanism which might institutionalize the social dialogue pillar of the DW Agenda in furtherance of the enhancement of capabilities of the waste-pickers, it is necessary for me to undertake a case study that reveals the details of *modus operandi* and the actual living and working conditions of the waste-pickers. Martyn Denscombe points out: “[t]he logic behind concentrating efforts on one case rather than many is that there may be insights to be gained from looking at the individual case that can have wider implications and, importantly, that would not have come to light through the use of a research strategy that tried to cover a large number of instances.”<sup>86</sup> Following Denscombe, I want to identify the instances of deprivation and sites for positive intervention in the work and lives of waste-pickers in India with the help of a micro-level in-depth study.

An advantage of the case study method is that it allows the researcher to follow a variety of research methods to conduct the study.<sup>87</sup> However, since a *case* is a naturally occurring phenomenon,<sup>88</sup> it is important to carefully devise the method through which the study is conducted, so that the naturalness of the study is preserved. Accordingly, I have

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<sup>86</sup> Martyn Denscombe, *The Good Research Guide for small-scale social research projects* (Berkshire: Open University Press, McGraw-Hill, 2007) at 36.

<sup>87</sup> *Ibid* at 37.

<sup>88</sup> See generally R. K. Yin, R. K. *Case study research: design and methods* (2nd ed.) (Thousand Oaks: Sage Publications, 1994).

used qualitative interviews and participant observation methods involving principal stakeholders – workers, middle-person (intermediaries), union leaders, and government officials – associated with the waste-picking activity. I supplement my qualitative interviews and participant observation with existing quantitative data for my case study.

I have selected waste-picking as the subject of my case study for two different reasons: first, waste-picking is an informal activity that is directly linked to the formal economy through the process of production;<sup>89</sup> and second, waste-picking is one of the most marginalized and volatile of all informal activities (waste-pickers are primarily temporarily engaged in waste-picking activity in the absence of a better work – it is hardly considered a proper work even by waste-pickers themselves). Though both of these characteristics might be true for some other informal activities, waste-picking is the classic case of the lower rung informal activity that is transient in nature, which posits a serious challenge to the institutionalization of capability-enhancing factors and operationalization of the social dialogue principle. Moreover, women constitute the majority of the waste-pickers in India.<sup>90</sup> I encountered mostly women waste-pickers during my study. Women waste-pickers manifest the work-life challenges of informal economic activities where work and family responsibilities are interwoven into each other. In order to understand the complexities of my research participants' work-lives, during the case study, my interviewing focus was narrative and intended to elicit interpretive account of the experiences of the interviewee stakeholders. As a participant observer, even though I participated during the unionization effort of the waste-pickers (discussed in chapter 8), I attempted to be non-interfering in the decision-making processes. The approach of the empirical study was to preserve the naturalness of the case studied in Kolkata, India.

Since the activity of waste-picking is linked to the formal production process, the linkage between the waste-picking activity and the formal recycling industry can indicate whether or not increasing informality is the result of rising cost of formality, a

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<sup>89</sup> See generally Alejandro Portes & Lauren Benton, "Industrial Development and Labor Absorption: A Reinterpretation" (1984) 10: 4 *Population and Development Review* 589; also see generally Alejandro Portes, Manuel Castells & Lauren A. Benton eds, *The Informal Economy – Studies in Advanced and Less developed Countries*, (Baltimore & London: The Johns Hopkins University Press, 1989).

<sup>90</sup> See generally Poornima Chikarmane & Lakshmi Narayanan, "Transform or Perish: Changing Conceptions of Work in Recycling" in Fudge, McCrystal & Sankaran eds, *supra* note 5, 49.

proposition scholars such as Portes, Castells, Benton, de Soto and organizations such as the ILO and the World Bank envisage.<sup>91</sup> Such linkage could also indicate that informality might not necessarily be a strategic cost-benefit decision at all times and more of a survival need of informal workers. Such linkage will also help to illustrate the continuity between formal and informal activities, if any, and its effect on informal workers. Waste-pickers are self-employed workers who do not have a fixed employer. Such a framework of operation of the activity adversely affects waste-pickers' bargaining power. However, workers engaged in the waste-picking activity are beginning to organize for their rights. Such organization initiative has helped me understand the role of informal workers' union in their capability development.

I conducted my case study in Kolkata (state of West Bengal), India. In Kolkata, organization initiative of informal workers is either absent or is a lesser priority for unions or other non-government organizations (NGOs). Therefore, effective social dialogue with the government and other stakeholders is absent. However, during the course of my fieldwork in Kolkata, waste-pickers in the city organized themselves into a trade union. The formation of the trade union in Kolkata has helped me probe the relation between unionization of waste-pickers and enhancement (or the possibility thereof) of their capabilities. Therefore, I believe that the case study helped me gain insight into the subtleties of the informal economic activity of waste-picking (with specific reference to their deprivation and unionization) and can teach valuable lessons so far as legislative institutionalization of capability-enhancing factors is concerned.

The state of West Bengal is a particularly interesting jurisdiction for a case study of informal waste-pickers. Ruled by the Left Front government led by the Communist Party of India (Marxist) for a long time, the state provides some limited nature of support to informal workers.<sup>92</sup> Since 2001, the state has instituted a contributory provident fund scheme for informal workers.<sup>93</sup> In 2007 the state enacted the West Bengal Unorganised Sector Workers' Welfare Act. A Labour Welfare Board constituted under the statute

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<sup>91</sup> See generally ILO, *informal economy*, supra note 11; also see Perry et al, supra note 39; also see de Soto, *The Other Path*, supra note 28.

<sup>92</sup> Agarwala, supra note 18 at 120-121.

<sup>93</sup> "State Assisted Scheme of Provident Fund for Unorganised Workers in West Bengal" (SASPFUW), Labour Department Resolution Nos. 180-IR dated 24/01/2001, and 305-IR dated 19/02/2001 of the Government of West Bengal.

would conceive and execute health insurance scheme, pension scheme, house building loan, educational assistance for workers' children, maternity benefit scheme, and any other welfare scheme for informal workers.<sup>94</sup> However, what is striking is that waste-pickers as a category of informal workers are totally excluded from the purview of the Scheme, as well as the statute. Accordingly, waste-pickers in Kolkata do not receive any kind of government assistance or social protection. In this backdrop I analyze deprivations of waste-pickers in Kolkata, the capital of the state of West Bengal, through my case study. In the following section, I provide a chapter outline of my study.

#### 4. Chapter Outline

Informal economic activities are defined in different ways,<sup>95</sup> depending on the nature and purpose of scholarly analyses. In chapter 2, I engage with the debate on the different conceptual understandings related to informal economic activities, and analyze terminologies used in the context of informal activities.

In chapter 3, I discuss the report of the high level commission, the NCEUS, established by the Government of India,<sup>96</sup> which shows the scarcity, and sometimes total lack of legislative protection for informal workers in India.<sup>97</sup> Even though the Constitution of India provides for labour welfare guarantees,<sup>98</sup> such guarantees largely remain unrealized for informal workers. In the absence of legislative protection of informal workers in India, I document the efforts of informal workers' trade unions, and other NGOs in promoting informal workers' interests. I argue that through socio-economic provisioning and political action these organizations promote human development of informal workers, and ensure a dignified life for these workers, as envisaged by the Constitution of India. I link the Indian judiciary-developed idea of dignified life to the concept of human development envisaged by Amartya Sen.

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<sup>94</sup> See Government of West Bengal, *Labour in West Bengal 2010 – Annual Report* (Kolkata: Govt. of WB) at 74.

<sup>95</sup> NCEUS, *Definitional and Statistical Issues*, supra note 14 at 13-16.

<sup>96</sup> See Government of India Resolution No. 5(2)/2004-ICC dated 20<sup>th</sup> September 2004.

<sup>97</sup> See generally NCEUS, *Conditions of Work*, supra note 16; also see generally NCEUS, *The Challenge of Employment in India – An Informal Economy Perspective*, Volume 1 Main Report (New Delhi: NCEUS, 2009).

<sup>98</sup> P. B. Gajendragadkar, *The Constitution of India – Its Philosophy and Basic Postulates*, Gandhi Memorial Lectures, University College, Nairobi, First Series (Nairobi: Oxford University Press, 1969) at 51.

In chapter 4, I elaborate on the concept of human development envisaged by Sen. He adopts an *institutionally integrated approach*, wherein the different institutions of the democratic society would interact in order to ensure appropriate conditions for human development in terms of promotion of capabilities.<sup>99</sup> Sen envisages continuous public participation and democratic dialogue involving individuals and integrated institutions in furtherance of promotion of capabilities within a particular society.<sup>100</sup> Social dialogue and public participation plays a constructive role in the promotion of capabilities within a particular society. I discuss the nuances of social dialogue and public participation in a democratic society as envisaged by Sen. I also indicate the link between the ILO's DW pillar of social dialogue and Sen's notion of democratic dialogue and public participation in this chapter.

In chapter 5, I discuss the strategic agenda of DW envisaged by the ILO in order to ameliorate conditions for informal workers. I argue that the social dialogue pillar is the ILO's strategic equivalent of the democratic dialogue principle central to the capability approach. However, social dialogue promoted by the ILO remains faithful to the tripartite structure, integrating government, workers, and employers into the dialogue process. In the absence of representative organization of informal workers, a tripartite social dialogue framework cannot integrate informal workers into the policy-making process. Thus, I argue that the social dialogue framework needs to integrate multiple institutions in order to allow informal workers to participate in the policy-making process involving them. I conclude the chapter with a comparison of the DW Agenda and the capability approach as possible frameworks to analyze the case study of informal workers in Kolkata, India.

In chapter 6, based on Sen's capability approach, I offer a theoretical framework to think about labour law for informal economic activities, which is not tied to the juridical concept of employment relationship. I use elements of Sen's theory discussed in chapter 4 to conceptualize labour law for informal economic activities.

Chapter 7 is based on my case study of the informal waste-pickers in Kolkata, India. In it I analyze the capability deficiencies of a specific category of informal workers – waste-pickers in Kolkata. I also ascertain what the waste-pickers in Kolkata deem to be

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<sup>99</sup> Sen, *Development*, supra note 35 at xii-xiii; Dréze & Sen, supra note 60 at 20.

<sup>100</sup> Sen, *Idea of Justice*, supra note 58 at 345-346.

*desirable capabilities* for their work-lives. In chapter 8, I propose a framework through which labour law for specific categories of informal workers could be developed. This chapter is aimed at putting the theory into work with a specific example. Chapter 9 is the concluding chapter of this dissertation. In this chapter, I briefly review my main arguments and research findings.

## Chapter 2

### Informality and India: A Workers' Perspective

#### 1. Introduction

In the introduction chapter, I chart the context and delineate the aim of my dissertation. In this chapter, I discuss the concepts that I engage with in my dissertation. I discuss the different terminologies and the underlying theoretical justifications, which are used in the context of the generic concept of *informality*. I identify the terminology that is most appropriate for the purpose of my dissertation, which, as I point out in the introductory chapter, is amelioration of conditions of informal workers in India. Accordingly, while identifying the appropriate terminology for policy-making purposes, I focus on the appropriateness in the Indian context.

The majority of the workers globally work under extremely precarious conditions.<sup>1</sup> Insecurity looms large over every aspect of their work. These workers lack guaranteed regular work, they could hardly secure minimum wages, they do not have any social protection, and the conditions at work defy the notion of dignity of the workers.<sup>2</sup> Despite their precarious condition, informal workers have largely remained outside government policy initiatives.

Policy-making in the informal economy is marred by the way informal economic activities are variously defined with differing perspectives in view. Economists and statisticians are interested in measuring the contribution of the informal economic activities in the overall economy. Labour activists are concerned with the improvement of the living standards and working conditions of workers engaged in informal activities.

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<sup>1</sup> See ILO, *Decent work and the informal economy*, International Labour Conference, 90<sup>th</sup> Session, 2002 (Geneva: International Labour Office, 2002) at 1-4, 31-33, available at <http://www.ilo.org/public/english/standards/relm/ilc/ilc90/pdf/rep-vi.pdf> (site visited 20 July 2010); also see Kristina Flodman Becker, "The Informal Economy", Sida Fact Finding Study, March 2004 at 21, available at <http://rru.worldbank.org/Documents/PapersLinks/Sida.pdf> (site visited 20 July 2010); also see generally NCEUS, *Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector*, National Commission for Enterprises in the Unorganised Sector's (NCEUS) (New Delhi: NCEUS, 2007), available at [http://nceus.gov.in/Condition\\_of\\_workers\\_sep\\_2007.pdf](http://nceus.gov.in/Condition_of_workers_sep_2007.pdf) (site visited 21 June 2010); also see Jeemol Unni, "Gender and Informality in Labour Market in South Asia" (2001) 36: 26 *Economic and Political Weekly*, 2360.

<sup>2</sup> ILO, *informal economy*, *ibid* at 2-4, 16-27; also see Becker, *ibid* at 8-10; also see generally NCEUS, *Conditions of Work*, *ibid*.

Amongst these differing perspectives each of the constituents chooses their own definition and terminology to work their way in furthering their objectives. Accordingly, I engage with the different concepts and propose the use of a terminology for a worker-centric informality conceptualization.

Before discussing the conceptual nuances of informality in the Indian context, it is useful to clarify the terms that I shall be using in this dissertation. I will be using the terminology informal employment to suggest informal economic activities, irrespective of the fact whether workers engaged in such activities are waged-workers or self-employed workers. I will use the terms informal employment and informal economic activities interchangeably. I will use the term *work* to suggest all kinds of paid and unpaid labour – such as – self-employment, wage-employment, disguised employment, unpaid family work. To denote workers in an employment relationship, I will use the terms waged-workers or workers in employment-relationship. To denote workers who are not employed by an employer, I will use the terms self-employed workers, own account workers, and unwaged workers.

I begin my task by analyzing the formal/informal divide on the basis of the dominant theories offered to explain it. There are two major theoretical conceptualizations that explain the formal/informal dichotomy – *dualism* and *structuralism*. The dualist theory is based on the rural/urban, agriculture/industry, and non-capitalist/capitalist dichotomy, and delineates the simultaneous but unrelated existence of the formal and the informal sectors. On the contrary, structuralists argue that the formal and the informal economies are inherently related to each other. According to the structuralist viewpoint the informal economy is part of the process of production that the formal economy employs in the modern world. I argue that both of these theories exclude a number of informal workers from the scope of its analysis. I contend that a better theoretical basis of the informal economy could be achieved by merging the insights from both of these theoretical points of view. Since my purpose is to address the predicament of informal workers engaged in wide ranging heterogeneous informal economic activities, I argue for the merger of insights of these theoretical conceptualizations. Such merger can help build an inclusive characterization of informal workers.

I argue that a worker-centric approach (rather than an economy-centric approach) to informal economic activities is essential to improve the conditions of informal workers. The concept of informal employment provides the conceptual basis for such worker-centric policy. The advantage of the concept of informal employment is that it relates the worker to their *work*, which does away with the necessity of finding a definite workplace or an employer-employee relation to ameliorate the conditions of informal workers.

My analysis throughout the chapter has a definite country focus – I focus on the Indian informal economy in building my argument with respect to the terminology and concepts of the informal economy. More than 90% of the working population in India is engaged in informal economic activities, making India a central concern in the policy-making debates with respect to the informal economy. It is in this background that I analyze the definitions and concepts related to informal economic activities in India.

The chapter is divided in two principal parts. In the first part of the chapter, which is divided into five sections, I discuss the theories offered to explain the formal/informal dichotomy. In section one of this part, I look into the logic of the dualist model of the formal/informal divide. In section two, I analyze the structuralist conceptualization of the formal/informal linkage. In section three, I argue that both the theories leave a vital section of informal workers (and informal economic activities) outside of their analytical purview. I argue that for an inclusive coverage of informal workers (for policy purposes) it is important to draw insights from both of the theoretical premises that helps explain the complexities of the modern informal economic activities. Such an exercise would entail surpassing the boundaries of any one of the leading theories and visualize the theories as interrelated concepts, which taken together, are capable of explaining the informality problematic. In section four, I discuss how the International Labour Organization (ILO) has been instrumental in developing terminologies related to informal economic activities. This part of the chapter concludes with the contention that the conceptualization of informal employment is the most efficacious concept (among the competing concepts of informal sector and informal economy) so far as informal workers are concerned (sections four and five).

The second part of the chapter is India-specific. This part consists of three sections. After briefly pointing out the typical conditions of the country in which informal economic activities engage the majority of the workers in the country in section one, I discuss the definitions used in the informal economy domain in India in section two. Informality is defined and conceptualized in terms of informal sector, informal employment, and informal economy. I particularly look into the definitions proposed by the National Commission for Enterprises in the Unorganised Sector (NCEUS), which was established by the Government of India in 2004 for the purpose of ascertaining the spread of the informal sector and assess the informal employment scenario in the country. The Commission (NCEUS) notes the different conceptualization of the informal economy and related concepts in the country, and offers a wider conceptualization of the terminologies used in the informal economy context. In section three, I focus on the concept of informal employment defined by the Commission (NCEUS), and I argue that the policy-makers should focus on the concept of informal employment in order to improve the conditions of informal workers in India. I argue that to improve the living standards and working conditions of informal workers a labour-centric approach to informality should be preferred than an economy-centric approach.

## **2. Conceptualizing Informality**

Conceptual clarity is a precondition for any efficient and successful policy intervention. The concept of informality largely lacks such clarity. The term informal is used in different contexts that do not necessarily resemble each other. It is used to signify the nature of entrepreneurship (sector), type of job (employment), or a section of the economy. Scholars have sought to define informality from diverse perspectives, and it is often difficult to ascertain a converging point in all these conceptual ideas.<sup>3</sup> Sometimes the theoretical concepts appear to be in conflict with each other.<sup>4</sup> Thus, some

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<sup>3</sup> Alice Sindzingre, “The relevance of the concepts of formality and informality: a theoretical appraisal” in Basudeb Guha-Khasnobis, Ravi Kanbur & Elinor Ostrom eds, *Linking the Formal and Informal Economy Concepts and Policies* (New York: Oxford University Press, 2006) at 59.

<sup>4</sup> Basudeb Guha-Khasnobis, Ravi Kanbur & Elinor Ostrom, “Beyond formality and informality” in Guha-Khasnobis, Kanbur & Ostrom eds, *ibid*, at 3-4; also Sindzingre, *ibid* at 58-59, 62-63, 71; also M. R. Narayana, “Formal and informal enterprises: concept, definition, and measurement issues in India” in Guha-Khasnobis, Kanbur & Ostrom eds, *ibid*, at 93-94.

commentators have quite aptly pointed out that the expression informality seems to signify a very subjective opinion based on a scholar's understanding of the issue at a definite point of time.<sup>5</sup>

At a very general level informal economic activities can be defined as activities that are not regulated, monitored or controlled directly or indirectly by the state. The idea of informality has come to be associated with adversity – characterized by less productivity, precarious conditions of work, regulatory avoidance (because of the overregulation mandated to operate formally and the resultant costs), and stealthy way of operation.<sup>6</sup> When the term informal sector first emerged from an anthropological study in Ghana, it did not necessarily have a negative connotation.<sup>7</sup> It was rather a picture of self-sufficient economic transactions not dependent on organized capital.<sup>8</sup> Over the course of time informality came to be identified with undesirable economic transactions and exploitative employment conditions.

Economic activity outside the (regulated and monitored) formal mode of organized production was not identified as productive. Workers who were not part of the formal economy were categorized as unemployed.<sup>9</sup> When British anthropologist Keith Hart identified economic activities that were outside of bureaucratic control and state regulation scholars no longer assumed that the workers not employed in formal undertakings were unemployed and instead, recharacterized the economy as dual.<sup>10</sup> The dual-economy thesis propounded that informal unregulated economic activities exist alongside the formal organized and regulated economic activities.<sup>11</sup> These two categories of activities were seen in isolation and perceived not to be related to each other.<sup>12</sup> Hart

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<sup>5</sup> Guha-Khasnobis, Kanbur & Ostrom, *ibid* at 3.

<sup>6</sup> See *supra* note 1.

<sup>7</sup> Keith Hart, "Informal Income Opportunities and Urban Employment in Ghana" (1973) 11: 1 *The Journal of Modern African Studies* at 61-89; also see ILO, *Employment, Incomes and Equality – a strategy for increasing productive employment in Kenya*, Report of an Inter-Agency Team Financed by the United Nations Development Programme and Organised by the International Labour Office (Geneva: ILO, 1972) at 5, 224-225, 505.

<sup>8</sup> Hart, *ibid*; also see ILO, *Employment*, *ibid*.

<sup>9</sup> Hart, *ibid*; also see Guha-Khasnobis, Kanbur & Ostrom, *supra* note 4 at 1; also Keith Hart, "Bureaucratic form and the informal economy" in Guha-Khasnobis, Kanbur & Ostrom eds, *supra* note 3 at 23-28; also see ILO, *Employment*, *ibid* at 3-8.

<sup>10</sup> See generally Hart, "Ghana", *ibid*; also see Guha-Khasnobis, Kanbur & Ostrom, *ibid* at 1; also Hart, "Bureaucratic form", *ibid* at 24-26; also see ILO, *Employment*, *ibid* at 3-8.

<sup>11</sup> Sindzingre, *supra* note 3 at 60.

<sup>12</sup> Guha-Khasnobis, Kanbur & Ostrom, *supra* note 4 at 1-2.

named the non-regulated economic activities outside the formal economy collectively as the informal sector in his study in Ghana.<sup>13</sup> He made no effort to ascertain any link or interaction between the informal sector and the formal economy.<sup>14</sup> The dualist thesis of simultaneous but unrelated existence of the formal economy and the informal sector was simply accepted.

The dualist assumption came to be challenged during late 1980s. In what came to be known as the structuralist theory, Alejandro Portes, Manuel Castells, and Lauren A. Benton identified the linkage between the formal and the informal economy.<sup>15</sup> They argued that under the competitive pressure of the global market formal firms engage in informal practices to reduce their cost of production.<sup>16</sup> In the next two sections, I elaborate these concepts. I begin with the dualist concept of formal informal divide.

## 2.1. Dualism and the Formal/Informal Divide

With the spread of capitalism across the non-European world the existing modes of pre-capitalist and feudal production came under increasing pressure. Workers were forced to shift to industrial wage-work, leaving their respective agricultural and artisanal activities. Independent farmers were increasingly marginalized.<sup>17</sup> Because of uneven competition from the capitalist mode of production, the traditional modes of production disintegrated.<sup>18</sup> The independent traditional societies gave way to the newer mode of production and social relation.<sup>19</sup> Even if the traditional modes of production were not completely supplanted they suffered tremendous set back that resulted in large scale

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<sup>13</sup> Hart, "Ghana", supra note 7.

<sup>14</sup> Hart, "Bureaucratic form", supra note 9 at 23-26.

<sup>15</sup> Manuel Castells & Alejandro Portes, "World Underneath: The Origins, Dynamics, and Effects of the Informal Economy" in Alejandro Portes, Manuel Castells & Lauren A. Benton eds, *The Informal Economy – Studies in Advanced and Less developed Countries*, (Baltimore & London: The Johns Hopkins University Press, 1989); also Alejandro Portes & Lauren Benton, "Industrial Development and Labor Absorption: A Reinterpretation" (1984) 10: 4 *Population and Development Review* 589.

<sup>16</sup> Castells & Portes, *ibid* at 12-15, 26-31; also Lauren A. Benton, "Industrial Subcontracting and the Informal Sector: The Politics of Restructuring in the Madrid Electronics Industry" in Portes, Castells & Benton eds, *ibid* 228 at 228-230.

<sup>17</sup> Michael Perelman, "The History of Capitalism" in Alfredo Saad-Filho ed, *Anti-Capitalism* (London: Pluto Press, 2003) 119 at 120.

<sup>18</sup> Tamás Szentes, *The Transformation of the World Economy – New Directions and New Interests* (London & New Jersey: Zed Books, 1988) at 36, 50, 72.

<sup>19</sup> *Ibid* at 36.

unemployment from the traditional industries.<sup>20</sup> Nonetheless, the pre-capitalist traditional modes of production (howsoever fragile and disintegrated) persisted alongside the imported capitalist mode of production, which had destabilizing effect on the socio-economic conditions in the periphery.<sup>21</sup>

It is within the context of the relationship between the capitalist mode of production and traditional economic activities in developing countries that W. A. Lewis propounded his two-sector development model. He described the source of surplus labour (because labour is unlimited) in “agricultural activities”, “petty retail trading”, “domestic servant”, “the workers on the docks”, “the young men who rush forward asking to carry your bag as you appear”, “the jobbing gardener”, “and the like”<sup>22</sup> in the developing countries. He argued that the output in these temporary and occasional activities can remain constant even if the number of workers involved is halved.<sup>23</sup> He then invoked the concepts of capitalist sector and subsistence sector to suggest the simultaneous existence of capitalist and non-capitalist modes of production.<sup>24</sup> He argued that the capitalist sector will keep on absorbing surplus labour from the subsistence sector until there is no surplus labour to absorb, thereby ensuring the development of the capitalist sector and the (national) economy as a whole.<sup>25</sup> He envisaged that the two sectors (subsistence and capitalist) run parallel to each other and are only connected to the other on the basis of flow of surplus labour or final product.<sup>26</sup> The Lewis model did not assert any inherent linkages between the subsistence and capitalist sectors in the production process.<sup>27</sup>

John R. Harris and Michael P. Todaro developed the two-sector model further. Unlike the Lewis model, their model explains rural to urban (agriculture to industry)

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<sup>20</sup> Ibid at 72.

<sup>21</sup> Karl Marx, “Chapter 20: Historical Facts about Merchant’s Capital”, Part IV: Conversion of Commodity-Capital and Money-Capital into Commercial Capital and Money-Dealing Capital (Merchant’s Capital) in *Capital Vol. III: The Process of Capitalist Production as a Whole*, available at <http://www.marxists.org/archive/marx/works/1894-c3/ch20.htm> (site visited 13 August 2010); also see Tom Kemp, *Historical Patterns of Industrialization* (London & New York: Longman, 1993) at 40-41.

<sup>22</sup> W. A. Lewis, “Economic Development with Unlimited Supplies of Labour” (1954) 22:2 *The Manchester School* 139 at 141-142.

<sup>23</sup> Ibid at 141.

<sup>24</sup> Ibid at 146-147.

<sup>25</sup> Ibid at 151-152.

<sup>26</sup> See generally ibid at 139.

<sup>27</sup> See generally ibid at 139; This is something that has been asserted by later theorists. See Castells & Portes, *supra* note 15 at 27-32.

migration even in the absence of labour surplus.<sup>28</sup> They applied the two-sector concept in explaining urban migration and resultant unemployment.<sup>29</sup> Their basic thesis is that the rural to urban migration happens because of the rural urban difference in expected earnings, which is higher in urban areas and is politically determined.<sup>30</sup> Even though the expected earnings induce rural to urban migration, such migration results in urban unemployment because migration exceeds available jobs in urban industries.<sup>31</sup>

What follows from these two models is that the economy has two sectors – the formal capitalist sector (urban in nature) and the informal non-capitalist (subsistence) sector (mostly rural in nature).<sup>32</sup> There is a flow of workforce from the rural informal (non-capitalist) sector to the urban formal (capitalist) sector. When the urban formal sector is saturated and cannot absorb workers anymore urban unemployment is created because of migration from rural informal sector.<sup>33</sup> The unemployed workforce was seen as the residual workforce that did not participate in the industrial production process.<sup>34</sup> It was assumed that large pools of working age people are unemployed because they do not participate in the factory-based production process. But, such an understanding was challenged by the empirical phenomenon in the large parts of the Third World where the working age population (who were excluded from the organized economic process) were engaged in some or other economic activity for their subsistence.<sup>35</sup> The myriad of activities people were engaged in were described as informal economic activities.<sup>36</sup> These

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<sup>28</sup> John R Harris & Michael P Todaro, “Migration, Unemployment and Development: A Two-Sector Analysis” (1970) 60: 1 *The American Economic Review* 126.

<sup>29</sup> *Ibid.* The urban unemployment that the Harris & Todaro model propounds actually results in the creation of the urban informal employment outside the organized capitalist mode of production. They themselves, however, did not provide any account of the urban unemployment scenario *per se*. Their model did not touch upon the question as to what these migrant unemployed people did to survive.

<sup>30</sup> See generally *ibid.*

<sup>31</sup> See generally *ibid.*

<sup>32</sup> See generally Lewis, *supra* note 22, 139; Sindzingre, *supra* note 3 at 60; also see generally Harris & Todaro, *ibid* at 126-142.

<sup>33</sup> Harris & Todaro, *ibid.*

<sup>34</sup> Hart, “Bureaucratic form”, *supra* note 9 at 23-28.

<sup>35</sup> Hart, *ibid* at 23-28; also see generally Hart, “Ghana”, *supra* note 7.

<sup>36</sup> See ILO, *Employment*, *supra* note 7 at 1-8, 223-232, 503-508; also see Saugata Mukherji, “Evolution of the Non-Agrarian Formal Sector of the Indian Economy Through the Nineteenth and Twentieth Century” in Binay Bhushan Chaudhuri ed, *Economic History Of India From Eighteenth To Twentieth Century* (New Delhi: Centre for Studies in Civilizations, 2005) at 356.

informal activities existed alongside the organized formal capitalist market, thereby giving an impression of a dual economy.<sup>37</sup>

It was, however, not until 1971 that the term informal sector was coined by Hart.<sup>38</sup> The idea of informal sector instantaneously became so popular that the ILO employed the concept to its study of the Kenyan economy.<sup>39</sup> The informal sector was described as self-employment activities and small scale entrepreneurship outside the organized capitalist market and free from government interference or support.<sup>40</sup> In 1993 the International Conference of Labour Statisticians (ICLS) adopted the definition of informal sector.<sup>41</sup>

The analytical categorization informal sector (developed by the ILO) sought to identify the informal self-employment, own-account activities and entrepreneurship, and promote these activities in order to reduce the unequal income distribution<sup>42</sup> that might result from non-participation in the formal sector because of which informal sector workers are deprived of market returns and social protection. However, the emphasis of sector-specific analysis (of informality) is on informal entrepreneurship. Such an understanding failed to capture the heterogeneity of the informal economic activities. With the growing understanding of the informal economic activities, it was increasingly perceived that the sector-specific definition was inadequate.<sup>43</sup> Thus, the sector specific understanding of informality was rejected in favour of informal economy,<sup>44</sup> which incorporates all activities (informal employment) and entrepreneurships (informal sector) that are not part of the formal economy.

The ILO's conception of informality during this period was based on the dual-economy model that was developed by Lewis. The dual-economy model had come under sharp criticism from Immanuel Wallerstein, who argued that dualism is only a falsity in a

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<sup>37</sup> See ILO, *Employment*, ibid at 503-506; also see Mukherji, ibid.

<sup>38</sup> Hart, "Ghana", supra note 7.

<sup>39</sup> See generally ILO, *Employment*, supra note 7.

<sup>40</sup> See Hart, "Ghana", supra note 7 at 68-70; also see ILO, *Employment*, supra note 7 at 6, 503-504.

<sup>41</sup> See "About the Informal Economy – Definitions and Theories", Women in Informal Employment: Globalizing and Organizing, available at [http://www.wiego.org/about\\_ie/definitionsAndTheories.php](http://www.wiego.org/about_ie/definitionsAndTheories.php) (site visited 22 June 2010).

<sup>42</sup> Hart, "Bureaucratic form", supra note 9 at 25-26.

<sup>43</sup> Martha Alter Chen, "Rethinking the informal economy: linkages with the formal economy and the formal regulatory environment" in Guha-Khasnobis, Kanbur & Ostrom eds, supra note 3, 75 at 76-80; also see Hart, ibid at 22.

<sup>44</sup> Chen, ibid at 76-80.

capitalist world.<sup>45</sup> Instead, he proposed the concept of a world system that is wholly capitalist in nature.<sup>46</sup> However, he did admit that there may be mini-systems of non-capitalist modes of production within the capitalist economy.<sup>47</sup> It is these mini-systems that are the precursors of the informal economy. With further evolution of the political economy, the dual system theory of unlinked coexistence of informal non-capitalist and formal capitalist modes of production came to be refined by structuralist arguments. Structuralist theory was envisaged within the context of increasing globalization of capitalism and *laissez faire* policy.

## 2.2. Structuralism and the Formal/Informal Linkages

Neo-liberal policies recommend privatization, free movement of capital and goods, re-regulation in favour of capital, and restructuring of the state to facilitate these policies.<sup>48</sup> In the 1980s neo-liberalism became the official doctrine of the international (financial) agencies.<sup>49</sup> The World Bank and the International Monetary Fund (IMF) became instrumental in promoting neo-liberalism generally, and in developing countries in particular.<sup>50</sup> Social democratic states were made to withdraw from capitalist market operations.<sup>51</sup>

Neo-liberalism facilitated unrestricted export of (accumulated) national surplus capital throughout the globe.<sup>52</sup> Capitalists could export capital to profitable locations characterized by low-wage labour or low-cost raw materials.<sup>53</sup> United States and United

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<sup>45</sup> See Immanuel Wallerstein, "The Rise and Future Demise of the World Capitalist System: Concepts for Comparative Analysis" (1974) 16: 4 *Comparative Studies in Society and History* 387 at 389-390; also see Immanuel Wallerstein, *The Modern World-System Capitalist Agriculture and the Origins of the European World-Economy in the Sixteenth Century* (New York and London: Academic Press, 1974) at 17-18.

<sup>46</sup> Wallerstein, "The Rise", *ibid* at 390-391, 398, 403-404; also Wallerstein, *The Modern World-System*, *ibid* at 2-11, 347-357.

<sup>47</sup> Wallerstein, "The Rise", *ibid* at 390, 398; also Wallerstein, *The Modern World-System*, *ibid* at 58, 87-129, 351.

<sup>48</sup> See David Harvey, "Neo-liberalism and the restoration of class power" in David Harvey, *Spaces of Global Capitalism: towards a Theory of Uneven Geographical Development*, (London: Verso, 2006) 9 at 11-25; also see David Harvey, "From Globalization to the New Imperialism" in R. Appelbaum & W. I. Robinson eds, *Critical Globalization Studies* (New York: Routledge, 2005), 91 at 98;

<sup>49</sup> A. Payne, *The Global Politics of Unequal Development* (New York: Palgrave Macmillan, 2005) at 76-79; Harvey, "Neo-liberalism", *ibid* at 23-24.

<sup>50</sup> Payne, *ibid*; also see Kemp, *supra* note 21 at 90-91; Harvey, *ibid*.

<sup>51</sup> Harvey, *ibid* at 23-29.

<sup>52</sup> Harvey, "From Globalization", *supra* note 48 at 94.

<sup>53</sup> *Ibid*.

Kingdom pioneered (with the help of the international financial institutions) opening up of markets throughout the world by introducing policies with respect to the removal of quantitative restrictions, simplification or removal of tariffs etc. These policies were pursued through the World Bank, IMF and the World Trade Organization (WTO).<sup>54</sup> Such policies at the global level resulted in industrial restructuring of capitalist mode of production.<sup>55</sup> This industrial restructuring promoted intense competition amongst the capitalists globally in exploiting the most efficacious production process.

State withdrawal from the market fundamentally changed the power equilibrium in the market. Enterprises now have virtually unrestricted freedom to determine their policies that would keep them competitive in a free market. In this context, Portes and Benton argued that it was more expensive for the modern industrial sector to generate regular formal jobs within the industry than to generate informal jobs (by shifting such jobs) outside the industrial infrastructure where abundant numbers of low-wage workers were available.<sup>56</sup> They argued that in order to reduce the cost of generating regular employment industries began employing temporary and contractual workers.<sup>57</sup> Some of these new hiring were monitored by the state bureaucracy, while others were not.<sup>58</sup> This new mechanism of industrial employment introduced informality into the formal organized industrial production process. The neo-liberal policy of global trade ensured that this new form of employment (temporary and contractual) could be generated anywhere in the world that provides the best conditions for the economies of scale by an industry situated anywhere in the world in the form of sweatshops, subcontracting etc.<sup>59</sup> The Portes and Benton argument has been developed further by Castells and Portes.<sup>60</sup> They noted informality is part of a production process that is linked to the formal

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<sup>54</sup> Harvey, "Neo-liberalism", supra note 48 at 26-29.

<sup>55</sup> Castells & Portes, supra note 15 at 27-30; Lourdes Beneria, "Subcontracting and Employment Dynamics in Mexico City" in Portes, Castells & Benton eds, supra note 15, 173.

<sup>56</sup> Portes & Benton, supra note 15 at 595-598.

<sup>57</sup> Ibid at 596.

<sup>58</sup> Ibid.

<sup>59</sup> David McNally, "The Colour of Money: Race, Gender, and the Many Oppressions of Global Capital" in David McNally ed, *Another World is Possible: Globalization and Anti-Capitalism*, revised edition (Winnipeg: Arbeiter Ring Publishing, 2006) 137 at 178-190.

<sup>60</sup> Castells & Portes, supra note 15 at 11-33.

capitalist mode of production,<sup>61</sup> and this linkage is an outcome of the neo-liberal globalization process.

Dualists were content to study the individual informal transactions without bothering to explain the expansion of informality. By contrast, the structuralists took upon themselves the task of explaining the reason of gradual expansion of the informal sector. In order to explain the expansion of the informal sector they contextualized the formal/informal distinction against the backdrop of the changes in the formal production process.<sup>62</sup> Their analysis of the evolution of production process is premised on the ascertainment of the shifting role of state in mediating the relation between capital and labour.<sup>63</sup> Thus, it was analytically necessary for them to employ the terminology of informal economy as an overarching expression to denote the heterogeneous informal sectors that are linked to the formal economy.

Even though Castells and Portes acknowledge that the informal economy is heterogeneous in nature, they identify three principal characteristics of informal economy: “the systemic connection with the formal economy”; “the special characteristics of labour employed in informal activities”; and the “government’s tolerant attitude toward the non-regulated sector”.<sup>64</sup> The analytical novelty of the structuralist understanding of the informal economy is its ability to explain the growing informality phenomenon in urban areas.<sup>65</sup> Subcontracted works and sweatshops are increasingly found in cities like New York,<sup>66</sup> Miami,<sup>67</sup> Mexico City,<sup>68</sup> and Madrid.<sup>69</sup> Thus, while the dualist economic model underlies the rural/urban division of informality and formality, the structuralist thesis accounts for the urban informality/formality divide on a national and international scale. Castells and Portes observed that even though the expression informal economy falls short in explaining the heterogeneity of informal activities around the globe, each of which has historical, social, and political origin, the concept is

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<sup>61</sup> Ibid.

<sup>62</sup> Ibid.

<sup>63</sup> Ibid at 12-15.

<sup>64</sup> Ibid at 25-27.

<sup>65</sup> See generally Portes, Castells & Benton eds, *supra* note 15.

<sup>66</sup> Saskia Sassen-Koob, “New York City’s Informal Economy”, in Portes, Castells & Benton eds, *supra* note 15 at 60.

<sup>67</sup> Alex Stepick, “Miami’s Two Informal Sectors” in Portes, Castells & Benton eds, *supra* note 15 at 111.

<sup>68</sup> Beneria, *supra* note 55 at 173.

<sup>69</sup> Benton, *supra* note 16 at 228.

nonetheless analytically useful in the absence of a better expression that encompasses the informal activities as a whole.<sup>70</sup>

Dualists failed to note the inherent linkages between formality and informality.<sup>71</sup> For dualists the informal sector needed to be seen as an exclusive characteristic of the rural economy. They are unable to account for the linkages between the sectors and the consistent growth of the informal sector. By contrast, the structuralist argument ignores subsistence and own-account activities from the analytical purview of the informal economy.<sup>72</sup> For structuralists, subsistence activities are analytically relevant for poverty studies, and are essentially a problem of distribution.<sup>73</sup> The informal economy, on the other hand, is a problem of production rather than distribution.<sup>74</sup> Therefore, even if studies of poverty and subsistence are important, they are not relevant for an analysis of the informal economy.<sup>75</sup> Thus, structuralists leave out a significant section of informal activity from their analytical purview. Significant numbers of subsistence activities, especially in the Third World, such as subsistence agriculture, domestic work, street vending etc., are not linked to the formal economy in their production process and, thus, would not be captured in the structuralist account. In an attempt to address this gap, some scholars<sup>76</sup> argue that formality and informality should be seen as a continuum, rather than disjunctive economic activities. However, even these scholars proposing the continuum idea do not elaborate as to how the subsistence activities could be accounted for.

Any study of informality has to account for both subsistence activities unconnected to the formal economy (or sector), as well as subcontracted entrepreneurs linked to the formal economy. If either subsistence or subcontract employments are not accounted for in informality analysis a large section of the workers would perpetually remain outside any analytical category – formal or informal, and be

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<sup>70</sup> See Castells & Portes, *supra* note 15 at 11-33.

<sup>71</sup> However, an indirect cursory reference to outsourcing mechanism could be traced in Lewis's arguments when he discusses movement of capital to labour abundant countries. Lewis was not very inclined to develop this issue in terms of linkage between the formal and informal 'sectors'. He maintained the dualism of the sectors. See Lewis, *supra* note 22 at 176-186.

<sup>72</sup> Castells & Portes, *supra* note 15 at 12.

<sup>73</sup> *Ibid* at 11-15.

<sup>74</sup> *Ibid*.

<sup>75</sup> *Ibid*.

<sup>76</sup> Guha-Khasnabis, Kanbur & Ostrom, *supra* note 4 at 2-3, 7, 16; also Sindzingre, *supra* note 3 at 58, 64-65; Chen, *supra* note 43 at 77, 84-87.

devoid of workers' rights. Even if some of these workers (especially subsistence workers) might be able to receive social protection from the state, they will be devoid of labour rights that arise from their relationship to their work. It is clear from the above account that the theories on the nature of informality are located in definite time and social spaces; since informality is varied across the globe and differs from country to country, it is difficult to explain such informality exclusively by reference to one theory or the other. To lay down a generalized characterization of informality it would be necessary to invoke both the theories offered to explain the nature of informality. Either of the theories by itself only partially explains the informality phenomenon. An overall conceptualization of the formal/informal divide needs to have insights from both the theoretical premises. The following section draws from empirical observations of the formal and informal economic activities in the modern world and argues for the convergence of the dualist theory with the structuralist theory.

### **2.3. Informal Economic Activities and the Convergence of the Theoretical Premises**

Philip Harding and Richard Jenkins bridge the gap between the dualist and structuralist conceptualizations of formal/informal divide.<sup>77</sup> The analytical framework offered by Harding and Jenkins situates informality in a continuum of what they term as *real life* situations.<sup>78</sup> They argue that the straight-forward dichotomy of formality/informality is a myth, not reality.<sup>79</sup> They describe the real life situations of informality, acknowledging that it is analytically difficult to draw clear boundaries between formal and informal activity.<sup>80</sup> They describe the varieties of informal and formal activities under the categories of: self-employment, household-work, homework

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<sup>77</sup> Philip Harding & Richard Jenkins, *The Myth of the Hidden Economy – towards a new understanding of informal economic activity* (Philadelphia: Open University Press, 1989) at 51.

<sup>78</sup> Ibid.

<sup>79</sup> Ibid. Referring to a study of the Detroit informal economy (conducted by Ferman and Berndt in 1981, in which they term 'informal economy' as 'irregular economy') Harding and Jenkins charted four functions that the informal economy does for the formal economy. They observe that the informal economy is consumer of the goods produced in the formal economy – formal economy is also the source of raw materials for the informal economy; informal economy acts as a mechanism to distribute goods produced by the formal economy; informal economy provides for the economic maintenance services for the formal economy; and the informal economy produces goods and services that are distributed through the formal economy. See *ibid* at 38-40.

<sup>80</sup> *Ibid* at 103-149.

and outwork, work and employment, on-job informality, formal wage-employment, corruption, and crime.<sup>81</sup> While some of these activities are linked both to the informal as well as the formal economy, many others are stand-alone informal or formal activity.<sup>82</sup> Thus, in the actual political economy space stand-alone informal activities (viz., subsistence agriculture) coexist with exclusive formal economic activities (viz., public company) and formal activities linked to informal activities (viz., outsourcing).<sup>83</sup>

In the same vein, J. K. Gibson-Graham argue that the non-capitalist modes of production exists side by side the capitalist mode of production,<sup>84</sup> especially in the so called Third World.<sup>85</sup> Even though Gibson-Graham's theoretical framework is not consistent with the Wallersteinian unitary world capitalist system or the Marxian idea of capitalist evolution, it is descriptively useful in identifying the non-capitalist modes of production that coexists with the capitalist system. It is also comparable with the Wallersteinian description of mini-systems. Gibson-Graham suggest that the contemporary economy is in reality a mixed system of coexistence of pre-capitalist and capitalist modes of production:

What haunts the capitalist commodity is not only noncommodity production (those home-cooked meals and made beds, those inputs produced internally within enterprises and transacted there) but noncapitalist commodity production – independent commodity production by the self-employed, slave commodities (what pure and strange moment is this, that slavery is only infrequently imagined to exist?), family-based relations of commodity production and exploitation, commodity production in collective and communal enterprises, to name just a few of the noncapitalist forms for which there are names and therefore histories. How is it that these are often confidently banished from the present – which is thereby rendered purely capitalist – or depicted as relatively marginal and inconsequential? (On this point the right and the left seem to be in some kind of imperfect but widespread agreement.)<sup>86</sup>

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<sup>81</sup> Ibid at 103.

<sup>82</sup> Ibid at 103-149.

<sup>83</sup> Ibid.

<sup>84</sup> See generally J.K. Gibson-Graham, *Postcapitalist Politics* (Minneapolis & London: University of Minnesota Press, 2006); also see J.K. Gibson-Graham, *The End of Capitalism (as we knew it) – A Feminist Critique of Political Economy* (Oxford: Blackwell, 1996) at 241-244, 259-265.

<sup>85</sup> Gibson-Graham, *The End of Capitalism*, ibid at 257; also see Merilee S. Grindle, “Agrarian Class Structures and State Policies: Past, Present and Future” (1993) 28: 1 *Latin American Research Review* 174-187.

<sup>86</sup> Gibson-Graham, *The End of Capitalism*, Ibid at 245-246.

Harding and Jenkins, and Gibson-Graham chart the reality of the complex modern economy. Their analysis is based on the empirical reality of multifarious economic activities that defy a straight-forward formal/informal division. It is in this context of empirical reality that we need to juxtapose real life (a phrase used by Harding and Jenkins to describe modern economic activities) economic experience in the background of the theories offered to explain informality to empirically verify the theories. While dualism explains the pre-capitalist and non-capitalist stand-alone subsistence activities outside the bureaucratic monitoring of the state, it fails to address those activities that are related to the formal economy but outside the purview of the bureaucratic control or monitoring. Structuralism, on the other hand, analytically explains activities that are linked to the formal economy but are not monitored by the state bureaucracy, but it does not explain the subsistence and own account activities. It is therefore necessary to look beyond the confines of each of the theories and seek insights from both the theoretical premises so far as it is attuned to the complexities of the varieties of economic activities – formal and informal. The ILO initiated concept of informal employment offers a more complete picture of the formal/informal conundrum that conforms to the real life political economy as charted by Harding and Jenkins, and Gibson-Graham.

#### **2.4. Informal Employment & the ILO**

The analytical inadequacy of the previous conceptions of informal economic activities in promoting a worker-centric conceptualization of informality designed to protect workers' rights propelled the development of the employment-specific definition of informality by the International Labour Conference (ILC) in 2002.<sup>87</sup> The ILO has been working with the concept of informal sector ever since it employed the concept to study economic activities in Africa in 1972.<sup>88</sup> An international statistical definition of informal sector was adopted by the ICLS in its 15<sup>th</sup> Conference in 1993 to enable countries to

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<sup>87</sup> See “Matrix and Glossary of Terms”, in ILO, *informal economy*, supra note 1, at 121-127; also see Arturo Bronstein, “Labour Law and the Informal Sector” (1999) *Workshop on Regulatory Frameworks and their Economic and Social Impact*, [unpublished paper] Geneva, 4-5 February; also see Ralf Hussmanns, *Measuring the informal economy: From employment in the informal sector to informal employment*, Working Paper No. 53, Policy Integration Department, Bureau of Statistics (Geneva: ILO, 2004) at 1; also see “About the Informal Economy”, supra note 41.

<sup>88</sup> See generally ILO, *Employment*, supra note 7.

measure economic activity generated in the informal sector in their national accounts.<sup>89</sup>

The 1993 Resolution defined the informal sector as household or unincorporated enterprises that may be own-account enterprise, or enterprise of informal employers, irrespective of the nature of the workplace, extent of capital invested or duration of the operation.<sup>90</sup> The definition was accepted by the international System of National Accounts (SNA),<sup>91</sup> thereby generating the possibility of maintaining a separate informal sector statistics in national accounts of individual countries. The informal sector was identified in national accounts based on the characteristics of the enterprise, rather than the work performed by the workers.<sup>92</sup>

The sector-based understanding of informality, however, fell short in explaining the heterogeneity of informal activities. The sector-based concept did not account for some informal activities. It became difficult, therefore, to measure the contribution of all informal activities in the overall economy. Moreover, workers employed in very small undertakings, or self-employed workers were excluded from the informal sector.<sup>93</sup> A sector-based definition did not distinguish between the various categories of informal employments, viz., outsourcing, casual jobs, irregular work or precarious subsistence employment.<sup>94</sup> Such categorization also did not serve well the borderline cases of informal employments, viz. freelancers, subcontractors etc.<sup>95</sup> Hence, from the perspective of the ILO, this definition failed to capture the universe of informal workers.

In view of these criticisms against the analytical concept of informal sector the Expert Group on Informal Sector Statistics (the Delhi Group, 2001)<sup>96</sup> proposed the measurement of informal employment to complement the measurement of informal

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<sup>89</sup> See Hussmanns, *Measuring*, supra note 87 at 1-2.

<sup>90</sup> See Fifteenth International Conference of Labour Statisticians, Geneva 19-28 January 1993 (ICLS/15/D.6(Rev.1)), Resolution II: Resolution concerning statistics of employment in the informal sector (Geneva: ILO, 1993) at p 53.

<sup>91</sup> See Ralf Hussmanns, *Statistical definition of informal employment: Guidelines endorsed by the Seventeenth International Conference of Labour Statisticians (2003)*, (Geneva: ILO, 2004) at 1.

<sup>92</sup> *Ibid* at 1-2; also see Hussmanns, *Measuring*, supra note 87 at 3-4.

<sup>93</sup> Hussmanns, *Measuring*, *ibid* at 1-3.

<sup>94</sup> *Ibid*.

<sup>95</sup> *Ibid*.

<sup>96</sup> The Delhi Group on Informal Sector Statistics was established by the United Nations Statistical Commission in 1997 as an international forum to assess the definitions and measurements used in the informal sector, and to suggest improved sophisticated definitions and measurement of the informal sector.

sector in national accounts.<sup>97</sup> Accordingly, for the purpose of collecting informal economy statistics the ILC (2002) defined informal economy as “all economic activities by workers [informal employment] and economic units [informal sector] that are not covered or insufficiently covered by formal arrangements”<sup>98</sup> (emphasis added). The ILC definition was based on the ILO Report on Decent Work and the Informal Economy (2002).<sup>99</sup> The ILO Report defined *employment in the informal economy* as employment in the informal sector, and informal employment outside the informal sector.<sup>100</sup> Thus, the concept of employment in the informal economy was much wider than the scope of the informal sector – it covers employment in the informal sector, as well as informal employment outside the informal sector.

This conceptual framework for the measurement of informal employment developed by the ILO Report<sup>101</sup> was submitted to the 17<sup>th</sup> ICLS for its adoption. The 17<sup>th</sup> ICLS adopted the definition and statistical methodology (albeit with some modifications) so proposed by the ILO Report.<sup>102</sup> The 17<sup>th</sup> ICLS did not endorse the phrase employment in the informal economy as proposed by the ILO Report.<sup>103</sup> The 17<sup>th</sup> ICLS endorsed the term informal employment instead to signify employment in the informal sector and informal employment outside the informal sector.<sup>104</sup> In this conceptualization “[e]mployment includes paid employment as well as self-employment, including unpaid work in an enterprise owned and operated by another member of the household or family, and the production of goods for own final use by households. The production of services (e.g. housework, caring for family members) for own final consumption by households is

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<sup>97</sup> Hussmanns, *Statistical*, supra note 91 at 1.

<sup>98</sup> *Ibid* at 2.

<sup>99</sup> ILO, *informal economy*, supra note 1 at 121-127.

<sup>100</sup> *Ibid*; also see Hussmanns, *Statistical*, supra note 91 at 2.

<sup>101</sup> ILO, *informal economy*, supra note 1; also see Anne Trebilcock, “Decent Work and the Informal Economy”, Discussion Paper No. 2005/04, January 2005, available at <http://62.237.131.23/publications/dps/dps2005/dp2005%2004%20Trebilcock.pdf> (site visited 20 July 2010) at 15.

<sup>102</sup> Trebilcock, *ibid* at 15; also see ILO, “Working out of Poverty”, *Report of the Director General*, International Labour Conference, 91<sup>st</sup> Session (Geneva: ILO, 2003), available at <http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/kd00116.pdf> (site visited 20 July 2010).

<sup>103</sup> Ralf Hussmanns “ILO Guidelines on the Measurement of Employment in the Informal Sector and of the Informal Economy”, presentation to the Goskomstat of Russia/GUS seminar on the non-observed economy: issues of measurement, St. Petersburg, 23-25 June (2004) as cited in Trebilcock, supra note 101 at 14-15.

<sup>104</sup> See Trebilcock, *ibid* at 15, 31-33.

excluded.”<sup>105</sup> The 15<sup>th</sup> ICLS had adopted an enterprise-approach to statistical definition; the 17<sup>th</sup> ICLS added labour-approach to the existing enterprise-approach.<sup>106</sup> The labour-approach based concept of informal employment is not only necessary in analytical terms so far as the measurement of the informal economy is concerned, it is also apt for policy formulation purposes that is concerned with the social protection of workers, as I argue in the following sub-section.

## 2.5. A Conceptual Resolution

The sector-based definition of informality is essentially targeted at measuring the informal entrepreneurship in the economy and ascertaining its contribution in the overall economy. The concerns that surround the conceptualization of the informal sector are: what is the contribution of the informal sector to the overall Gross Domestic Product (GDP)? How productive is the informal sector in comparison to that of the formal sector? How to enhance the productivity of the informal sector? How technologically efficient is the informal sector? How much revenue generation is foregone because of the informal sector? Thus, the purpose of the sector based definition is locating informality within the overall economy.

The concept of informal employment is devised primarily from the necessity of measuring informal activities in the informal sector as well as informal activities outside the informal sector (discussed earlier). Even though the principal purpose of the concept of informal employment is measurement, the concept connects informal workers with the *work* they perform, irrespective of whether or not they have a definite workplace or an employer. Informal employment or work can be performed in an informal entrepreneurship or in a formal enterprise or outside either of these enterprises. It is, therefore, the site for the ascertainment of working conditions and living standard of informal workers. Thus, for a study concerning the conditions of informal workers it is the concept of informal employment that is analytically the most useful one. It is because of such usefulness the ILO has opted to use the concept of informal employment for policy-making purposes concerning the amelioration of the conditions of the workers

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<sup>105</sup> ILO, *informal economy*, supra note 1 at 126.

<sup>106</sup> Ibid at 121.

involved in informal employment. Women in Informal Employment: Globalizing and Organizing (WIEGO), the global research-policy network, also heavily relies on the concept of informal employment in its research documents and policy guidelines.<sup>107</sup> Thus the concept of informal employment holds analytical edge over other concepts so far as workers are the focus of policy concern.

The ILO's policy focus is the worker rather than the economy *per se*. The improvement of living standards of workers globally is the principal concern of the ILO. It promotes adherence to labour standards to improve the conditions of workers.<sup>108</sup> The concept of informal employment helps the ILO in concentrating on the workers rather than the enterprise. Therefore, the concept of informal employment, which is a variation of the concept of work, is the most suitable concept of informality for ILO purposes. The concept of informal employment fills in the gap left by the structuralist analysis of the informal economy. Structuralists left subsistence and own account activities outside their analytical scope of the informal economy. The concept of informal employment brings in the subsistence activities within the central debate surrounding the informal economy along with the informal enterprises linked to the formal economy.

Informal employment has country-specific characteristics.<sup>109</sup> Therefore, attempts to link the concept of informal employment to the overall economy have to be premised in a country-specific context so as to arrive at a policy-agenda that is analytically appropriate in that specific country-context. Thus, I examine the concept of informality in Indian context in the next part of the chapter to attain an in-depth understanding of the nature and extent of informality in India.

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<sup>107</sup> See Women in Informal Employment: Globalizing and Organizing (WIEGO), available at <http://wiego.org/wiego/about-wiego> (site visited 26 May 2012).

<sup>108</sup> David Kucera & Leanne Roncolato, "Informal employment: Two contested policy issues" (2008) 147:4 International Labour Review 321 at 322.

<sup>109</sup> Kucera & Roncolato, *ibid* at 325-328 (Kucera and Roncolato points out (just as with informal enterprise) that 'voluntary informal employment' is also a country-specific phenomenon and is a characteristic of more developed amongst the developing countries – such employment might be a reality in Mexico, but the same cannot be said of India ); also see the World Bank Report: Guillermo E. Perry et al, eds, *Informality: Exit and Exclusion* (Washington DC: The World Bank, 2007), wherein the Bank studies the Latin American informality and reports the voluntary nature of informal activities in some Latin American countries. However, the Report acknowledges that such finding might not be true for most countries where informality is a problem. Also see generally Klarita Gerxhani, "The Informal Sector in Developed and Less Developed Countries: A Literature Survey" (2004) 120: 3/4 Public Choice 267.

### 3. India and Informal Work

In this part, I examine the definitions and concepts associated with informality in India. I analyze the concepts of informal economy, informal sector, and informal employment in the country's context to ascertain the conceptual background upon which policy decisions could be taken. I conclude this part by scrutinizing the terminology that could be successfully used to analyze and address the conditions of the informal workers in India.

#### 3.1. Background of Informal Economic Activities in India

India manifests characteristics of both the dualist and the structuralist model. Non-capitalist modes of production coexist with capitalist mode of production.<sup>110</sup> It was the British that brought in the concept of formality in India through bureaucratic regulation of economic activities.<sup>111</sup> Before the British Raj government bureaucracy through civil servants were unknown in India. However, informal modes of pre-capitalist production did not become obsolete at the introduction of the formal mode of production; those coexisted with the formal mode of production.<sup>112</sup>

After independence the country resorted to Soviet style planned economy.<sup>113</sup> State regulation and monitoring was the benchmark of this stage of industrial evolution.<sup>114</sup> The state took primary responsibility for industrialization.<sup>115</sup> The formal economy was characterized by the nationalized industries and the private entrepreneurships heavily regulated by the state.<sup>116</sup> State regulation diminished when India became part of the free market trading system from the early 1990s.<sup>117</sup> All this while, however, agriculture

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<sup>110</sup> See Anupam Sen, *The state, industrialization and class formations in India – A neo-Marxist perspective on colonialism, underdevelopment and development* (London: Routledge & Kegan Paul, 1982) at 64-66, 70, 85-86, 88, 102-103, 194-208; Kemp, supra note 21 at 40-41, 139; Gibson-Graham, *The End of Capitalism*, supra note 84 at 245-246, 257-265.

<sup>111</sup> Jan Breman, *Footloose labour – Working in India's informal economy* (Cambridge: Cambridge University Press, 1996) at 5.

<sup>112</sup> See Sen, supra note 110 at 64-66, 70, 85-86, 194-208; also see Kemp, supra note 21 at 12-13, 40-41, 128-139; also Sindzingre, supra note 3 at 60.

<sup>113</sup> Tom Kemp, *Industrialization in the non-Western World* (New York: Longman, 1983) at 85-94.

<sup>114</sup> See Sen, supra note 110 at 87-105.

<sup>115</sup> See *ibid* at 91-99.

<sup>116</sup> See *ibid* at 91-99.

<sup>117</sup> See Barbara Harriss-White & Anushree Sinha, "Introduction" in Barbara Harriss-White & Anushree

remained the backbone of the Indian economy: 65% of the population continues to be engaged in agricultural activities.<sup>118</sup> Because of rural to urban migration (and the absence of urban job for all) a portion of the workforce is perpetually underemployed and informally employed.<sup>119</sup>

This underemployed and informally employed pool of workers became the country's asset in the global free trade regime. Post 1991, when India became part of the world free trade regime, this huge pool of cheap labour constituted a comparative advantage for the country in global trade.<sup>120</sup> India increasingly became one of the most popular destinations of global outsourcing and subcontracting business along with China.<sup>121</sup> Outsourcing and subcontracting activities juxtaposes formal employment with informality.<sup>122</sup> Formal or informal firms could outsource and subcontract to either formal or informal entrepreneurs. Some scholars also argue that apart from outsourcing and subcontracting activities the economic reforms of 1991 gave rise to the informal sector because of relocation of capital from the formal sector to the informal sector and the relocation of downsized formal sector labour to the informal sector.<sup>123</sup> Thus, the contemporary Indian economy is characterized by formal industries, informal entrepreneurs, and informal subsistence activities.<sup>124</sup> It is in this backdrop that the

Sinha eds, *Trade Liberalization and India's Informal Economy* (New Delhi: Oxford University Press, 2007) at 5-11; also see Montek Singh Ahluwalia, "Economic Reforms in India Since 1991: Has Gradualism Worked?" (2002) 16: 3 *The Journal of Economic Perspectives*, 67 at 71-73.

<sup>118</sup> Ahluwalia, *ibid* at 76-77; also see Raghbendra Jha, "The Indian Economy: Current Performance and Short-Term Prospects" in Raghbendra Jha ed, *The Indian Economy Sixty Years After Independence*, (London: Palgrave Macmillan, 2008) at 20. A portion of this agriculture is unregulated subsistence and exchange activities performed at a family or community level. See David Ludden, "The Formation of Modern Agrarian Economies in South India" in Chaudhuri ed, *supra* note 36 at 1-7; also see generally S. C. Srivastava, "Development and disparity: agriculture in North East India" (1998) LXXIX: 313 *Indian Journal of Economics*, 195; also see generally J. S. Kanwar, S. M. Virmani & S. K. Das, "Farming Systems Research in India – A Historical-Perspective" (1992) 28: 1 *Experimental Agriculture*, 1-17.

<sup>119</sup> Hart, "Bureaucratic form", *supra* note 9 at 26-27; also see Mukherji, *supra* note 36 at 418.

<sup>120</sup> See generally Andrew D. Foster & Mark R. Rosenzweig, "Comparative Advantage, Information and the Allocation of Workers to Tasks: Evidence from an Agricultural Labour Market" (1996) 63: 3 *The Review of Economic Studies*, 347; also see generally Mohd. Afaq Khan, "India's comparative advantage in business process outsourcing" (2004) 1: 2 *Aim Explore*, 33; also see generally S Dash, "Human capital as a basis of comparative advantage equations in services outsourcing: A cross country comparative study" (2006) *International Conference on Information and Communication Technologies and Development*, 165.

<sup>121</sup> See generally Khan, *ibid* at 33-39.

<sup>122</sup> See generally Castells & Portes, *supra* note 15; Portes & Benton, *supra* note 15; also see generally Eckhard Siggel, "The Indian informal sector: The impact of globalization and reform" (2010) 149: 1 *International Labour Review* 93.

<sup>123</sup> Siggel, *ibid* at 94-97.

<sup>124</sup> Harriss-White & Sinha, *supra* note 117 at 1-5; also see Sheila Bhalla, *Definitional and Statistical Issues*

terminology and concepts related to informality in the country need to be examined. In the following section, I examine the concepts and terminologies with respect to informality in the country and analyze their usefulness for the purpose of policy-making so far as the improvement of the conditions of workers is concerned.

### 3.2. Definition and Concepts Relating to Informality

India is an oft cited example of an enormous and ever growing informal economy. The extent and enormity of informality in the country is in part determined by the way informality is defined and measured in the country. Scholars have pointed out that the definition and measurement of the informal economy and informal employment in the country inflate the concept.<sup>125</sup> Both agricultural and non-agricultural activities are measured as part of the informal economy in the country. Since agricultural activities constitute the majority of economic activities in India their inclusion in the definition means that India has a very large informal economy and informal employment.<sup>126</sup>

The informal economy in India is also referred to as the unorganized economy.<sup>127</sup> The Annual Labour Report of the Ministry of Labour 2008-09 defines unorganized labour as:

workers who have not been able to organize themselves in pursuit of their common interests due to certain constraints, like, casual nature of employment, ignorance and illiteracy, small and scattered size of establishments, etc.<sup>128</sup>

According to the National Sample Survey Organisation (NSSO) data (2004-05) only 7.6% of the total workers in the country are formal workers. The rest of the 92.4% of workers are unorganized (informal) workers. 99.2% of all agricultural employment, 75%

*Relating to Workers in Informal Employment*, Working Paper No. 3, National Commission for Enterprises in the Unorganised Sector (New Delhi: NCEUS, 2008) at 3; also see Siggel, *ibid*.

<sup>125</sup> Keith Hart argues that the formal/informal dichotomy would be overstretched if the peasant economy is brought within the rubric of informality. See Hart, "Bureaucratic form", *supra* note 9 at 31; also see Chen, *supra* note 43 at 82-83.

<sup>126</sup> ILO, *Women and Men in the Informal Economy: A Statistical Picture* (Geneva: ILO, 2002).

<sup>127</sup> See NCEUS, *Conditions of Work*, *supra* note 1.

<sup>128</sup> Chapter 8, Para 8.1, The Ministry of Labour Annual Report 2008-2009 (Chapter 8: Unorganised Labour), available at <http://labour.nic.in/annrep/annrep0809/Chapter-8.pdf> (site visited 17th December 2009).

of all manufacturing employment, 78% of all building and construction employment, and 98% of all employment in trade and commerce are in the informal economy.<sup>129</sup>

The Government of India established the NCEUS in 2004 for the purposes of *inter alia* ascertaining the spread, size and scope of informal sector, and estimating the employment and unemployment scenario in the sector.<sup>130</sup> While setting the terms of reference to the Commission, the Government of India was only concerned with the informal sector, not with informal employment. However, it is to the credit of the Commission that instead of being restricted by the sector-based conception of informality, it defined and conceptualized informal sector as well as informal employment in the country.<sup>131</sup>

The Commission noted that in India the term informal sector had lacked any uniform identifying factor or definition; the term is used differently by different organizations to determine and measure informality according to the organization's requirements.<sup>132</sup> The Directorate of National Sample Surveys (NSS) surveyed household enterprises under terminologies *small scale manufacture and handicrafts*, and *non-*

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<sup>129</sup> Ibid; "Legal Empowerment and the informal economy – SEWA Experience", paper presented at the Regional Dialogue on Legal Empowerment for the Poor, Bangkok, Thailand, 3-5 March, available at <http://www.snap-undp.org/lepknowledgebank/Public%20Document%20Library/SEWA%20-%20Legal%20Empowerment%20and%20the%20informal%20economy.pdf> (site visited 18<sup>th</sup> December 2009).

<sup>130</sup> NCEUS, *Report on Definitional and Statistical Issues Relating to Informal Economy*, National Commission for Enterprises in the Unorganised Sector (New Delhi: NCEUS, 2008) at 9.

The terms of Reference for the Commission were: "(i) Review of the status of unorganized/informal sector in India including the nature of enterprises, their size, spread and scope, and magnitude of employment;

(ii) Identity constraints faced by small enterprises with regard to freedom of carrying out the enterprise, access to raw materials, finance, skills, entrepreneurship development, infrastructure, technology and markets and suggest measures to provide institutional support and linkages to facilitate easy access to them;

(iii) Suggest the legal and policy environment that should govern the informal/unorganized sector for growth, employment, exports and promotion;

(iv) Examine the range of existing programmes that relate to employment generation in the informal/unorganized sector and suggest improvement for their redesign;

(v) identify innovative legal and financial instruments to promote the growth of the informal sector;

(vi) Review the existing arrangements for estimating employment and unemployment in the informal sector, and examine why the rate of growth in employment has stagnated in the 1990s;

(vii) Suggest elements of an employment strategy focusing on the informal sector."

See Appendix – I of the Report, at 144.

<sup>131</sup> Ibid at 9.

<sup>132</sup> Ibid at 13-16.

*registered small scale manufacture and handicrafts* till mid-1970s.<sup>133</sup> The survey was revised thenceforth under the overarching theme of Economic Census to include data on unorganized manufacturing, service, trade, transport etc.<sup>134</sup> These surveys essentially included undertakings that were not covered by the Annual Survey of Industries (ASI).<sup>135</sup> A shift in the survey index was made in 1999 when informal sector enterprises in non-agricultural sector were surveyed instead of previously used concept of unorganized sector.<sup>136</sup> The new conceptualization of informal sector enterprises in the country was in keeping with the international definition of informal sector, except for the fact that the concept in India was also based on the maximum number of workers employed in an enterprise.<sup>137</sup> The latest NSS survey (61<sup>st</sup> Round Survey on Employment and Unemployment) refined the concept of informality by introducing additional characteristics to identify informal employment.<sup>138</sup> Thus, the informal sector meant manufacturing establishments not included in the ASI and services not incorporated in the public sector.<sup>139</sup>

The National Accounts Statistics (NAS) categorized unorganized sector as enterprises that are not part of the organized sector.<sup>140</sup> Thus, the identification of the unorganized sector was indirect and was based on the measurement of the organized sector. NAS identifies the organized sector from available official documents. According to the NAS criterion, any enterprise that is required to be registered or report its

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<sup>133</sup> Ibid.

<sup>134</sup> Ibid. These surveys were guided by the Central Statistical Organisation (CSO), and fieldworks were conducted by the National Sample Survey Organisation (NSSO).

<sup>135</sup> Ibid.

<sup>136</sup> Ibid.

<sup>137</sup> Ibid. However, since the NSS survey excluded manufacturing enterprises covered by the ASI, the effect was the exclusion of enterprises that employed at least ten workers (if power was not used in the particular enterprise employing these workers) or twenty workers (if power were used in the enterprise employing these workers). These numerical maximums (ten or twenty workers depending on whether an establishment is using power or not) are fixed in the country by legislation. The Factories Act 1948, Employee's Provident Fund and Miscellaneous Provisions Act 1952, Contract Labour (Regulation and Abolition) Act, 1970, Payment of Gratuity Act, 1972 restricts the size of the entrepreneurship for the application of its provisions. These legislations, therefore, creates the formal/informal divide so far as legislative protections are concerned. There are, however, some legislations, viz. the Minimum Wages Act, 1948, Equal Remuneration Act, 1976 etc. that are applicable without any restriction with respect to size of the establishments. Therefore, these legislations are applicable to both formal as well as informal establishments in the country.

<sup>138</sup> Ibid.

<sup>139</sup> Ibid.

<sup>140</sup> Ibid.

constitution and activities under law, regulation, notification, ordinance etc., and has so reported, is in the organized sector.<sup>141</sup> Thus, the entirety of the NAS visualization of organized sector statistics is based on the available administrative documents, and not on first hand verifiable empirical phenomenon. The NCEUS Report criticizes such categorization by the NAS:

[t]he application of such varying criteria, make it impossible to have comparable statistics across the sectors either for the organized or for the unorganized sector. The division is also artificial in nature and cannot be linked to any physical characteristics.<sup>142</sup>

Further, the Directorate General of Employment and Training (DGET) of the Ministry of Labour and Employment, Government of India collects employment statistics under its Employment Market Information (EMI) program.<sup>143</sup> The EMI program is comprehensively designed to estimate the nature, scope, and extent of employment and unemployment in the organized sector in the country with a view to formulating policy to address unemployment.<sup>144</sup> Even though the program seeks to provide a comprehensive coverage of employment in the organized sector, it excludes a significant portion of the organized sector employment from its scope either due to its voluntary reporting mechanism or due to its relatively limited territorial or subject-matter coverage.<sup>145</sup> Most significantly, the EMI program does not cover a major portion of organized agricultural employment.<sup>146</sup> However, in spite of these limitations EMI data is used to compile national accounts for organized employment.<sup>147</sup>

In this maze of different conceptualization of formal and informal (organized and unorganized in India) sector, and formal and informal employment, the Commission decided that it was necessary to streamline the definition of the terms informal sector and informal employment. To address the confusion resulting from the multiplicity of conceptualizations of the phrases informal sector and informal employment the Commission proposed definitions of key terms.

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<sup>141</sup> Ibid at 15.

<sup>142</sup> Ibid.

<sup>143</sup> Ibid at 15-16.

<sup>144</sup> Ibid.

<sup>145</sup> Ibid.

<sup>146</sup> Ibid.

<sup>147</sup> Ibid at 16.

The NCEUS recommended a very broad definition of the informal sector and informal employment. According to the Commission:

[t]he informal sector consists of all unincorporated private enterprises owned by individuals or households engaged in the sale and production of goods and services operated on a proprietary or partnership basis and with less than ten total workers.<sup>148</sup>

Since the concept of enterprise is understood in India as excluding agricultural and allied enterprises, the Commission's definition expressly includes agricultural and plantation activities within the scope of enterprise and, hence, as part of the informal sector definition.<sup>149</sup> Thus, the informal sector in India consists of all unincorporated enterprises (agricultural or non-agricultural) wherein less than ten total workers are employed. The definition is dependent on the legal status and size of the undertaking.<sup>150</sup> K. P. Kannan and T. S. Papola observe that the definition is generic and is the broadest one ever adopted.<sup>151</sup> The definition does away with the concept of separate legal personality of informal undertakings as distinguished from its owners.<sup>152</sup> Because of the enormous agricultural sector in India the overall informal sector is very large compared to the formal sector.<sup>153</sup>

The Commission defines informal workers:

[i]nformal workers consist of those working in the informal sector or households, excluding regular workers with social security benefits provided by the employers and the workers in the formal sector without any employment and social security benefits provided by the employers.<sup>154</sup>

Kannan and Papola further observe that the definition of informal worker is also a generic one that is characterized by the absence of job security and social protection, irrespective of the employment being in the formal or the informal sector.<sup>155</sup> This definition of

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<sup>148</sup> Ibid at 61.

<sup>149</sup> Ibid.

<sup>150</sup> Ibid.

<sup>151</sup> K.P. Kannan & T.S. Papola, "Workers in the informal sector: Initiatives by India's National Commission for Enterprises in the Unorganized Sector (NCEUS)" (2007) 146: 3-4 *International Labour Review* 321 at 323.

<sup>152</sup> Ibid.

<sup>153</sup> ILO, *Women and Men*, supra note 126.

<sup>154</sup> NCEUS, *Definitional and Statistical Issues*, supra note 130 at 61.

<sup>155</sup> Kannan & Papola, supra note 151 at 323.

informal workers (and thereby informal employment) corresponds to the conceptual framework delineated by the 17<sup>th</sup> ICLS.<sup>156</sup> The definition of informal worker depends upon the definition of worker in formal waged employment; workers who are not part of the formal sector or protected by employment benefits are informal workers engaged in informal employment. The definition is, therefore, largely dependent on the legal status of formal employment.

According to the definitions proposed by the Commission, the informal *sector* in India accounts for 86% of total employment and contributes to 50% of total GDP.<sup>157</sup> It is on the basis of the Commission's definition that 92% of total employment is informal employment.<sup>158</sup>

### 3.3. Informality in India

The Commission suggests the principal reason why the definition and measurement of the informal sector was necessary was to ascertain the sector's contribution to the overall economy of the country, to enhance the competitiveness of the sector in the global market, and to generate employment opportunities in the sector.<sup>159</sup> Thus, the focus of the exercise was to devise macroeconomic policy in order to improve the productivity and competitiveness of the informal sector. Even though generation of employment in the sector was one of the concerns of the Commission, it recognized that mere generation of employment would not serve any fruitful purpose in improving the livelihoods of the informal workers.

The Commission noted that the real challenge of informal employment is to improve the overall conditions of employment and livelihood of the workers in the informal economy.<sup>160</sup> It recognized that the problem with employment in the informal

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<sup>156</sup> NCEUS, *Definitional and Statistical Issues*, supra note 130 at 61.

<sup>157</sup> Ibid at 62. However, some other accounts estimate contribution of the informal economy ('informal sector' and 'informal employment') as more than 60%; see Harriss-White & Sinha, supra note 117 at 2.

<sup>158</sup> NCEUS, *Definitional and Statistical Issues*, ibid at 62.

<sup>159</sup> Ibid at 9; also see Contribution of the Unorganised Sector to GDP Report of the Sub Committee of a NCEUS Task Force, Working Paper No. 2, June 2008, National Commission for Enterprises in the Unorganised Sector (New Delhi: NCEUS, 2008), available at [http://nceus.gov.in/Final\\_Booklet\\_Working\\_Paper\\_2.pdf](http://nceus.gov.in/Final_Booklet_Working_Paper_2.pdf) (site visited 22 June 2010).

<sup>160</sup> NCEUS, *The Challenge of Employment in India – An Informal Economy Perspective*, Volume 1 main Report, National Commission for Enterprises in the Unorganised Sector (New Delhi: NCEUS, 2009).

sector is essentially a problem of quality of employment.<sup>161</sup> The Commission argued that employment means *job security, income security, social security and decent conditions of work*.<sup>162</sup> The Commission<sup>163</sup> moves away from the assumption that growth of the economy and competitiveness of informal activities will have trickledown effect and by itself is capable of improving the conditions of the workers working informally. The Commission Report on *The Challenge of Employment in India – An Informal Economy Perspective*<sup>164</sup> notes that the growth in the economy and improving living standards for the working population may not be conjoined, and, therefore, solvable with identical policies. Economic growth need not necessarily improve the conditions of the population, specially the impoverished and marginalized ones. The Indian economy has seen consistent growth in the last two decades and half.<sup>165</sup> But the growth of the economy did not result in the improvement, growth, and development of the population of the country.<sup>166</sup>

The actual situation in the country corroborates the Commission's position that for overall development of the population focused attention needs to be given to specific groups in addition to macroeconomic policies directed at economic development. Recently the Planning Commission of the Government of India accepted a new definition of (and methodology to estimate) poverty.<sup>167</sup> According to the new definition, 37% of the population lives below the poverty line.<sup>168</sup> In spite of a growing middle class<sup>169</sup> India is

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<sup>161</sup> Ibid at v.

<sup>162</sup> Ibid at 7.

<sup>163</sup> Ibid.

<sup>164</sup> Ibid at i-iv, 1.

<sup>165</sup> Jha, supra note 118 at 19-21.

<sup>166</sup> See generally Ibid at 17-37; also see NCEUS, *Challenge of Employment*, supra note 160. The Report observes that the growth of the economy has benefitted only the first 23% of middle class and higher income groups in the country. Ibid at iii.

<sup>167</sup> See Planning Commission accepts 37 pc live below poverty line, 19 April, 2010, OneWorld South Asia, available at <http://southasia.oneworld.net/todayshadlines/planning-commission-accepts-37-pc-live-below-poverty-line> (site visited 21 June, 2010).

<sup>168</sup> See generally Report of the Expert Group to Review the methodology for Estimation of Poverty, Government of India, Planning Commission, 2009, available at [http://www.planningcommission.nic.in/reports/genrep/rep\\_pov.pdf](http://www.planningcommission.nic.in/reports/genrep/rep_pov.pdf) (site visited 21 June, 2010); also see Himanshu, Poverty's Definitional Woes, 27 May, 2010, Livemint.com & The Wall Street Journal, available at <http://www.livemint.com/2010/05/27001014/Poverty8217s-definitional-w.html> (site visited 21 June, 2010).

<sup>169</sup> Jha, supra note 118 at 21.

still crippled with a significantly large impoverished population and ranks very low on the human development index.<sup>170</sup>

The Human Development Report 2009 ranks India at a dismally low 134<sup>th</sup> position among 182 countries.<sup>171</sup> The country's rank has deteriorated from 127 in 2005<sup>172</sup> to 134 in 2009. The determinants of the Index are: life expectancy, literacy rate, survival till 40 years of age, usage of improved water source, malnutrition etc.<sup>173</sup> At the macroeconomic level some of the biggest problems crippling the country's development are regional inequality, unemployment and underemployment, fiscal deficit, and lack of infrastructure.<sup>174</sup> Indicators like infant mortality, child malnutrition, nutrient intakes, educational attainment, and sex ratio suggest that economic development has failed to address these ground-level problems of the impoverished and marginalized population.<sup>175</sup> Economic development did not percolate down to the lower strata of the society. Therefore, analytically the informal sector as a contributor to the economy needs to be viewed differently from that of the conditions of workers working in informal activities.

What is required in the context of informality is not generation of employment, rather improvement of conditions at work and betterment of standard of living of the working population. That is what the NCEUS meant when it conceptualized employment generation in the informal sector.<sup>176</sup> To improve the conditions of the workers employed in informal activities the NCEUS looked beyond mere employment generation in informal sector and invoked the concept of Decent Work (DW) in informal employment. Thus, conceptualization of informal employment helps in analytically framing the problem of informal employment in terms of the DW Agenda developed by the ILO.

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<sup>170</sup> See Human Development Report 2009 – India – The Human Development Index – going beyond income, available at [http://hdrstats.undp.org/en/countries/country\\_fact\\_sheets/cty\\_fs\\_IND.html](http://hdrstats.undp.org/en/countries/country_fact_sheets/cty_fs_IND.html) (site visited 21 June, 2010).

<sup>171</sup> See Human Development Report 2009 – Overcoming barriers: Human mobility and development, (UNDP, New York, 2009) at p 145, available at [http://hdr.undp.org/en/media/HDR\\_2009\\_EN\\_Complete.pdf](http://hdr.undp.org/en/media/HDR_2009_EN_Complete.pdf) (site visited 21 June 2010).

<sup>172</sup> See Human Development Report 2005 – International cooperation at a crossroads – Aid, trade and security in an unequal world, at p 264, available at [http://hdr.undp.org/en/media/HDR05\\_complete.pdf](http://hdr.undp.org/en/media/HDR05_complete.pdf) (site visited 21 June, 2010).

<sup>173</sup> See Human Development Report 2009 – India, *supra* note 170.

<sup>174</sup> Jha, *supra* note 118 at 31-35.

<sup>175</sup> See Anil B. Deolalikar, “Human Development in India: Past Trends and Future Challenges” in Jha ed, *supra* note 118, 155.

<sup>176</sup> See generally NCEUS, *Challenge of Employment*, *supra* note 160.

The concept of informal employment is further analytically useful so far as the conceptualization distinguishes work from employment under an employment relationship. Traditionally labour-policy has been centred on the employer-employee relationship so far as conditions of service and provision for welfare benefits were concerned. But the nature of informal activities falls outside of the employer-employee relationship to a great extent, thereby making it difficult for policy-makers to depend on the employer-employee relationship to ameliorate the conditions of the workers working informally. Therefore, we need to concentrate not only on informal workers in an employer-employee relation, but also on the informal workers who are not in such a relationship. We need to concentrate on the lives of the workers and their work, rather than employment in entrepreneurs if what we are concerned with is improving all informal workers' condition (and not only workers who are employed in informal or formal enterprises). To shift focus from the traditional basis of employer-employee relationship and social security guarantees to the life and work of the workers the concept of informal employment is analytically helpful.

A broad concept of informal employment encompasses employment in the informal sector, informal employment in the formal sector, employment of unpaid family labour,<sup>177</sup> beneficial self-employment, and self-employment for subsistence purposes. The notion of informal employment places *work* (irrespective of employer-employee relationship) at the centre of the informal employment debate. A significant portion of informal employment consists of activities that are performed by the workers from their homes, street corners, and other diverse places. A workplace is absent for a large number of informal workers. The concept of informal employment offers a conceptual framework to relate workers with their work also in absence of a workplace.

If the purpose of such analytical categorization is the amelioration of the conditions of the workers engaged in informal employment it is useful to incorporate as many workers engaged in informal economic activities as possible within the purview of the concept. For example, even though agriculture contributes to only 25% of India's

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<sup>177</sup> Unpaid family labour providing service (viz. care work) is excluded from the definition of 'informal employment', but, unpaid family labour producing goods are included within the concept of 'informal employment'. See ILO, *informal economy*, supra note 1 at 121-127.

GDP, it employs 65% of the working population of the country.<sup>178</sup> If the purpose of informality analysis is the improvement of the conditions of the workers there is no reason why a portion of these 65% of working population should be excluded from such analysis. However, a clarificatory note needs to be added here: even though I propose the incorporation of all informal workers (including the agricultural workers) within the analytical concept of informal employment, I am far from arguing that a single policy framework could be effective for all these diverse categories of workers (and their work) categorized together. Even if all workers working informally are categorized together under the concept of informal employment, for policy making purposes each category of work needs to be analyzed separately. For example, there is no way that waste-picking, which is a self-employed survival work without a definite worksite, could be equated with construction work, which is a waged employment performed in a definite workplace, for policy making purposes for the workers. Thus, while the concept of informal employment could be general and broadly defined (to give some generality to the concept), a worker-oriented policy needs to analyze each category of informal work separately to devise appropriate means to improve the conditions of the workers engaged in different informal employments.

#### **4. Conclusion**

This chapter has two objectives: one, is to show that neither of the two leading theories explaining the formal/informal divide offers a complete picture of the varieties of informal economic activities and, second, to analyze the efficacy of the terminology and definitions related to informality for policy-making purposes from the point of view of improving the lives of the workers. I argue that the concept of informal employment is an appropriate one if the purpose is to ameliorate the conditions of informal workers. The concept of informal employment is not only useful for policy-making purposes for the workers; the concept also bridges the gap between the dualist and the structuralist theories in analytically providing a much wider coverage to workers working informally.

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<sup>178</sup> Jha, *supra* note 118 at 20.

I also examine the usefulness of the concept of informal employment from an Indian informal economy perspective. The focus of the Indian approach has traditionally been on the concept of informal sector, wherein the concept of informal employment is only a subsidiary and supplementary one. But, if the situation of informal workers is to be analyzed and their conditions are to be improved the concept of informal employment needs to form the core of the informality analysis.

The concept of informal employment embraces informal workers working in the informal sector, the formal sector, or subsistence activities. Even though formal sector workers enjoy legislative and executive benefits informal workers engaged in the formal sector are generally excluded from such benefits – so are informal workers engaged in the informal sector or subsistence activities. The NCEUS notes that irrespective of the sector where informal workers are engaged, the real challenges for informal workers in India are job security, income security, and decent working conditions.

The Constitution of India directs the governments (Union and state governments) to provide job security, income security, and decent working conditions to workers. For formal workers, these constitutional guarantees are at least theoretically ensured to some extent through legislative means. However, such legislative benefit is absent in case of informal workers. The NCEUS documents the absence of legislative benefits for informal workers in India. So far as legislative or executive benefits are concerned, informal workers are unequally treated from formal workers in the country. Such inequality not only undermines the socialist guarantees of the Constitution of India, it is in conflict with the express constitutional right to equality. As I discuss in the next chapter, in India labour rights such as right to association and collective bargaining, freedom of expression, right against forced and child labour, right to work, appropriate conditions at work, equality of wage, maternity benefit are constitutionally guaranteed. However, the state has failed to realize these constitutional guarantees for informal workers in the country. In the next chapter, I consider the predicament of informal workers in India. Even though labour rights are constitutionally protected, it is only formal workers employed in industrial establishments who receive legislative and executive protection in furtherance of their overall development. In the next chapter, I show how organizations

of informal workers are promoting overall development of informal workers in absence of any state action in that respect.

## 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 state 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.<sup>1</sup> 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.<sup>2</sup> 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

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<sup>1</sup> Part III of the *Constitution of India*, available at Ministry of Law and Justice Website, <http://lawmin.nic.in/coi/coiason29july08.pdf>, (site visited 5 September, 2010).

<sup>2</sup> Part IV of the *Constitution of India*.

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 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,<sup>3</sup> company,<sup>4</sup> cooperative,<sup>5</sup> registered society,<sup>6</sup> and trust<sup>7</sup> – in representing informal 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 of the dissertation. 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

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<sup>3</sup> 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.

<sup>4</sup> Registered under the *Companies Act, 1956*.

<sup>5</sup> 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.

<sup>6</sup> Registered under the *Societies Registration Act, 1860*.

<sup>7</sup> 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, 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*.

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-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.<sup>8</sup> The term socialist was introduced into the Constitution through the Forty-second Amendment of the Constitution of India in 1976.<sup>9</sup> The Constitution (Forty-fifth Amendments) Bill, 1978 defined socialist as “a

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<sup>8</sup> 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/lssnew/constituent/vol2p3.html> (site visited 5 March 2012).

<sup>9</sup> See *The Constitution (Forty-second Amendment) Act, 1976*.

republic in which there is freedom from all forms of exploitation, social, political and economic.”<sup>10</sup> While this definition was not adopted, the Constitution of India declared its socialist philosophy in the governance of the country in its preamble.<sup>11</sup>

The philosophy declared in the preamble has been elaborated throughout the rest of the document. The Constitution of India distinguishes between *rights* and *goals*.<sup>12</sup> 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.<sup>13</sup> 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 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;<sup>14</sup> protection of life and liberty;<sup>15</sup> freedom of expression, assembly, union formation, movement, vocation;<sup>16</sup> the right to free education;<sup>17</sup> protection from forced labour;<sup>18</sup> and a prohibition on employment of children.<sup>19</sup> Directives, on the other hand, are fundamental

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<sup>10</sup> The *Constitution (Forty-fifth Amendments) Bill 1978*, however, could not introduce the proposed definition in Article 367 (Interpretation) of the Constitution.

<sup>11</sup> See Preamble to the *Constitution of India*.

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

<sup>13</sup> 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.

<sup>14</sup> Articles 14, 15, 16 of the *Constitution of India*.

<sup>15</sup> Article 21 of the *Constitution of India*.

<sup>16</sup> Article 19 of the *Constitution of India*.

<sup>17</sup> Article 21-A of the *Constitution of India*.

<sup>18</sup> Article 23 of the *Constitution of India*.

<sup>19</sup> Article 24 of the *Constitution of India*.

in the governance of the country.<sup>20</sup> States are directed to ensure (to the reasonable extent possible within economic and other limitations) the right to work,<sup>21</sup> adequate means of livelihood,<sup>22</sup> equality of wages,<sup>23</sup> fair distribution of material resources,<sup>24</sup> adequate protection of workers (especially children),<sup>25</sup> provision for living wage,<sup>26</sup> decent standard of life,<sup>27</sup> provision for education, leisure and social and cultural development,<sup>28</sup> appropriate conditions of work,<sup>29</sup> maternity relief,<sup>30</sup> assistance during old age and unemployment,<sup>31</sup> promotion of weaker sections of the population,<sup>32</sup> appropriate nutrition and health provision,<sup>33</sup> workers participation in management,<sup>34</sup> and equal justice and legal aid.<sup>35</sup>

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.<sup>36</sup> 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

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<sup>20</sup> Article 37 of the *Constitution of India*.

<sup>21</sup> Article 41 of the *Constitution of India*.

<sup>22</sup> Article 39 of the *Constitution of India*.

<sup>23</sup> Articles 38, 39 of the *Constitution of India*.

<sup>24</sup> Article 39 of the *Constitution of India*.

<sup>25</sup> Article 39 of the *Constitution of India*.

<sup>26</sup> Article 42 of the *Constitution of India*.

<sup>27</sup> Article 43 of the *Constitution of India*.

<sup>28</sup> Article 41 of the *Constitution of India*.

<sup>29</sup> Article 42 of the *Constitution of India*.

<sup>30</sup> Article 42 of the *Constitution of India*.

<sup>31</sup> Article 41 of the *Constitution of India*.

<sup>32</sup> Article 46 of the *Constitution of India*.

<sup>33</sup> Article 47 of the *Constitution of India*.

<sup>34</sup> Article 43-A of the *Constitution of India*.

<sup>35</sup> Articles 38, 39-A of the *Constitution of India*.

<sup>36</sup> See Justice Bhagwati in *Francis Coralie v. Union Territory of Delhi*, (1981) MANU 0517 (SC), at para 8 [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)].

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

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.”<sup>37</sup> Granville Austin terms directive principles as “statement of the social revolution”, which aim to promote positive freedom of the masses.<sup>38</sup>

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]”.<sup>39</sup> Goals, on the other hand, imply dependent agents requiring positive action initiated by the state for their assistance.<sup>40</sup> 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.<sup>41</sup> Directive principles have been variously termed as: *election manifesto, new year resolution, pious superfluities, and veritable dustbin of*

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<sup>37</sup> See Upendra Baxi, ““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.

<sup>38</sup> See Austin, *Cornerstone of a Nation*, supra note 13 at 51.

<sup>39</sup> See Shankar, supra note 12 at 120.

<sup>40</sup> See *ibid.*

<sup>41</sup> 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: It is no use giving a fixed, rigid form to something which is not rigid, which is fundamentally changing and must, having regard to the circumstances and the times, keep on changing. It is, therefore, no use saying that the directive principles have no value. In my judgment, the directive principles have a great value, for they lay down that our ideal is economic democracy. Because we did not want merely a parliamentary form of government to be instituted through the various mechanisms provided in the Constitution, without any direction as to what our economic ideal or as to what our social order ought to be, we deliberately included the directive principles in our Constitution. I think if the friends who are agitated over this question bear in mind what I have said just now that our object in framing this Constitution is really twofold: (i) to lay down the form of political democracy, and (ii) to lay down that our ideal is economic democracy and also to prescribe that every government whoever it is in power, shall strive to bring about economic democracy, much of the misunderstanding under which most members are labouring will disappear. See *Constituent Assembly Debates*, Vol. VII, at pp. 494-495. Also see O. Chinnappa Reddy, *The Court and the Constitution of India – Summits and Shallows* (New Delhi: Oxford University Press, 2010) at p. 76-77.

*sentiment*.<sup>42</sup> 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.<sup>43</sup> 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.<sup>44</sup> During the first three decades after Indian independence, the Supreme Court held that directive principles were subservient to fundamental rights.<sup>45</sup> During the 1970s, the Court proposed harmonious relationships between directive principles and fundamental rights.<sup>46</sup> 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.<sup>47</sup>

In a judgment delivered in 1951, *State of Madras v. Champakam Dorairajan*,<sup>48</sup> 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 III [fundamental rights] .... The directive principles of State policy have to conform to and run as subsidiary to the Chapter of Fundamental Rights.<sup>49</sup>

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<sup>42</sup> See Reddy, *ibid* at 17.

<sup>43</sup> See P.B. Gajendragadkar, *The Constitution of India – Its Philosophy and Basic Postulates, Gandhi Memorial Lectures, University College, Nairobi, First Series* (Nairobi: Oxford University Press, 1969) at 51.

<sup>44</sup> See Shankar, *supra* note 12 at 124.

<sup>45</sup> See *ibid* at 124-128.

<sup>46</sup> *Ibid*.

<sup>47</sup> *Ibid*.

<sup>48</sup> (1951) MANU 0007 (SC).

<sup>49</sup> (1951) MANU 0007 (SC) at para 10. This judgment of the Court is contrary to what Jawaharlal Nehru had in mind. Nehru noted: "It is up to this Parliament to remove the contradiction [between fundamental rights and directive principles] and make the Fundamental Rights subserve the Directive Principles of the State Policy." As cited in Reddy, *supra* note 41 at 19.

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<sup>50</sup> 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.<sup>51</sup> Fundamental rights and directive principles supplement each other<sup>52</sup> – fundamental rights are not superior to directive principles.<sup>53</sup> Fundamental rights and directive principles are the conscience of the constitution, and are constitutive of the *basic structure* of the Constitution of India.<sup>54</sup> While directive principles lay down goals to be achieved, fundamental rights provide for the means of achieving such goals.<sup>55</sup> 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.<sup>56</sup>

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:<sup>57</sup> the

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<sup>50</sup> *His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala*, (1973) MANU 0445 (SC).

<sup>51</sup> (1973) MANU 0445 (SC), paras 564, 634.

<sup>52</sup> (1973) MANU 0445 (SC), para 634.

<sup>53</sup> (1973) MANU 0445 (SC), para 906.

<sup>54</sup> (1973) MANU 0445 (SC), paras 634, 672, 1206.

<sup>55</sup> (1973) MANU 0445 (SC), para 634.

<sup>56</sup> (1973) MANU 0445 (SC), para 1762.

<sup>57</sup> (1980) MANU 0075 (SC).

“harmony and balance” between fundamental rights and directive principles were also parts of that basic structure.<sup>58</sup> 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.<sup>59</sup>

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.<sup>60</sup> 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,<sup>61</sup> the Supreme Court of India quoted the US Supreme Court in *Munn v. Illinois*,<sup>62</sup> noting that

<sup>58</sup> (1980) MANU 0075 (SC) at para 61.

<sup>59</sup> (1980) MANU 0075 (SC) at para 116.

<sup>60</sup> See *Akhil Bharatiya Soshit Karamchari Sangh (Railway) v. Union of India*, (1980) MANU 0058 (SC), at para 122.

<sup>61</sup> Such as *Kharak Singh v. State of Utter Pradesh*, (1962) MANU 0085 (SC), *Sunil Batra v. Delhi Administration*, (1978) MANU 0184 (SC), *Olga Tellis v. Bombay Municipal Corporation*, (1985) MANU 0039 (SC).

<sup>62</sup> 1876 WL 19615 (U.S.III.). 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

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 necessities of life such as 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.<sup>63</sup>

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*,<sup>64</sup> 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.<sup>65</sup> 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.<sup>66</sup> 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*.<sup>67</sup> According to the Court these directives are minimum necessities for a life with human dignity.<sup>68</sup> 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)

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highest enjoyment.

<sup>63</sup> Justice Bhagwati in *Francis Coralie*, supra note 36 at para 8.

<sup>64</sup> (1983) MANU 0051 (SC).

<sup>65</sup> Ibid at para 6.

<sup>66</sup> Ibid at para 14.

<sup>67</sup> Ibid at para 14.

<sup>68</sup> Ibid at para 14.

(directive principles).<sup>69</sup> In *Olga Tellis v. Bombay Municipal Corporation*,<sup>70</sup> 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.”<sup>71</sup> 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.<sup>72</sup>

In another decision protecting informal workers’ right to work, *Sodan Singh v. New Delhi Municipal Committee*,<sup>73</sup> 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-dependent 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

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<sup>69</sup> See *Consumer Education and Research Centre v. Union of India*, (1995) MANU 0175 (SC); *Kirloskar Brothers Ltd. v. Employees’ State Insurance Corpn.*, (1996) MANU 0873 (SC).

<sup>70</sup> (1985) MANU 0039 (SC).

<sup>71</sup> *Ibid* at para 32.

<sup>72</sup> *Ibid* at para 33.

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.

<sup>73</sup> (1989) MANU 0521 (SC); and its follow up decision (1992) MANU 0489 (SC).

who has obtained a right under the legislation.”<sup>74</sup> 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”<sup>75</sup>

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 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*.<sup>76</sup>

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.<sup>77</sup> 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

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<sup>74</sup> (1973) MANU 0445 (SC), at para 1764.

<sup>75</sup> (1983) MANU 0051 (SC), at para 14.

<sup>76</sup> (1973) MANU 0445 (SC), at para 1764.

<sup>77</sup> 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.

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.<sup>78</sup> The Supreme Court, therefore, lamented:

“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.<sup>79</sup>

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.

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<sup>78</sup> 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).

<sup>79</sup> (1989) MANU 0521 (SC), at para 4. In this context, see E. M. S. Namboodiripad, *The Republican Constitution in the Struggle for Socialism*, R.R. Kale Memorial Lecture, 1968, Gokhale Institute of Politics and Economics, Poona (Bombay: Asia Publishing House, 1968) at 8-11, 13. Also see Upendra Baxi, “The (Im)possibility of Constitutional Justice – Seismmographic Notes on Indian Constitutionalism” in Zoya Hasan, E. Sridharan, & R. Sudarshan eds, *India's Living Constitution – Ideas, Practices, Controversies* (London: Anthem Press, 2005) 31 at 43-46.

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.<sup>80</sup> 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.<sup>81</sup> 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.<sup>82</sup> 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”.<sup>83</sup> Further, Article 14 envisages a “classless egalitarian socio-economic order”.<sup>84</sup> 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.<sup>85</sup>

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<sup>80</sup> See Praveen Jha, “Globalization and Labour in India: The Emerging Challenges”, available at [http://www.nottingham.ac.uk/shared/shared\\_scpolitics/documents/gwcprojectPapers/India.pdf](http://www.nottingham.ac.uk/shared/shared_scpolitics/documents/gwcprojectPapers/India.pdf) (site visited 16 June 2012).

<sup>81</sup> *State of West Bengal v. Anwar Ali Sarkar*, (1952) MANU 0033 (SC) at para 8.

<sup>82</sup> See M P Singh, *V.N. Shukla Constitution of India*, 10<sup>th</sup> Edition (Lucknow: Eastern Book Company, 2001) at 37. Also see Reddy, *supra* note 41 at 85-86.

<sup>83</sup> See Article 15(4) of the *Constitution of India*. Also see Reddy, *ibid*.

<sup>84</sup> See *M. Chhaganlal v. Greater Bombay Municipality*, (1974) MANU 0052 (SC) at para 32.

<sup>85</sup> *St. Stephen's College v. The University of Delhi*, (1991) MANU 0319 (SC) at para 103.

The Supreme Court laid down conditions for reasonable classification in *State of West Bengal v. Anwar Ali Sarkar*:<sup>86</sup> 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.<sup>87</sup> What should ideally follow from these conditions is that all persons under similar circumstances should receive equal protection from laws.<sup>88</sup> However, Courts in India determine reasonable classification within a very narrow range that is based on technical considerations relevant to an impugned legislation.<sup>89</sup> 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 to promote constitutional labour guarantees for informal workers.<sup>90</sup> 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.<sup>91</sup> Justice Reddy asserts that *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

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<sup>86</sup> (1952) MANU 0033 (SC) at para 58

<sup>87</sup> Also see *Shri Ram Krishna Dalmia v. Justice S.R. Tendolkar*, (1958) MANU 0024 (SC) at paras 13, 16.

<sup>88</sup> *State of West Bengal*, (1952) MANU 0033 at paras 25, 38, 45, 47, 58, supra note ----

<sup>89</sup> 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).

<sup>90</sup> 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 *Vishaka v. State of Rajasthan*, (1997) MANU 0786 (SC), is a case on the point (discussed presently).

<sup>91</sup> See Reddy, supra note 41 at 89-95.

oppression and are allowed to enjoy the plenitude of life.”<sup>92</sup> 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 *the State of Madhya Pradesh v. Pramod Bhartiya*<sup>93</sup> declared that equal pay for equal work, irrespective of the technical details or designation of employees, flows from Article 14. Further, in *the State of Uttar Pradesh v. J.P. Chaurasia*<sup>94</sup> the Supreme Court noted:

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.

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.

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

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<sup>92</sup> See *ibid* at 90.

<sup>93</sup> See generally (1993) MANU 0060 (SC).

<sup>94</sup> (1988) MANU 0502 (SC) at para 29.

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.<sup>95</sup> 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.<sup>96</sup> 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).<sup>97</sup> 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.<sup>98</sup> 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.<sup>99</sup>

The NCEUS defined informal sector on the basis of two criteria: an ownership criterion and a size criterion.<sup>100</sup> According to the ownership criterion, an enterprise must not be a separate legal entity, such as a company,<sup>101</sup> or a registered society,<sup>102</sup> apart from

<sup>95</sup> Article 245 of the *Constitution of India*.

<sup>96</sup> See Article 246 of the *Constitution of India*.

<sup>97</sup> See Seventh Schedule of the *Constitution of India*.

<sup>98</sup> Entry 22 of the Concurrent List enumerates: “[t]rade unions, industrial and labour disputes”; Entry 23 of the List enumerates: “[s]ocial security and social insurance; employment and unemployment”; and Entry 24 provides: “[w]elfare of labour including conditions of work, provident funds, employers’ liability, workmen’s compensation, invalidity and old age pensions and maternity benefits.”

<sup>99</sup> NCEUS, *The Challenge of Employment in India – An Informal Economy Perspective, Volume 1 Main Report, April, 2009* (New Delhi: NCEUS, 2009) at 169.

<sup>100</sup> NCEUS, *Report on Definitional and Statistical Issues Relating to Informal Economy, November 2008* (New Delhi: NCEUS, 2008) at 23.

<sup>101</sup> Registered under the *Companies Act, 1956*.

<sup>102</sup> Registered under the *Societies Registration Act, 1860*. The Societies Registration Act is an “Act for the Registration of Literary, Scientific, and Charitable Societies.” See Short Title of the Act.

Section 1 of the Act explains the legal status of a Society: “[a]ny seven or more persons associated

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”,<sup>103</sup> irrespective of the fact that they are employed in either informal or formal sector, and includes self-employed own-account workers.<sup>104</sup>

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,<sup>105</sup> 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 labour” such as the Equal Remuneration Act, 1976, and the Bonded Labour System (Abolition) Act, 1976.<sup>106</sup> The second of these groups consists of “laws which apply to some sections of the unorganised sector labour” such as the Minimum

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 ....”

<sup>103</sup> NCEUS, *Definitional and Statistical Issues*, supra note 100 at 27.

<sup>104</sup> 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, *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](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.

<sup>105</sup> See generally NCEUS, *Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector, August 2007* (New Delhi: NCEUS, 2007).

<sup>106</sup> Ibid at 155.

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.<sup>107</sup> 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.<sup>108</sup>

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.<sup>109</sup> Likewise, the Commission notes that the bonded labour system, whether employed formally or informally, is abolished under the Bonded Labour System (Abolition) Act, 1976.<sup>110</sup>

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.<sup>111</sup> The categories of employment listed in the Act’s Schedule could be modified at any time by the government.<sup>112</sup> The Act lists both agricultural and non-agricultural activities, where employers are mandated to pay specified wages to their employees.<sup>113</sup> 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

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<sup>107</sup> Ibid at 155.

<sup>108</sup> Ibid at 155, 157.

<sup>109</sup> Ibid at 158.

<sup>110</sup> Ibid at 158.

<sup>111</sup> Ibid at 158.

<sup>112</sup> *Minimum Wages Act, 1948*, section 27 (Power of State Government to add to Schedule).

<sup>113</sup> 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.

Commission shows that other legislation grouped under the second category address some sections of informal workers.<sup>114</sup> 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.<sup>115</sup> 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.<sup>116</sup> Such protection is available to all workers, formal or informal.<sup>117</sup> Likewise, the Maternity Benefit Act mandates that employers ensure maternity benefits to women workers formally or informally employed.<sup>118</sup> 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.<sup>119</sup>

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.<sup>120</sup> The NCEUS also documents the “abysmally poor”

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<sup>114</sup> NCEUS, *Conditions of Work*, supra note 105 at 158-160.

<sup>115</sup> Ibid at 161-163.

<sup>116</sup> 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.

<sup>117</sup> According to section 1 (4) of the *Contract Labour (Regulation and Abolition) Act, 1970*, the statute is applicable to all establishments where twenty or more workers are employed, and all employers (contractors) who employs twenty or more workers.

<sup>118</sup> 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.

<sup>119</sup> 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*.

<sup>120</sup> NCEUS, *Conditions of Work*, supra note 105 at 163-164, 284-287; also see Rohini Hensman, “Labour and Globalization: Union Responses in India” in Paul Bowles & John Harriss eds, *Globalization and Labour in China and India – Impacts and Responses* (New York: Palgrave Macmillan, 2010) 189 at 193-196.

implementation of labour laws in India.<sup>121</sup> 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.<sup>122</sup> Thus, the exclusion of informal workers from legislative protection happens at two stages. 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.<sup>123</sup>

In the 2009 Report prepared by the NCEUS, named *The Challenge of Employment in India – An Informal Economy Perspective*,<sup>124</sup> the Commission discusses three of the major labour laws that regulate industrial relations and labour welfare in India.<sup>125</sup> 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,<sup>126</sup> employment security for formal workers,<sup>127</sup> promote amicable industrial relations in the formal sector,<sup>128</sup> 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 *Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector*<sup>129</sup> (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

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<sup>121</sup> NCEUS, *Conditions of Work*, ibid at 164-171; also see NCEUS, *Challenge of Employment*, supra note 99 at 186-187.

<sup>122</sup> NCEUS, *Conditions of Work*, ibid at 166-167.

<sup>123</sup> NCEUS, *Challenge of Employment*, supra note 99 at 180; also see Hensman, supra note 120 at 193-196.

<sup>124</sup> See generally NCEUS, *Challenge of Employment*, ibid.

<sup>125</sup> Ibid at 169-170.

<sup>126</sup> See *The Factories Act, 1948*; also see *The Industrial Disputes Act, 1947*.

<sup>127</sup> See *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).

<sup>128</sup> See *The Industrial Disputes Act, 1947*, Chapter IIB (Grievance Redressal Machinery) and Chapter III (Reference of Disputes to Boards, Courts or Tribunals).

<sup>129</sup> See generally NCEUS, *Conditions of Work*, supra note 105.

workers (including self-employed informal workers), even though there are indications that this legislation is also biased towards formal workers.<sup>130</sup>

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 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).<sup>131</sup> 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.<sup>132</sup>

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*,<sup>133</sup> the Supreme Court was called upon to determine the true import of the term *industry* as used in the 1947 statute.<sup>134</sup> 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

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<sup>130</sup> See the *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.

<sup>131</sup> See NCEUS, *Challenge of Employment*, supra note 99 at 178-180.

<sup>132</sup> Ibid at 180.

<sup>133</sup> (1978) MANU 0257 (SC).

<sup>134</sup> *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."

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.<sup>135</sup>

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 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.<sup>136</sup> (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”<sup>137</sup> 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

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<sup>135</sup> (1978) MANU 0257 (SC) at para 111.

<sup>136</sup> *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.

<sup>137</sup> See Section 2(9) of the *Employee’s State Insurance Act, 1948*.

such workers are employed for only a day.<sup>138</sup> However, the Employee's State Insurance Act is applicable to establishments employing at least ten workers.<sup>139</sup>

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.<sup>140</sup> 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 (Conditions of Work and Livelihood Promotion) Bill 2005.<sup>141</sup> 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,<sup>142</sup> a large number of informal workers remain

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<sup>138</sup> See *Royal Talkies, Hyderabad v. Employees State Insurance Corporation*, (1978) MANU 0282 (SC); *Siddheswar, Hubli v. ESI*, 1998 Lab. I.C. 212 (Orissa); *Regional Director, Employees State Insurance Corporation v. Suvarna Saw Mills*, 1979 Lab. I.C. 1335 (Karnataka).

<sup>139</sup> 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).

<sup>140</sup> 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.

<sup>141</sup> See generally Reserve Bank of India, *Internal Working Group to Review the Recommendations of the NCEUS Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector* (Mumbai: Reserve Bank of India, 2008).

<sup>142</sup> For a comprehensive list of the Central Government and state governments' social security Schemes and their scope, see S. Mahendra Dev, "Social Security in the Unorganized Sector in India" in Ramgopal Agarwala, Nagesh Kumar & Michelle Riboud eds, *Reforms, Labour Markets, and Social Security in India* (New Delhi: Oxford University Press, 2004) 198 at 200-227, 231-235; also see R. K. A. Subrahmanya, "Strategies for Protective Social Security" in Renana Jhabvala & R. K. A. Subrahmanya eds, *The Unorganised Sector – Work Security and Social Protection* (New Delhi: Sage Publications, 2001) 38 at 42-44; also see Mina Swaminathan, "Worker, Mother or Both: Maternity and Child Care Services for Women in the Unorganised Sector" in Jhabvala & Subrahmanya eds, *The Unorganised Sector*, *ibid*, 122 at 123-135. For a discussion on employment generation schemes, see Alakh N. Sharma, "Employment Generation Policy and Social Safety Nets in India" in Agarwala, Kumar & Riboud eds, *ibid*, 236 at 261-270; also see R. K. A. Subrahmanya, "Support for the Unorganised Sector: Existing Social Security Measures" in Jhabvala & Subrahmanya eds, *The Unorganised Sector*, *ibid* 45 at 53-58; also see R. K. A. Subrahmanya, "Welfare Funds: An Indian Model for Workers in the Unorganised Sector" in Jhabvala & Subrahmanya eds, *The Unorganised Sector*, *ibid* 65 at 66-69.

excluded from the purview of such schemes because of inappropriate and inefficient implementation of the schemes.<sup>143</sup> Social security schemes in India are mainly targeted towards the *poor* rather than *workers*.<sup>144</sup> Even when social protection schemes are targeted towards workers, they do not provide *any legal right* to social security for informal workers,<sup>145</sup> something that the Unorganised Sector Social Security Act, 2008 purportedly seeks to guarantee.

The 2008 Act is applicable to both waged<sup>146</sup> and self-employed<sup>147</sup> informal workers<sup>148</sup> who work either in the informal sector<sup>149</sup> or the formal sector.<sup>150</sup> The Central Government is to formulate social protection schemes providing for “life and disability cover”, “health and maternity benefits”, “old age protection”, and “any other benefit”

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<sup>143</sup> 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. Many of the social protection schemes are rendered ineffective because of the rampant corruption during the implementation of the schemes; see Wouter van Ginneken, “Social Protection for the Informal Sector in India” in Agarwala, Kumar & Riboud eds, *ibid*, 186 at 194.

<sup>144</sup> See Renana Jhabvala, “Participatory Approaches: Emerging Trend in Social Security” in Jhabvala & Subrahmanya eds, *The Unorganised Sector*, *ibid*, 30 at p. 31-34; Subrahmanya, “Support”, supra note 142 at 52-58.

<sup>145</sup> This is because most of the existing social protection schemes do not emanate from legislative mandate.

<sup>146</sup> 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.”

Further in section 2(b) a *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.”

<sup>147</sup> As per section 2(k) a *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.”

<sup>148</sup> 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 ...”

<sup>149</sup> 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.”

<sup>150</sup> Formal sector is an enterprise excluding an informal sector (section 2(f)).

under the law.<sup>151</sup> 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.<sup>152</sup> 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.<sup>153</sup> Upon a self-declaration, informal workers are registered under the law, and an identity card is issued against such registration.<sup>154</sup> 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.<sup>155</sup> 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.<sup>156</sup>

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.<sup>157</sup> 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 the law does not expressly exclude any category of self-employed informal workers from its purview.<sup>158</sup> 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.<sup>159</sup> She also points out that in the absence of the more powerful formal sector

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<sup>151</sup> Section 3(1) of the *Unorganised Sector Social Security Act, 2008*.

<sup>152</sup> Section 3(4) of the *Unorganised Sector Social Security Act, 2008*.

<sup>153</sup> See Chapter III and Chapter IV of the *Unorganised Sector Social Security Act, 2008*. In particular, see section 5(8) and section 6(8) of the *Unorganised Sector Social Security Act, 2008*.

<sup>154</sup> Section 10 of the *Unorganised Sector Social Security Act, 2008*.

<sup>155</sup> See Section 2(m) and Schedule II of the *Unorganised Sector Social Security Act, 2008*.

<sup>156</sup> See Cabinet okays fund for unorganized sector, *The Times of India*, 29 July 2011, available at [http://articles.timesofindia.indiatimes.com/2011-07-29/india/29828840\\_1\\_unorganized-sector-workers-national-social-security-fund](http://articles.timesofindia.indiatimes.com/2011-07-29/india/29828840_1_unorganized-sector-workers-national-social-security-fund) (site visited 29 January 2012).

<sup>157</sup> See Kamala Sankaran, “Informal Employment and the Challenges for Labour Law” in Guy Davidov & Brian Langille eds, *The Idea of Labour Law* (Oxford & New York: Oxford University press, 2011) 223 at 229.

<sup>158</sup> *Ibid* at 232.

<sup>159</sup> Hensman, *supra* note 120 at 198.

unions' interest in the legislation, "it has less chance of success".<sup>160</sup> Even if successful, Hensman notes, the law will leave informal workers with much weaker rights than their formal counterparts.<sup>161</sup>

Sankaran points out that the labour law is inadequate for the promotion of workers' interests in the Indian context.<sup>162</sup> She observes that Indian labour laws exclude informal workers on the basis of numerical thresholds, functional criteria, and wage ceiling criteria.<sup>163</sup> Poor enforcement of labour laws adds to the exclusion of informal workers in India.<sup>164</sup> According to Sankaran, a multiplicity of labour laws dealing with the same or similar concepts and terminologies differently<sup>165</sup> further complicates their application to informal workers.<sup>166</sup> 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.<sup>167</sup> The law pilot project on waste-pickers shows how, in the absence of labour laws and appropriate policy,<sup>168</sup> waste-pickers' organizations have innovatively leveraged the existing waste management law and policy to their best advantage.<sup>169</sup> However, the law pilot project on domestic workers points towards the

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<sup>160</sup> Ibid.

<sup>161</sup> Ibid.

<sup>162</sup> See Sankaran, "Informal Employment", supra note 157 at 224; also see Kamala Sankaran, *Labour Laws in South Asia: The need for an inclusive approach* (Geneva: International Institute for Labour Studies, 2007) at 3-6.

<sup>163</sup> Kamala Sankaran, "Protecting the Worker in the Informal Economy: The Role of Labour law" in Guy Davidov & Brian Langille eds, *Boundaries and Frontiers of Labour Law* (Portland: Hart Publishing, 2006) 205 at 206-207.

<sup>164</sup> Ibid; also see Sankaran, *The need for an inclusive approach*, supra note 162 at 7, 14-16.

<sup>165</sup> 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.

<sup>166</sup> Sankaran, *The need for an inclusive approach*, ibid.

<sup>167</sup> "India Pilot Project – Law & Informality", Women in Informal Employment: Globalizing and Organizing, available at [http://wiego.org/informal\\_economy\\_law/india-pilot-project](http://wiego.org/informal_economy_law/india-pilot-project) (site visited 16 June 2012).

<sup>168</sup> See generally Renana Jhabvala, "Opening Remarks", *Workshop to Discuss Policy on Community-based and Decentralised Integrated Sustainable Solid Waste Management in the Country*, July 22-23, 2008, available at [http://wiego.org/sites/wiego.org/files/resources/files/wp\\_consultation\\_report.pdf](http://wiego.org/sites/wiego.org/files/resources/files/wp_consultation_report.pdf) (site visited 16 June 2012); also see generally Poornima Chikarmane, "Policy Outline", *Workshop to Discuss Policy*, ibid.

<sup>169</sup> See generally Kamala Sankaran, Shalini Sinha & Roopa Madhav, "Waste Pickers Background Note", *WIEGO Law Pilot Project on the Informal Economy*, available at [http://wiego.org/sites/wiego.org/files/resources/files/wp\\_background\\_note.pdf](http://wiego.org/sites/wiego.org/files/resources/files/wp_background_note.pdf) (site visited 16 June 2012);

inadequacy of law and policy for the promotion of domestic workers' interests.<sup>170</sup> Even though some states such as Kerala and Karnataka have minimum wage laws for domestic workers,<sup>171</sup> there are no central or state statutes regulating service conditions or social protection for domestic workers.<sup>172</sup>

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.<sup>173</sup> 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.<sup>174</sup> 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.<sup>175</sup>

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

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also see Kamala Sankaran, Shalini Sinha & Roopa Madhav, "Concept Note – National Consultation of Waste Pickers", July 22-23, 2008, KKP and WIEGO Pilot Project, available at [http://wiego.org/sites/wiego.org/files/resources/files/wp\\_consultation\\_concept\\_note.pdf](http://wiego.org/sites/wiego.org/files/resources/files/wp_consultation_concept_note.pdf) (site visited 16 June 2012); also see "Integrated Solid Waste Management", Thematic Session I, Session Chaired by Dr. Kamala Sankaran, *Workshop to Discuss Policy*, *ibid*; also see "Municipal and Organizational Arrangements", Integrated Solid Waste Management, Thematic Session I, Session Chaired by Dr. Kamala Sankaran, *Workshop to Discuss Policy*, *ibid*.

<sup>170</sup> See generally Kamala Sankaran, Shalini Sinha & Roopa Madhav, "Domestic Workers – Background Document", WIEGO Law Pilot Project on the Informal Economy, available at [http://wiego.org/sites/wiego.org/files/resources/files/dw\\_background\\_note.pdf](http://wiego.org/sites/wiego.org/files/resources/files/dw_background_note.pdf) (site visited 16 June 2012).

<sup>171</sup> See *ibid* at 3.

<sup>172</sup> See *ibid* at 1-3, 9.

<sup>173</sup> *Francis Coralie*, *supra* note 36.

<sup>174</sup> See Sankaran, "Informal Employment", *supra* note 157 at 227.

<sup>175</sup> *Ibid* at 227; also see Sankaran, "Protecting the Worker", *supra* note 163 at 211.

Constitution of India. In the absence of adequate state initiatives for the promotion of the constitutional rights of informal workers, the private membership-based and non-membership organizations seek to promote workers' constitutional rights. In the next section of the dissertation I discuss private initiatives aimed at realizing constitutional guarantees, which the workers derive through the formation of membership-based and non-membership organizations.

#### **4. Unionization/Organization as a Strategy for the Realization of Constitutional Labour Guarantees for Informal Workers**

As I have shown in the previous sections, the Indian constitutional and legislative frameworks have failed to meet expectations of its large working population,<sup>176</sup> with the result that there is growing inequality between formal and informal workers.<sup>177</sup> 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.<sup>178</sup> 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

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<sup>176</sup> See A. Vaidyanathan, "The Pursuit of Social Justice" in Hasan, Sridharan, & Sudarshan eds, supra note 79, 284 at 288-289. Also see Granville Austin, "The Expected and the Unintended in Working a Democratic Constitution" in Hasan, Sridharan, & Sudarshan eds, supra note 79, 319 at 334-339.

<sup>177</sup> 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.

<sup>178</sup> See Austin, "The Expected and the Unintended", supra note 176 at 337. Also see Vaidyanathan, *ibid* at 300.

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 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.<sup>179</sup> 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.<sup>180</sup> Based on the ideals of *satya* (truth), *ahimsa* (non-violence), *sarvadharmā* (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).”<sup>181</sup> 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.”<sup>182</sup> On the basis of this definition the Labour Department refused to register

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<sup>179</sup> 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.

<sup>180</sup> 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.

<sup>181</sup> See SEWA, “About Us”, at [http://www.sewa.org/About\\_Us.asp](http://www.sewa.org/About_Us.asp) (site visited 5 January 2012); also see Elizabeth Hill, *Worker Identity, Agency and Economic Development: Women's empowerment in the Indian informal economy* (New York: Routledge, 2010) at 46-47.

<sup>182</sup> Section 2 (h) of the *Trade Unions Act 1926*.

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.<sup>183</sup> 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.<sup>184</sup>

The SEWA is a trade union that organizes self-employed women workers engaged in various economic activities.<sup>185</sup> SEWA members pay an annual membership fee of 5 rupees;<sup>186</sup> SEWA also accepts donations from a range of government and private donors, Indian and foreign.<sup>187</sup> The union is governed by a two-tier representation model.<sup>188</sup> SEWA members directly elect Trade Council representatives and members of the Executive Committee.<sup>189</sup> The union governance is carried on by a mix of professional cadres and informal worker-members.<sup>190</sup> However, the SEWA is different from the traditional concept of a trade union.<sup>191</sup> SEWA's functional emphasis is on an internally constructive role, rather than an external adversarial agenda.<sup>192</sup> 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.<sup>193</sup> SEWA functions through the constitution of trade and service cooperatives,<sup>194</sup> and it is composed of around ninety

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<sup>183</sup> See SEWA, “About Us”, supra note 181.

<sup>184</sup> See Ela R. Bhat, *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.

<sup>185</sup> See SEWA, “SEWA’s Structure”, available at [http://www.sewa.org/About\\_Us\\_Structure.asp](http://www.sewa.org/About_Us_Structure.asp) (site visited 7 June 2012); also see John Blaxall, “India’s Self Employed Women’s Association (SEWA) – Empowerment through Mobilization of Poor Women on a Large Scale” 1 at 7, available at <http://info.worldbank.org/etools/docs/reducingpoverty/case/79/fullcase/India%20SEWA%20Full%20Case.pdf> (site visited 6 June 2012).

<sup>186</sup> See SEWA, “SEWA’s Structure”, *ibid*.

<sup>187</sup> Blaxall, supra note 185 at 16.

<sup>188</sup> See SEWA, “SEWA’s Structure”, supra note 185.

<sup>189</sup> See SEWA, “SEWA’s Structure”, *ibid*.

<sup>190</sup> See Blaxall, supra note 185 at 6, 13-14, 16-18.

<sup>191</sup> Hill, *Worker Identity*, supra note 181 at 75.

<sup>192</sup> See generally Bhat, supra note 184, in particular at 70, 99-122; also see Jan Breman, *The Making and Unmaking of an Industrial Working Class – Sliding Down the Labour Hierarchy in Ahmedabad, India* (New Delhi: Oxford University Press, 2004) at 282-286.

<sup>193</sup> See generally Bhat, *ibid*; also see SEWA, “Sewa Services”, available at [http://www.sewa.org/Sewa\\_Services.asp](http://www.sewa.org/Sewa_Services.asp) (site visited 5 January 2012); also see Hill, *Worker Identity*, supra note 181 at 75-76.

<sup>194</sup> See Bhat, *ibid* at 16-17, 53-54, 99-122; also see Janhavi Dave, Manali Shah & Yamini Parikh, “The Self-Employed Women’s Association (SEWA) Organising Through Union and Co-operative in India” in Melanie Samson ed, *Refusing to be Cast Aside: Waste Pickers Organising Around the World* (Cambridge,

trade and service cooperatives in India.<sup>195</sup> The *Swashrayi Mahila Sewa Sahakari Bank* (SEWA Bank) is the largest cooperative of SEWA members with 93,000 savings accounts, and it is run by the members themselves.<sup>196</sup> SEWA's health care initiative is a combination of health education and curative care, which is also run by the members.<sup>197</sup> SEWA's child care initiatives are run by local cooperatives and organizations.<sup>198</sup> SEWA initiated its integrated insurance scheme in 1992 with the help of the national insurance companies.<sup>199</sup> SEWA also provides legal services including legal education and legal assistance during litigation through its legal advisory centre.<sup>200</sup> The SEWA Academy promotes its members' education and capacity building.<sup>201</sup> SEWA established the *Mahila Housing SEWA Trust* in 1994 in order to improve "housing and infrastructural conditions" of women engaged in informal economic activities.<sup>202</sup>

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.<sup>203</sup> With the members' full participation, SEWA lobbies the government on several issues.<sup>204</sup> 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

MA: WEIGO, 2009) 27.

<sup>195</sup> Dave, Shah & Parikh, *ibid*.

<sup>196</sup> See Bhat, *supra* note 184 at 99-122.

<sup>197</sup> See SEWA, "Sewa Services – Health Care", available at [http://www.sewa.org/Services\\_Health\\_Care.asp](http://www.sewa.org/Services_Health_Care.asp) (site visited 5 January 2012).

<sup>198</sup> See SEWA, "Sewa Services – Child Care", available at [http://www.sewa.org/Services\\_Child\\_Care.asp](http://www.sewa.org/Services_Child_Care.asp) (site visited 5 January 2012).

<sup>199</sup> See SEWA, "Sewa Services – VimoSEWA (SEWA Insurance)"

[http://www.sewa.org/Services\\_Work\\_Security\\_Insurance.asp](http://www.sewa.org/Services_Work_Security_Insurance.asp) (site visited 5 January 2012); also see Ginnekenn, "Social Protection", *supra* note 143 at 192-193; also see generally Mirai Chatterjee & Jayshree Vyas, "Organising Insurance for Women Workers" in Jhabvala & Subrahmanya eds, *The Unorganised Sector*, *supra* note 142, 74.

<sup>200</sup> See SEWA, "Sewa Services – Legal Services" [http://www.sewa.org/Services\\_Legal\\_Services.asp](http://www.sewa.org/Services_Legal_Services.asp) (site visited 5 January 2012).

<sup>201</sup> See SEWA, "Sewa Services – Capacity Building of SEWA Members"

[http://www.sewa.org/Services\\_Capacity\\_Building.asp](http://www.sewa.org/Services_Capacity_Building.asp) (site visited 5 January 2012).

<sup>202</sup> See SEWA, "Sewa Services – Housing and Infrastructure" <http://www.sewahousing.org/> (site visited 5 January 2012).

<sup>203</sup> See Bhat, *supra* note 184 at 70, 213; also see Hill, *Worker Identity*, *supra* note 181 at 139-142; also see Kapoor, *supra* note 179 at 564-566.

<sup>204</sup> 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.

women's participation in the public sphere.<sup>205</sup> As a matter of strategy, SEWA also resorts to direct struggle and agitation against myriad forms of discrimination against women informal workers.<sup>206</sup> Moreover, at a fundamental level, SEWA unionization provides for the much needed legitimation and recognition of informal workers and their activities.<sup>207</sup> Based on her extensive study of SEWA unionization, Elizabeth Hill demonstrates that SEWA intervenes at three levels in the work-lives of informal workers.<sup>208</sup> The three levels are the *macro* or societal level, the *meso* or industry (enterprise) level, and the *micro* or individual worker (inter-personal) level.<sup>209</sup>

From this summary, it is clear that SEWA organizes to provide a range of socio-economic services to its members.<sup>210</sup> 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 nationally and internationally. In effect, SEWA aims at socio-economic-political justice for informal women workers,<sup>211</sup> 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.<sup>212</sup> 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.<sup>213</sup>

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<sup>205</sup> Hill, *ibid* at 76-77; also see generally Bhat, *ibid*.

<sup>206</sup> See Bhat, *ibid* at 70; also see Hill, *ibid* at 76-77, 89-93.

<sup>207</sup> Hill, *ibid* at 76-83.

<sup>208</sup> *Ibid* at 58-72, 76-94.

<sup>209</sup> *Ibid* at 59-72, 77.

<sup>210</sup> Kapoor, *supra* note 179 at 556-557, 559.

<sup>211</sup> *Ibid* at 561; also see Dave, Shah & Parikh, "The Self-Employed Women's Association", *supra* note 194 at 32.

<sup>212</sup> Hill, *Worker Identity*, *supra* note 181 at 98.

<sup>213</sup> Saibibi, *bidi* roller, as cited in Hill, *ibid*.

According to Hill, SEWA's collective action has a positive psychological impact on its members, which is central for multidimensional human development.<sup>214</sup> SEWA membership is a source of recognition and respect for women informal workers.<sup>215</sup> 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.<sup>216</sup>

Hill documents the confidence, self-respect, poise, self-assurance, sense of public status, identity, and esteem amongst members of SEWA.<sup>217</sup> She makes a connection between these positive psychological traits and SEWA members' *agency* or reflexive human action.<sup>218</sup> 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].<sup>219</sup> Agency is, therefore, a primary factor in the socio-economic transformation of informal workers.<sup>220</sup> 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.

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.<sup>221</sup> KKPKP registered itself as a trade union in 1993.<sup>222</sup> Unlike SEWA, KKPKP admits both men and women members.<sup>223</sup> A membership-based organization, annual fee paying KKPKP members elect their

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<sup>214</sup> Hill, *ibid* at 95.

<sup>215</sup> *Ibid* at 96.

<sup>216</sup> *Ibid* at 95-99, 104-113.

<sup>217</sup> *Ibid* at 104-112.

<sup>218</sup> *Ibid* at 107-112, 115-117.

<sup>219</sup> *Ibid* at 117.

<sup>220</sup> *Ibid* at 119-125.

<sup>221</sup> See *Kagad Kach Patra Kashtakari Panchayat* (KKPKP), available at <http://www.wastepickerscollective.org/> (site visited 7 June 2012).

<sup>222</sup> Piush Antony, *Towards Empowerment: Experiences of Organizing Women Workers* (New Delhi: ILO, 2001) at 17.

<sup>223</sup> See Poornima Chikarmane & Laxmi Narayan, "Organising the Unorganised: A Case Study of the Kagad Kach Patra Kashtakari Panchayat (Trade Union of Waste-pickers)" 1 at 4, available at [http://wiego.org/sites/wiego.org/files/resources/files/Chikarmane\\_Narayan\\_case-kkpkp.pdf](http://wiego.org/sites/wiego.org/files/resources/files/Chikarmane_Narayan_case-kkpkp.pdf) (site visited 7 June 2012).

Representative Council for the governance of the union.<sup>224</sup> 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.<sup>225</sup> 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.<sup>226</sup> 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.<sup>227</sup> 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.<sup>228</sup>

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.<sup>229</sup> 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.<sup>230</sup> In 1995 the KKPKP established a co-operative shop for waste trade run by its members.<sup>231</sup> Twenty to thirty members are engaged in the shop that sells waste for recycling.<sup>232</sup> 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.<sup>233</sup> 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,

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<sup>224</sup> See *ibid* at 5, 7-8.

<sup>225</sup> See *ibid* at 7-8.

<sup>226</sup> Antony, *supra* note 222 at 17-18; also see Nalini Shekar, “Suman More – KKPKP, Pune, India” in Samson ed, *supra* note 194, 11.

<sup>227</sup> Antony, *ibid* at 63.

<sup>228</sup> *Ibid* at 63, 66.

<sup>229</sup> Chikarmane & Narayan, “Organising”, *supra* note 223 at 37-40; also see *ibid* at 63.

<sup>230</sup> Antony, *ibid* at 63.

<sup>231</sup> *Ibid*.

<sup>232</sup> *Ibid*.

<sup>233</sup> *Ibid* at 63-64.

and natural death.<sup>234</sup> 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.<sup>235</sup> 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.<sup>236</sup> 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.<sup>237</sup> 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.<sup>238</sup> 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.<sup>239</sup> 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.<sup>240</sup>

The *Sramajibee Mahila Samiti* (SMS) is a registered society<sup>241</sup> of women agricultural workers in West Bengal.<sup>242</sup> According to 2004-2005 data, 98.9% of workers in the agricultural sector in India are informal workers.<sup>243</sup> A leftist ideology underlies the SMS's functioning; class and gender based political action is more important than socio-

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<sup>234</sup> Ibid at 64.

<sup>235</sup> Ibid at 63-64, 66.

<sup>236</sup> Ibid at 62-63.

<sup>237</sup> Ibid at 63.

<sup>238</sup> Ibid.

<sup>239</sup> Ibid at 65.

<sup>240</sup> Ibid.

<sup>241</sup> Ibid at 22, 32, 75; The *Sramajibee Mahila Samiti* (SMS) is a Society registered under the Societies Registration Act.

<sup>242</sup> Antony, *ibid* at 22.

<sup>243</sup> NCEUS, *Definitional and Statistical Issues*, *supra* note 100 at 44.

economic provisioning in the SMS's day-to-day functioning.<sup>244</sup> In 1990, the SMS was created out of the *Paschim Banga Khet Majdoor Samity* (PBKMS) as a separate organization for women workers.<sup>245</sup> 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.<sup>246</sup> The organization functions through six elected committees at different levels.<sup>247</sup> Through direct political action the SMS has taken up issues such as women's employment, government corruption, and minimum wages.<sup>248</sup> 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.<sup>249</sup> 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.<sup>250</sup> 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.<sup>251</sup> The SMS mobilizes local people to participate in such forums along with representatives of political parties and civil society.<sup>252</sup>

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 *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.<sup>253</sup> The SMS separately owns land where full-time workers live in a community.<sup>254</sup> SMS members have access to the JSK facilities. Members of the community draw from the community as per their need.<sup>255</sup> Community living is devised to ensure stakeholder participation in management (workers' participation in

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<sup>244</sup> Antony, supra note 222 at 22.

<sup>245</sup> Ibid at 75.

<sup>246</sup> Ibid at 22.

<sup>247</sup> Ibid.

<sup>248</sup> Ibid at 75, 78-80.

<sup>249</sup> Ibid at 77.

<sup>250</sup> Ibid at 77-78.

<sup>251</sup> Ibid at 78.

<sup>252</sup> Ibid.

<sup>253</sup> Ibid at 76.

<sup>254</sup> Ibid.

<sup>255</sup> Ibid.

management is a constitutional right).<sup>256</sup> 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.<sup>257</sup> The SMS has also promoted village level arbitration by organizing *salishi* sessions in matters such as divorce, compensation etc.<sup>258</sup> The SMS undertakes development works such as road repair by successfully establishing relations with the government.<sup>259</sup> 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.<sup>260</sup> The AMM has more than 200,000 members in the state of Maharashtra.<sup>261</sup> AMM membership is not subscription-based membership – membership is granted while workers avail credit from the organization.<sup>262</sup> 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.<sup>263</sup> The AMM's principal activity is their micro-credit program for these informal workers.<sup>264</sup> 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.<sup>265</sup> The society (i.e., AMM) also educates and trains its members' daughters, and encourages them to join the society.<sup>266</sup>

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

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<sup>256</sup> Ibid; also see Article 43A, Part IV of the *Constitution of India*.

<sup>257</sup> Antony, *ibid* at 76-77.

<sup>258</sup> Ibid at 78-79.

<sup>259</sup> Ibid at 79.

<sup>260</sup> Ibid at 91.

<sup>261</sup> Ibid at 92.

<sup>262</sup> Ibid at 27.

<sup>263</sup> Ibid at 92.

<sup>264</sup> Ibid at 28, 91-93.

<sup>265</sup> Ibid at 92-95.

<sup>266</sup> Ibid at 93.

enterprises.<sup>267</sup> The department store sells products prepared by the AMM members in their homes.<sup>268</sup> Apart from income generating programs for its members, the AMM houses destitute women, such as victims of domestic violence and physically and mentally disabled persons, in its rehabilitation centre at Vashi Nagar in Navi Mumbai.<sup>269</sup> The society also provides medical and legal aid to its members, and mediates in domestic disputes.<sup>270</sup> The AMM runs a crèche for its members' children; it also bears the cost for their education and sometimes arranges their marriages.<sup>271</sup> Apart from running a hostel for working women with government collaboration, the AMM has established two co-operative housing societies in Mumbai.<sup>272</sup> The Secretary of the AMM, Prema Puro is an influential organizer – she represents the AMM in various government and non-government bodies.<sup>273</sup>

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.<sup>274</sup> The SMVSS was established by an NGO called the Sakti Mahila Vikas Swavlambi Sarkari Samiti (SMVSSS).<sup>275</sup> 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.<sup>276</sup> The SMVSS has established fruitful relations with the government agency Housing and Urban Development Corporation (HUDCO).<sup>277</sup> HUDCO promotes the work done by the members of the cooperative by providing them loans, offering training to them, and marketing their work.<sup>278</sup>

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.<sup>279</sup>

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<sup>267</sup> Ibid at 94.

<sup>268</sup> Ibid.

<sup>269</sup> Ibid.

<sup>270</sup> Ibid at 94-95.

<sup>271</sup> Ibid at 95.

<sup>272</sup> Ibid.

<sup>273</sup> Ibid at 95-96.

<sup>274</sup> Ibid at 89.

<sup>275</sup> Ibid.

<sup>276</sup> Ibid.

<sup>277</sup> Ibid.

<sup>278</sup> Ibid.

<sup>279</sup> Ibid at 89-90.

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.<sup>280</sup> The SMVSS networks with government agencies and NGOs in order to enhance its visibility and strengthen its voice.<sup>281</sup>

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.<sup>282</sup> 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.<sup>283</sup> 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

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<sup>280</sup> Ibid.

<sup>281</sup> Ibid at 90.

<sup>282</sup> Kapoor, *supra* note 179 at 561-565.

<sup>283</sup> Ibid at 561-562.

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.<sup>284</sup> 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 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.<sup>285</sup> Therefore, one of the primary responsibilities of informal workers' organizations is to inculcate amongst members a sense of dignity and relevance to the society.<sup>286</sup> 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

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<sup>284</sup> 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 Subrahmanya, "Support", supra note 142 at 59-62.

<sup>285</sup> Hill, *Worker Identity*, supra note 181 at 61-72, 103-107.

<sup>286</sup> *Ibid* at 103-107, 109, 116-117, 119.

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 at the beginning of the study, did 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 were 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 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 KKP KP, 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.<sup>287</sup> The KKPKP campaigned for segregation of waste at its source for recycling purposes; got identity cards issued to its members;<sup>288</sup> arranged for credit facilities and education; and advocated child labour issues.<sup>289</sup> The union successfully lobbied with the Pune Municipality and the Pimpri Chinchwad Municipality to recognize and register waste-pickers, and endorse their identity cards.<sup>290</sup> Such official recognition and registration helped promote unhindered collection of waste by waste-pickers in the respective cities.<sup>291</sup> Pune Municipality became the first municipality in India to institutionalize a medical insurance scheme for registered waste-pickers.<sup>292</sup> 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.<sup>293</sup>

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 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.<sup>294</sup> 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

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<sup>287</sup> See Shekar, "Suman More", supra note 226 at 11-13.

<sup>288</sup> Chikarmane & Narayan, "Organising", supra note 223 at 2.

<sup>289</sup> Ibid at 8.

<sup>290</sup> Ibid at 16.

<sup>291</sup> Ibid.

<sup>292</sup> Ibid at 17.

<sup>293</sup> Ibid at 18.

<sup>294</sup> Ibid at 18-20.

arrangements, they do not involve waste-pickers in such activities.<sup>295</sup> The KKPKP also mobilizes its members around political agendas such as legislative and social protection of waste-pickers.<sup>296</sup>

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.<sup>297</sup> 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.<sup>298</sup> 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.<sup>299</sup> The SEWA engaged their waste-picker members into these cooperatives.<sup>300</sup> The SEWA currently operates three cooperatives of waste-picker members.<sup>301</sup> The SEWA cooperatives have contracted with the *Vejalpur Nagarpalika* (Vejalpur Municipality) to provide door-to-door waste collection services to 46,842 households.<sup>302</sup> 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.<sup>303</sup>

Similarly an NGO named Chintan,<sup>304</sup> based in Delhi, has arranged for door-to-door waste collection by waste-pickers in Delhi.<sup>305</sup> Chintan has collaborated with municipal authorities in order to contract waste-picking services on behalf of waste-pickers.<sup>306</sup> Another NGO, named Nidan, which is itself a registered society, established and registered a company, the *NIDAN Swachdhara Private Limited Company* of waste-

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<sup>295</sup> Ibid at 20.

<sup>296</sup> Ibid at 23, 42-43.

<sup>297</sup> See Dave, Shah & Parikh, "The Self-Employed Women's Association", supra note 194 at 28-29.

<sup>298</sup> Ibid.

<sup>299</sup> Ibid at 29-30.

<sup>300</sup> Ibid.

<sup>301</sup> Ibid at 30.

<sup>302</sup> Ibid.

<sup>303</sup> Ibid at 30-32.

<sup>304</sup> Chintan is a registered society under the *Societies Registration Act, 1860*.

<sup>305</sup> See "Scavengers to Managers", available at [http://www.chintan-india.org/initiatives\\_scavengers\\_to\\_managers.htm](http://www.chintan-india.org/initiatives_scavengers_to_managers.htm) (site visited 16 January 2012); also see Bharati Chaturvedi, "Santraj Maurya and Lipi in India – Tales of Two Waste Pickers in Delhi, India" in Samson ed, supra note 194, 8.

<sup>306</sup> See "Scavengers to Managers", *ibid*.

pickers.<sup>307</sup> 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.<sup>308</sup> 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.<sup>309</sup>

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.<sup>310</sup> 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.<sup>311</sup> In Delhi, through an understanding between Chintan and the New Delhi Municipal Council (NDMC), waste-pickers provide door-to-door waste-collection services.<sup>312</sup> Waste-pickers are directly paid by the households for their services.<sup>313</sup> The NDMC supports the waste-collection by providing for segregation spaces, and vehicles for waste-collection and removal.<sup>314</sup>

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.<sup>315</sup> The waste-pickers' cooperative in Pune is an autonomous body working independently, and is accountable to the households

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<sup>307</sup> See Nidan, "Activities, Empowering the Informal Workers and Children", available at [http://www.nidan.in/otherpage.php?page\\_code\\_no=3](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.

<sup>308</sup> Singh & Saran, "NIDAN", ibid at 18.

<sup>309</sup> Ibid at 18-19.

<sup>310</sup> See generally "Municipal and Organizational Arrangements", supra note 169.

<sup>311</sup> 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.

<sup>312</sup> Samson, "Chapter 4: Formal Integration" ibid at 50-51.

<sup>313</sup> Ibid at 50.

<sup>314</sup> Ibid at 52.

<sup>315</sup> Ibid at 50, 57-59; Samson, "Chapter 5: Using the Law", supra note 311 at 72.

directly.<sup>316</sup> Neither the municipality nor the KKPKP has any ownership over the cooperative and its functioning.<sup>317</sup> The municipality has also determined the rate of pay, to be directly paid by households to the cooperative for the services rendered.<sup>318</sup> However, for door-to-door waste-collection service provided in slums, the municipality takes the responsibility for payment to the cooperative.<sup>319</sup> The municipality has also provided segregation space, and other support to the cooperative.<sup>320</sup> While the cooperative is supported by the municipality, it is controlled by its members.<sup>321</sup>

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.<sup>322</sup> The KKPKP functions as the secretariat for the alliance.<sup>323</sup> SWACHH currently has twenty-four organizations working with issues involving waste-pickers.<sup>324</sup> The alliance developed a national policy on solid waste management, and proposes to lobby with government(s) in order to implement their policy proposal.<sup>325</sup> 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.<sup>326</sup> 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.<sup>327</sup> However, the above examples show that some organizations are facilitating

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<sup>316</sup> Samson, "Chapter 4: Formal Integration" *ibid* at 58-59.

<sup>317</sup> *Ibid*.

<sup>318</sup> *Ibid*.

<sup>319</sup> *Ibid*.

<sup>320</sup> *Ibid* at 59.

<sup>321</sup> *Ibid* at 50.

<sup>322</sup> KKPKP Central Secretariat, "The SWACHH National Alliance of Waste Pickers, India" in Samson ed, *supra* note 194, 37 at 38.

<sup>323</sup> *Ibid*.

<sup>324</sup> *Ibid*.

<sup>325</sup> *Ibid*.

<sup>326</sup> *Ibid* at 38-39.

<sup>327</sup> Gill, *Of Poverty and Plastic*, *supra* note 177 at 25.

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.<sup>328</sup> These organizations do not only provide socio-economic resources, they are also responsible for the development of agency amongst informal workers. Agency emanating from the moral condition of psychological well-being,<sup>329</sup> along with socio-economic provisions, enables informal workers to lead a life of dignity, a celebrated constitutional goal in India.<sup>330</sup> A dignified life is a fundamental right under the Constitution of India.<sup>331</sup> The right to life under the Constitution of India,<sup>332</sup> does not mean mere animal existence, it guarantees a dignified life with freedom and entitlements.<sup>333</sup> 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-

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<sup>328</sup> Hill, *Worker Identity*, supra note 181 at 117-125.

<sup>329</sup> Ibid at 104-112, 119-125.

<sup>330</sup> Justice Bhagwati in *Francis Coralie*, supra note 36; *Bandhua Mukti Morcha*, supra note 64 at para 14; *Indra Sawhney v. Union of India*, (1992) MANU 0665 (SC) at paras 1-4, 262, 412-417, 565; *Akhil Bharatiya Soshit Karamchhari Sangh (Railway) v. Union of India*, (1980) MANU 0058 (SC) at paras 16, 134; *Mrs. Maneka Gandhi v. Union of India*, (1978) MANU 0133 (SC) at paras 13, 53, 79-80, 125; *Minerva Mills v. Union of India*, (1980) MANU 0075 (SC) at paras 62, 109, 118; *Miss. Mohini Jain v. State of Karnataka*, (1992) MANU 0357 (SC) at paras 8-13; *Municipal Corporation of the City of Ahmedabad v. Jan Mohammed Usmanbhai*, (1986) MANU 0099 (SC) at para 19; *P. Rathinam v. Union of India*, (1994) MANU 0433 (SC) at para 27; *Prem Shankar Shukla v. Delhi Administration*, (1980) MANU 0084 (SC) at paras 1, 11, 23-25; *People's Union for Democratic Rights v. Union of India*, (1982) MANU 0038 (SC) at paras 10, 12, 14, 16, 19; see generally *Sheela Barse v. State of Maharashtra*, (1987) MANU 0139 (SC); *Sunil Batra v. Delhi Administration*, (1978) MANU 0184 (SC) at paras 57, 266; *Vikram Deo Singh Tomar v. State of Bihar*, (1988) MANU 0572 (SC) at para 2.

<sup>331</sup> Ibid.

<sup>332</sup> Ibid.

<sup>333</sup> Ibid.

political participation, freedom of movement, economic development etc.<sup>334</sup> 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.<sup>335</sup> The value and importance of resources, Sen notes, lies on what resources “can do for people.”<sup>336</sup> Goods, and services are important for people only when they use such goods and services in furtherance of their development.<sup>337</sup> Accordingly, people not only need to exercise command over resources,<sup>338</sup> they also need the ability to use such resources for their development.<sup>339</sup> According to Sen, human development signifies *freedom of people to choose* the kind of life that they value.<sup>340</sup> 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.

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<sup>334</sup> Francis Coralie, *supra* note 36.

<sup>335</sup> Amartya Sen, *Resources, Values and Development* (Cambridge: Harvard University Press, 1984) at 510-511.

<sup>336</sup> *Ibid* at 510.

<sup>337</sup> *Ibid* at 30-31, 495-504.

<sup>338</sup> *Ibid* at 30-31, 516.

<sup>339</sup> *Ibid* at 316-317, 510-511.

<sup>340</sup> See Amartya Sen, *Development as Freedom* (New York: Alfred A. Knoph, 1999) at 18.

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.<sup>341</sup> 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."<sup>342</sup> 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 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

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<sup>341</sup> 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).

<sup>342</sup> Sen, *Resources*, ibid at 511.

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,<sup>343</sup> *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-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.

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<sup>343</sup> Article 37 of the *Constitution of India*.

Moreover, whatever economic and social security guarantees are envisaged under the constitution, such guarantees are subject to the economic capacity of the governments.<sup>344</sup> 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. 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

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<sup>344</sup> 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."

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.

## Chapter 4

### Freedom as Human Development

#### 1. Introduction

“The worst fault of the working classes is telling their children they’re not going to succeed, saying: ‘There is life, but it’s not for you.’”

– John Mortimer, *Delhi Mail*, 31 May, 1988.<sup>1</sup>

In chapter 3, I analyze the role played by informal workers’ organizations in India in promoting a dignified life for informal workers. I show that informal workers’ organizations provide a range of social and economic resources to informal workers. These organizations also enable informal workers to effectively exercise their civil and political rights. By providing for socio-economic resources and enabling conditions for the exercise of civil-political rights, informal workers’ organizations promote overall development of informal workers. Such a development strategy finds support in Amartya Sen’s capability approach, which analyses the significance of resources on individual lives, rather than the significance of resources *per se*. In this chapter, I analyze the nuances of Sen’s capability approach. Sen’s approach is important for the evaluation of human development; his capability approach can also offer valuable insights in furtherance of a normative goal for informal workers. In order to evaluate the effectiveness of Sen’s approach for the formulation of a labour law framework for informal workers in India, I discuss principal tenets of the capability approach.

In section 2 of this chapter, I describe the basic idea of human development formulated by Sen. According to Sen, development policy should aim to create enabling conditions in which individuals are free to do what they want; development should remove unfreedoms suffered by individuals. I analyze how the capability approach came into existence as an alternative to the existing dominant development approaches,

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<sup>1</sup> This John Mortimer quote dramatically phrases the risk of “adaptive preference” against which Amartya Sen revolts in his work on development and welfare. See Amartya Sen, *Development as Freedom* (New York: Alfred A. Knoph, 1999) at 62-63. “Adaptive preferences” are adjusted preferences that people adjust to in accordance with the realities of their practical situations. “Adaptive preferences” are shaped by a person’s social environment and institutions that influence her life. Also see John Alexander, *Capabilities and Social Justice – The Political Philosophy of Amartya Sen and Martha Nussbaum* (Farnham & Burlington: Ashgate, 2008) at 14.

prominent amongst which is the utilitarian theory. In section 3 of the chapter, I analyze the fundamental tenets of Sen's approach. Sen asserts that development means freedom of individuals to lead their lives as they wish. Instead of focusing on resources *per se*, Sen looks at what resources do to enhance individual freedom. In this respect his theory diverges from those of John Rawls and Ronald Dworkin, whose emphasis is on resources, rather than the effect of resources on individual lives. In section 4, I discuss Sen's conceptualization of freedom. Sen articulates a concept of positive freedom, which not only signifies an individual's well-being, but is also concerned with the exercise of agency by an individual. In this section of the chapter, I also ascertain the link between the idea of human rights and the concept of freedom as envisaged by Sen. Democratic participation and the different institutions of the democratic society attain central significance in Sen's theory. In section 5, I discuss Sen's idea of integrated institutions, a concept of multiple institutions that interact amongst themselves in order to promote individual freedom. Even though Sen's theory is not an institution-centric theory, multiple institutions in a democratic society play a major role in his conceptualization. In section 6, I briefly compare Sen's conceptualization of the capability approach and Martha Nussbaum's idea of capabilities. While Sen is happy to leave the determination of desirable capabilities to the democratic dialogue process, Nussbaum thinks it useful to delineate a minimum list of desirable capabilities for all societies. Their conceptual divergence pertains to their theoretical focus: while Sen's focus is on the evaluation of human development, Nussbaum proposes the capability approach to provide social basis of constitutional guarantees. The contrast between Sen and Nussbaum is significant for the purpose of my study. In the specific context of informal economic activities, while Sen's concept would allow direct participation of informal workers in the determination of their capability-enhancing factors, Nussbaum's conceptualization will lead towards *a priori* decision on such factors. I conclude this chapter with a roadmap for the next chapter.

## **2. Sen's Idea of Human Development**

Amartya Sen's theory of *development as freedom* has revolutionized the way development is seen and analyzed in economic and philosophical circles.<sup>2</sup> According to Sen's theory of development as freedom the principal purpose of development is the creation of enabling conditions in which human lives can flourish.<sup>3</sup> Sen traces his idea of human development to Aristotle's formulation of meaningful human life (what it is to live like human beings).<sup>4</sup> To Sen, the purpose of development is the facilitation of the freedom of individuals so that they can choose the kind of life for themselves that they have reason to value.<sup>5</sup> He conceptualizes development in the following words:

Development consists of the removal of various types of unfreedoms that leave people with little choice and little opportunity of exercising their reasoned agency. The removal of substantial unfreedoms, it is argued here, is constitutive of development.<sup>6</sup>

Instead of being an institution-centric idea of development, Sen's conception makes human agency central. Institutions are important in Sen's theory only so far as such institutions guarantee enabling circumstances in which individuals can freely exercise their agency or initiative according to their choosing.

Sen's concept of development as freedom is expressed in terms of the concepts of *capability* and *functionings*. Capability is the freedom to choose,<sup>7</sup> and functionings are the achievement that an individual actually attains.<sup>8</sup> Capability is, therefore, the freedom

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<sup>2</sup> G. A. Cohen has described Sen a revolutionary thinker in the context of reformulation of the development philosophy. See G.A. Cohen, "Equality of What? On Welfare, Goods and Capabilities" in Martha C. Nussbaum & Amartya Sen eds, *The Quality of Life* (Oxford: Clarendon, 1993) 9 at p 10.

<sup>3</sup> Sen, *Development*, supra note 1 at 3-4; also see Amartya Sen, *Inequality Reexamined* (New York: Russell Sage Foundation/Cambridge: Harvard University Press, 1992) at 39-41, in particular footnote 8 in p 41.

<sup>4</sup> Sen, *Development*, ibid at 14-15, 24, 73; also see generally Martha Nussbaum, "Nature, Function and Capability: Aristotle on Political Distribution", (1987) WIDER Working Papers, WP 31, December 1987, World Institute for Development Economics Research of the United Nations University.

<sup>5</sup> Sen, *Development*, ibid at 18.

<sup>6</sup> Sen, *Development*, ibid at xii.

<sup>7</sup> Sen explains "capability" in the following words:

"A person's capability refers to the alternative combinations of functionings that are feasible for her to achieve. Capability is thus a kind of freedom: the substantive freedom to achieve alternative functioning combinations (or, less formally put, the freedom to achieve various lifestyles). For example, an affluent person who fasts may have the same functioning achievement in terms of eating or nourishment as a destitute person who is forced to starve, but the first person does have a different "capability set" than the second (the first can choose to eat well and be well nourished in a way the second cannot)." Sen, *Development*, ibid at 75.

<sup>8</sup> Sen explains 'functionings' in the following terms:

"The concept of 'functionings' which has distinctly Aristotelian roots, reflects the various things a person may value doing or being [footnote omitted]. The valued functionings may vary from elementary ones,

available to individuals to choose the functionings that they want to attain. Sen's theory of development as freedom is based on three principal premises: first, the idea of development in terms of freedom; second, a positive concept of freedom; and third, the role of institutions in promoting development as freedom.<sup>9</sup> These are the constitutive elements of Sen's theory.

Sen's theory of development as freedom was conceptualized as an alternative to the mainstream theories of development and well-being.<sup>10</sup> In his 1979 Tanner lecture, where he first introduced his concept, he criticized and rejected the welfarist concept of social good in terms of utility and Rawlsian concept of equality of primary goods<sup>11</sup> as incomplete theories of social well-being.<sup>12</sup> A welfarist concept measures individual well-being in terms of happiness – if an individual is happy, she is well-off. The Rawlsian concept measures individual well-being in terms of possession of primary goods – an individual is well-off if she possesses primary goods. Rejecting the dominant ideas of development and social justice of the time, Sen introduced his concept of “basic capability equality”.<sup>13</sup> He argued that social framework should aim to equalize the “basic capabilities” of individuals, wherein basic capabilities are a person's ability to do certain basic things.<sup>14</sup> Refining his views over the years, Sen now argues that development should promote freedom of individuals with freedom expressed in terms of capability. He defined capability as the actual freedom available to people in being and doing what they have reason to value.<sup>15</sup> The ends of well-being, justice, and development need to be evaluated in terms of capabilities to function.<sup>16</sup> Thus, over the years Sen has emphasized

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such as being adequately nourished and being free from avoidable disease [footnote omitted], to very complex activities or personal states, such as being able to take part in the life of the community and having self-respect.” Sen, *Development*, *ibid* at 75.

<sup>9</sup> See Sen, *Development*, *ibid* at 3-11.

<sup>10</sup> See generally Amartya Sen, “Equality of What?” The Tanner Lecture on Human Values, delivered at Stanford University, May 22, 1979 in *The Tanner Lectures On Human Values, Vol. I* (Salt Lake City: University of Utah Press/Cambridge, London, Melbourne and Sydney: Cambridge University Press, 1980).

<sup>11</sup> To which he has latter added Dworkinian concept of ‘equality of resources’. See Sen, *Inequality*, *supra* note 3 at 42.

<sup>12</sup> See generally Sen, “Equality”, *supra* note 10.

<sup>13</sup> *Ibid* at 217-218.

<sup>14</sup> *Ibid* at 218.

<sup>15</sup> Sen, *Development*, *supra* note 1 at 18; also see the examples at 5-6.

<sup>16</sup> Ingrid Robeyns, “The Capability Approach: a theoretical survey” (2005) 6: 1 *Journal of Human Development* 93 at 95-96.

the term freedom rather than the technical coinage capability.<sup>17</sup> I now take each one of the constitutive elements of Sen's theory to explain the nature and implications of his theory of development.

### 3. Human Development in Terms of Freedom

Sen asserts that the other dominant theories of development, such as utilitarianism and Rawlsianism, concentrate on the means to development rather than the ends of development in order to analyze the mechanism and purpose of development.<sup>18</sup> He observes:

If freedom is what development advances, then there is a major argument for concentrating on the overarching objective, rather than on some particular means, or some specially chosen list of instruments. Viewing development in terms of expanding substantive freedoms directs attention to the ends that make development important, rather than merely to some of the means that, *inter alia*, play a prominent part in the process.<sup>19</sup>

Utilitarianism dominates development policy circles. The question that utilitarianism asks of individuals is whether individuals are *happy* of their plight, or their *desires* are fulfilled.<sup>20</sup> Utilitarianism (or at a general level, welfarism) focuses on the mental state of the individual in order to ascertain development. Sen argues that utilitarianism, while important, fails to assess development or well-being on an objective basis because it focuses on the subjective criterion of happiness or desire fulfilment.<sup>21</sup> He contends that utilitarianism fails to appreciate the diversity of human beings.<sup>22</sup> He argues that because of the diversity of human beings the extent (and measurement) of happiness or desire-fulfilment cannot be an objective basis of determination of well-being or development.<sup>23</sup> Since happiness and desire-fulfilment are mental states, it is possible that

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<sup>17</sup> In his Tanner Lectures in 1979 he introduces the term "capability" as a technical terminology, and in his book *Development as Freedom* in 1999 he focuses on the concept of 'freedom'. However, both the coinages have the same orientation signifying freedom of choice.

<sup>18</sup> Sen, *Development*, supra note 1 at 54-74.

<sup>19</sup> *Ibid* at 3.

<sup>20</sup> See generally Sen, "Equality", supra note 10; also see *ibid* at 56-63.

<sup>21</sup> See Sen, "Equality", *ibid* at 211-212; also see Sen, *Development*, *ibid* at 56-63.

<sup>22</sup> Sen, *Development*, *ibid* at 67-71; also see Sen, "Equality", *ibid* at 202, 215.

<sup>23</sup> Sen, *Development*, *ibid* at 70-72, 74-81; also see generally Sen, "Equality", *ibid*.

an individual who has had a terrible life might be happy by some meagre act of mercy, or she has adjusted her desires that commensurate the practical state she is in – Sen terms this adjustment *adaptive preference*.<sup>24</sup> On the other hand, someone who is born with a silver spoon in mouth might not be happy with all the comforts of life, or her desires might be very difficult to satisfy.<sup>25</sup>

Therefore, measuring only the mental state of an individual, without regard to the diversity of individuals, does not provide an objective, appropriate, and adequate version of development, because mental state is subjective, and hence, the measurement runs the risk of documenting adaptive preference of individuals. Moreover, Sen argues that the analytical focus of the utilitarian idea of development is the end-product of development (“welfarism ... combined with consequentialism”), i.e. happiness in achievement.<sup>26</sup> Utilitarianism does not attach any significance to the opportunities actually available to the people in their achievement.<sup>27</sup>

Sen commends John Rawls for filling this void left by utilitarianism.<sup>28</sup> Rawls’s analytical focus is opportunities available to people<sup>29</sup> rather than the end-result (of happiness or desire fulfillment).<sup>30</sup> Rawls’s theory of social justice is the most significant one outside the utilitarian tradition.<sup>31</sup> Rawls moved away from utilitarianism’s focus on mental states and devised an objective basis for the analysis of social good and human development.<sup>32</sup> Rawls devised a list of *primary goods*,<sup>33</sup> and argued that equality of primary goods serves the social good.<sup>34</sup> Rawls’s argument is that it is the duty of the

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<sup>24</sup> Sen, *Development*, ibid at 62-63, 67.

<sup>25</sup> See Sen, “Equality”, supra note 10 at 203.

<sup>26</sup> Sen, *Development*, supra note 1 at 58-59.

<sup>27</sup> Ibid at 63.

<sup>28</sup> See Sen, “Equality”, supra note 10 at 214-215.

<sup>29</sup> See John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971) at 62, 93-95, 395-396, 399-404.

<sup>30</sup> But see Sen *Development*, supra note 1 at 72-73; also see Sen, “Equality”, supra note 10 at 215.

<sup>31</sup> Sen *Development*, ibid at 63. With respect to Rawls’s contribution to the theory of justice, Robert Nozick observes: “A *Theory of Justice* is a powerful, deep, subtle, wide-ranging, systematic work in political and moral philosophy which has not seen its like since the writings of John Stuart Mill, if then. ... Political philosophers now must either work within Rawls’ theory or explain why not.” See Robert Nozick, *Anarchy, State, And Utopia* (New York: Basic Books, 1974) at 183.

<sup>32</sup> See Rawls, supra note 29 at 90-92, 95; also see Sen, supra note 28.

<sup>33</sup> The chief categories of primary goods for Rawls are rights and liberties, powers and opportunities, income and wealth, and self-respect. He also includes ‘natural goods’ such as health and vigour, intelligence and imagination as primary goods. See Rawls, ibid at 62, 92.

<sup>34</sup> See Rawls, ibid at 62, 93-95, 395-396, 399-404; also see Sen, “Equality”, supra note 10 at 213-214.

society to ensure that every individual in the society has equal access to the primary goods (the list of goods that is valued by all).<sup>35</sup> Individual development is to be judged objectively by the number of primary goods that an individual has access to.<sup>36</sup> His theory shifted the focus of development from the measurement of mental state (the utilitarian principle) to the objective ascertainment of the presence or absence of primary goods.<sup>37</sup>

Ronald Dworkin provided the other non-utilitarian objective basis for the determination of social good.<sup>38</sup> Dworkin argues that society should strive to provide equality of resources (rather than welfare) to the people: “Equality of resources supposes that the resources devoted to each person's life should be equal.”<sup>39</sup> Equality of resources will be achieved when no person should envy the bundle of resources privately owned by any other person in the society.<sup>40</sup> His theory of distribution of resources is based on an initial hypothetical equality of means to purchase resources.<sup>41</sup> Delineating the limits on equal distribution of resources Dworkin observes:

[A] political community should aim to erase or mitigate differences between people in their personal resources [personal resources are health, strength, and talent]—should aim to improve the position of people who are physically handicapped or otherwise unable to earn a satisfactory income, for example—but should not aim to mitigate or compensate for differences in personality [personality includes character, convictions, preferences, motives, tastes, and ambitions]—for differences traceable to the fact that some people’s tastes and ambitions are expensive and other people’s cheap, for instance.<sup>42</sup>

Dworkin’s agenda is to enable people to have equal social resources throughout their lives.<sup>43</sup>

While commending the shift in Rawls’s theory (from mental state or end-result as proposed by utilitarianism to objective analysis of availability of primary goods), Sen

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<sup>35</sup> See Rawls, *ibid* at 62; also see Sen, *ibid* at 214.

<sup>36</sup> See Rawls, *ibid* at 62, 92-93; Amartya Sen, *The Idea of Justice* (Cambridge: Harvard University Press, 2009) at 60, 63.

<sup>37</sup> See Rawls, *ibid* at 90-92; Sen, *supra* note 28.

<sup>38</sup> See generally Ronald Dworkin, “What is Equality? Part 2: Equality of Resources” (1981) 10: 4 *Philosophy and Public Affairs* 283.

<sup>39</sup> *Ibid* at 289.

<sup>40</sup> *Ibid* at 285.

<sup>41</sup> *Ibid* at 286-287.

<sup>42</sup> *Ibid* at 286.

<sup>43</sup> *Ibid* at 289-290, 295.

criticizes Rawls for not allowing room for human diversity in his theory.<sup>44</sup> Sen argues that even if individuals have equal access to primary goods that access will not result in equal opportunity for all individuals because of the differences among individuals.<sup>45</sup> He gives the examples of a disabled person vis-à-vis a healthy human being and a woman vis-à-vis a man to argue his case that the same set of primary goods would result in different opportunities for different individuals.<sup>46</sup> Sen's case is that a disabled person or a woman might need more resources or primary goods to come to the same level of opportunity that is enjoyed by a healthy human being or a man.<sup>47</sup> Hence, Sen alleges that Rawls suffers from commodity fetishism that might result in opportunity deprivation rather than actual development of individuals.<sup>48</sup> Thus, while Sen commends the scope of objective analysis that Rawls's theory provides for, he asserts that primary goods are only a *means* to achieve the *end* of development.<sup>49</sup> Likewise, Sen rejects Dworkin's theory of equal access to resources on identical grounds.<sup>50</sup> Sen offers a multidimensional view of development,<sup>51</sup> which includes both well-being freedom and agency freedom (discussed presently).<sup>52</sup>

#### 4. The Concept of Freedom

Elizabeth S. Anderson observes that Sen offers a rich way to understand freedom.<sup>53</sup> Sen's concept of freedom has distinct Aristotelian roots.<sup>54</sup> Aristotle saw human functioning in terms of being able to choose and live a "flourishing living (eudaimonia)".<sup>55</sup> According to Aristotle the mere availability of wealth, goods, or

<sup>44</sup> See Sen, "Equality", supra note 10 at 215-216; also see Sen, *Development*, supra note 1 at 72-73.

<sup>45</sup> Sen, "Equality", *ibid*; also see Sen, *Development*, *ibid* at 72-73.

<sup>46</sup> Sen, "Equality", *ibid* at 203, 215, 217-218.

<sup>47</sup> *Ibid* at 203, 215, 218.

<sup>48</sup> *Ibid* at 216, 218-219.

<sup>49</sup> *Ibid* at 218-219.

<sup>50</sup> Sen, *Inequality*, supra note 3 at 42; also see Amartya Sen, "Capability and Well-Being" in Nussbaum & Sen, eds, supra note 2, 30 at 33.

<sup>51</sup> Sen, *Development*, supra note 1 at 3-4, 18-19, 33-40, 74-86; Sabina Alkire, "Dimensions of Human Development" (2002) 30: 2 *World Development* 181 at 182-184.

<sup>52</sup> Amartya Sen, "Well-Being, Agency and Freedom: The Dewey Lectures 1984" (1985) 82: 4 *Journal of Philosophy* 169 at 208; also see Sen, *Development*, *ibid* at 3, 36, 74-75.

<sup>53</sup> Elizabeth S. Anderson, "What is the Point of Equality?" (1999) 109: 2 *Ethics* 287 at 316.

<sup>54</sup> Sen, *Development*, supra note 1 at 14-15, 24, 73, 75; also Nussbaum, "Nature", supra note 4.

<sup>55</sup> Nussbaum, *ibid* at 3; also see Aristotle, *Nicomachean Ethics, Book I*, 2<sup>nd</sup> ed, translated by Terence Irwin (Indianapolis/Cambridge: Hackett Publishing, 1999) at 4-5, 7-11; also see *Translator's Introduction*, Aristotle, *ibid* at xvii-xviii, xxiii-xxv.

resources is not sufficient for a flourishing living or a good human life.<sup>56</sup> Likewise, Sen distances himself from the narrowly defined notion of opportunity through the availability of primary goods or resources and takes a multidimensional view of freedom.<sup>57</sup>

According to Sen an individual has real freedom<sup>58</sup> when she is able to choose the kind of life that she wants to lead<sup>59</sup> - Sen terms this freedom capability.<sup>60</sup> Sen defines capability as a functioning set that an individual can choose to achieve.<sup>61</sup> Functionings are what individuals actually achieve in their lives.<sup>62</sup> A functioning-set consists of number of functionings than an individual values amongst the different other functionings.<sup>63</sup> Thus, capability is the capacity (or freedom) of an individual to choose one set of functioning amongst the different functioning-sets available to her.<sup>64</sup> Sen proposes to see freedom as the freedom or capacity to choose. However, the capacity to choose need not reside together with the capacity to control.<sup>65</sup> Choice is central to Sen's conceptualization of freedom, even if control over such choice is exercised by others.<sup>66</sup> Instead of well-being, the achievement of functionings, or the availability of goods or resources, Sen argues that this freedom (to choose) is the appropriate measurement of development.<sup>67</sup>

Aristotle notes:

[W]e intuitively believe that the good is something of our own and hard to take from us. ... Further, each type of person finds pleasure in whatever he is called a lover of; a horse, for instance, pleases the horse-lover, a spectacle the lover of spectacles. Similarly, what is just pleases the lover of justice, and in general what accords with virtue pleases the lover of virtue. Aristotle, *Ibid* at 4, 11.

<sup>56</sup> Nussbaum, *ibid* at 7, 9-10.

<sup>57</sup> See generally Sen, "Equality", *supra* note 10; also see generally Amartya Sen, *Commodities and Capabilities* (Amsterdam & New York: North Holland, 1985).

<sup>58</sup> Sen, *Development*, *supra* note 1 at p 3, 36; Sabina Alkire, "Why the Capability Approach?" (2005) 6: 1 *Journal of Human development* 115 at 121.

<sup>59</sup> Sen, *Development*, *ibid* at 74-75.

<sup>60</sup> Sen, "Capability and Well-Being", *supra* note 50; Sen, *Development*, *ibid* at 74-75.

<sup>61</sup> Sen, *Development*, *ibid* at 75.

<sup>62</sup> *Ibid*.

<sup>63</sup> *Ibid* at 75-76.

<sup>64</sup> *Ibid* at 75.

<sup>65</sup> Alkire, "Capability Approach?", *supra* note 58 at 121-122.

<sup>66</sup> *Ibid*.

<sup>67</sup> Sen, *Development*, *supra* note 1 at 74-76; Nussbaum offers some challenge to Sen's perspective of seeing development as 'freedom'. She contends whether 'promoting freedom can be seen as a coherent political project'. She asserts that 'freedom' conceptualized by Sen needs clarification, because there are freedoms that are sometimes conflicting in nature. See Martha C. Nussbaum, "Capabilities as Fundamental Entitlements: Sen and Social Justice" (2003) 9: 2/3 *Feminist Economics* 33 at 44-45.

Sen's notion of freedom is far from a negative notion of freedom that is equivalent to non-interference by the state.<sup>68</sup> His notion of freedom is a substantive notion of positive freedom that enables an individual to achieve in life what she wants. It is his focus on *freedom to* (do or be) that is captured by the use of the terminology capability.<sup>69</sup> Sen's notion of freedom has two principal dimensions: first, the socio-economic dimension that creates appropriate conditions for individuals to exercise their choice and second, the individuals' own initiative or agency to lead the kind of life she has chosen.<sup>70</sup> In Sen's own words: "The capability of a person depends on a variety of factors, including personal characteristics and social arrangements."<sup>71</sup> Accordingly, Sen breaks down his idea of freedom into *well-being freedom* and *agency freedom*.<sup>72</sup>

#### 4.1. Well-Being and Agency

Well-being is defined as the measurement or extent of how well or comfortable an individual is in her life.<sup>73</sup> Sen argues "that the well-being that a person actually enjoys is often more closely related to ... functioning achievements."<sup>74</sup> Accordingly, Sen asserts that the well-being of an individual "leads to a particular concept of freedom".<sup>75</sup> Sen calls this the well-being freedom.<sup>76</sup> He observes that "[t]his view relates to the idea that the good life is inter alia also a life of freedom."<sup>77</sup> This freedom is an individual's capability to choose and enjoy definite functioning-sets.<sup>78</sup> Thus, well-being achievements are achieved functionings and well-being freedom is an individual's capability set.<sup>79</sup> Sen distinguishes this well-being freedom from agency-freedom.<sup>80</sup>

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<sup>68</sup> Sen, *Development*, *ibid* at xii, 63-67.

<sup>69</sup> Sabina Alkire, *Valuing Freedoms – Sen's Capability Approach and Poverty Reduction* (Oxford: Oxford University Press, 2002) at 6.

<sup>70</sup> Sen, *Development*, *supra* note 1 at 10, 17-19, 31; also see Sen, "Capability and Well-Being", *supra* note 50 at 39; also see Sen, "Well-Being", *supra* note 52.

<sup>71</sup> Sen, "Capability and Well-Being", *ibid*.

<sup>72</sup> Sen, "Well-Being", *supra* note 52 at 169, 203-204, 208; also see *Ibid* at 35, 39 (specially see footnote 23 in p 39); John M. Alexander, "Capabilities, human rights and moral pluralism" (2004) 8: 4 *International Journal of Human Rights* 451 at 457.

<sup>73</sup> Sen, "Well-Being", *ibid* at 202.

<sup>74</sup> *Ibid*.

<sup>75</sup> *Ibid* at 202-203.

<sup>76</sup> *Ibid*.

<sup>77</sup> Sen, *supra* note 73.

<sup>78</sup> *Ibid* at 203-204.

<sup>79</sup> Robeyns, *supra* note 16 at 103.

<sup>80</sup> Sen, "Well-Being", *supra* note 52.

According to Sen, agency freedom is the freedom of an individual to achieve something that she decides to achieve as a responsible agent.<sup>81</sup> He reasons that while well-being freedom is a particular type of freedom to attain definite well-being, agency freedom is the general type of freedom that enables an individual to achieve whatever she decides to achieve.<sup>82</sup> Agency freedom need not be limited to achievement of well-being only, there may be occasions when an individual may choose to achieve something that is detrimental to her own well-being, but nonetheless of some value to her.<sup>83</sup> Thus, Sen observes: “A person’s agency aspect cannot be understood without taking note of his or her aims, objectives, allegiances, obligations, and-in a broad sense-the person's conception of the good.”<sup>84</sup>

Therefore, while well-being is associated with the idea of wellness, comfort or a good life for all people, the agency aspect is extremely subjective since it is shaped by each individual’s prudence and conscience. Sen captures these two dimensions of freedom in the following words:

Although the agency aspect and the well-being aspect both are important, they are important for quite different reasons. In one perspective, a person is seen as a doer and a judge, whereas in the other the same person is seen as a beneficiary whose interests and advantages have to be considered. There is no way of reducing this plural-information base into a monist one without losing something of importance.<sup>85</sup>

Sen argues that all these aspects of freedom are valuable (and no one of these factors could be prioritized) and each needs to be kept in mind in an evaluation of development as freedom. Thus, there is an internal plurality in Sen’s concept of freedom.<sup>86</sup> In facilitating the freedom of choosing by an individual, Sen argues that both the well-being freedom and the agency freedom are equally valuable, and one cannot be reduced to the other.

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<sup>81</sup> Sen, *supra* note 78.

<sup>82</sup> *Ibid.*

<sup>83</sup> *Ibid.* at 208-212. Sen gives examples of an individual eating on the bank of a river while another person is dying from drowning in the river. The individual on the bank enjoying her meal may derive well-being from her meal, but in pursuance of her ‘agency freedom’ she may decide to sacrifice her meal and save the drowning individual. Thus, if the individual decides to save the drowning individual in accordance with her ‘agency freedom’, she chooses something else than her own well-being.

<sup>84</sup> Sen, *supra* note 78.

<sup>85</sup> *Ibid.* at 208.

<sup>86</sup> Alkire, “Capability Approach?”, *supra* note 58 at 122.

## 4.2. Positive freedom and negative freedom

Based on his analysis of the well-being and the agency aspects of freedom, Sen reasons that analyzing development (achievement) in terms only of well-being would take us into one direction; analyzing development (achievement) in terms only of an individual's overall goals and agency would take us into a different direction.<sup>87</sup> Both of these kinds of achievement would in turn differ from the "freedom to achieve" measurement of development.<sup>88</sup> Sen argues in favour of measurement of development in terms of freedom to achieve rather than actual achievement (of well-being or agency objective).<sup>89</sup> He reasons that it is with respect to freedom to achieve that an individual can lay claim on society – there cannot be any claim with respect to the actual achievements attained by an individual.<sup>90</sup> Despite having the same level of freedom to achieve if an individual achieves less, she cannot complain against social arrangements.<sup>91</sup>

John Alexander notes: "Freedom [according to capability theorists] is not merely the absence of interference, but also the possession of different capabilities to achieve valuable human functionings."<sup>92</sup> Sen is not content with the idea of non-interference<sup>93</sup> – his is a concept of positive freedom.<sup>94</sup> Benedetta Giovanola asserts that Sen's

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<sup>87</sup> Sen, "Capability and Well-Being", supra note 50 at 35.

<sup>88</sup> Ibid.

<sup>89</sup> Ibid at 39-40.

<sup>90</sup> Ibid.

<sup>91</sup> Ibid. Sen here can be seen to be promoting the idea of 'equality of capabilities, rather than enhancement of capabilities, even though the two concepts are not totally devoid of each other. See Alkire, *Valuing Freedoms*, supra note 69 at 177.

<sup>92</sup> Alexander, *Amartya Sen and Martha Nussbaum*, supra note 1 at 4. Taking a leaf from Sen's argument Alexander further notes: "A person who is poor, uneducated, unemployed, afflicted by a preventable disease or socially excluded might encounter no interference from the state or fellow citizens, but he or she certainly lacks the required capacities and opportunities to live a life of freedom. This being the stark reality in most of our contemporary capitalist liberal democracies, it is important to emphasize the idea that a society fails to treat some of its members as equals not only when it restricts or interferes with them, but also when it permits them to grow up in poverty and suffer serious forms of capability shortfalls and deprivation. Hence, the capability theorists, as it is argued here, are not against interferences *per se*. It is well within the spirit of the capability approach to tolerate certain qualified forms of 'interferences' for distributive purposes and for the provision of public goods so that maximum conditions for basic capabilities can be realized for all citizens. Particularly when these interventions are capabilities-promoting for everyone and are stipulated to take place under the purview of a fair rule of law and in compliance with human rights, they can hardly be considered as interferences in the negative sense of the term." Ibid.

<sup>93</sup> Anderson, supra note 53 at 316-318.

<sup>94</sup> Amartya Sen, "Freedom of Choice: Concepts and Content" (1988) 32 *European Economic Review* 269 at p 272; Sen also contends that the idea of freedom that is implicit in Rawls's work is also a notion of positive freedom, see Sen, *Idea of Justice*, supra note 36 at 64-65; also see Alexander, *Amartya Sen and*

conceptualization of freedom “allows us to think of human beings in a *dynamic* frame in which they are constantly involved in the process of ‘becoming’ themselves and realizing themselves.”<sup>95</sup> His conception of freedom – as constitutive of well-being freedom and agency freedom – is a positive conception of freedom, to be actively pursued by individuals, with appropriate social provisioning being provided by integrated institutions, a term that Sen uses to suggest multiplicity of institutions working together.<sup>96</sup>

Based on Aristotle and Karl Marx, Sen holds that individual freedom has intrinsic value.<sup>97</sup> It is this intrinsic value of freedom that every good society should promote as social good.<sup>98</sup> The intrinsic value of freedom is “significant in itself for the person’s overall freedom.”<sup>99</sup> Sen notes that intrinsic freedom is not only important as a valuable social good, it is also “important in fostering the person’s opportunity to have valuable outcomes.”<sup>100</sup> In this sense, freedom is instrumental in attaining other valuable things in the society.<sup>101</sup> It is in this instrumental sense that freedom is a precondition to either well-being achievement or agency achievement of an individual. Freedom in its instrumental sense is important “in judging how good a ‘deal’ a person has in the society.”<sup>102</sup> Social development, therefore, needs to be judged on the basis of freedom in both its intrinsic as well as its instrumental senses.<sup>103</sup>

Sen’s idea of freedom as positive entitlements and agency initiatives stand in sharp contrast to that of “negative rights” (“what one is not prevented from doing”).<sup>104</sup> In Sen’s proposition of freedom as determinant of development public policy has a significant role to play.<sup>105</sup> According to Sen, freedom “in terms of the choice of functionings” is a combination of an individual’s command over resources (individual entitlements) and the individual’s personal *conversion factors* (individual’s personal

*Martha Nussbaum*, supra note 1 at 149-152, 155.

<sup>95</sup> Benedetta Giovanola, “Personhood and Human Richness: Good and Well-Being in the Capability Approach and Beyond” (2005) LXIII: 2 Review of Social Economy 249 at 252.

<sup>96</sup> Alexander, “moral pluralism”, supra note 72 at 457.

<sup>97</sup> Sen, *Inequality*, supra note 3 at 41. Also see Sen, *Development*, supra note 1 at p 18; Alexander, “moral pluralism”, supra note 72 at 455.

<sup>98</sup> Sen, *Inequality*, *ibid.*

<sup>99</sup> Sen, *Development*, supra note 1 at 18.

<sup>100</sup> *Ibid* at 18, xii.

<sup>101</sup> Sen, *Inequality*, supra note 97; Alexander, “moral pluralism”, supra note 97.

<sup>102</sup> Sen, *Inequality*, supra note 3, *ibid.*

<sup>103</sup> Sen, *Development*, supra note 1 at 18.

<sup>104</sup> Sen, *Inequality*, supra note 97 (see footnote 8).

<sup>105</sup> Sen, “Capability and Well-Being”, supra note 50 at 44.

characteristics and ability to convert those characteristics into functionings with her command over resources).<sup>106</sup> Therefore, public policy needs to ensure the appropriate availability of resources (entitlements) that could help in individual conversion of characteristics into respective functionings.<sup>107</sup> The concept of conversion factor is important in the capability approach.

A conversion factor is a *combination* of factors/characteristics that generates such *conditions* (not the individual factors/characteristics *per se*) in which an individual can have the freedom to do or to be. Conversion factor can be personal (i.e., combined personal characteristics giving rise to conditions in which an individual can choose her life); social (i.e., combined social characteristics giving rise to conditions in which an individual is free to choose her life); and environmental (i.e., combined environmental characteristics giving rise to conditions in which an individual is free to choose her life). What is important to note is that conversion factors are not *per se* resources or characteristics (including liberty and rights etc.). Conversion factors are *intangible combination of circumstances* that facilitates freedom to choose (capabilities). Each of these definite categories of conversion factors (i.e., personal, social or environmental) converts the characteristics of other categories (*inter se*) into functionings.

Sen asserts that freedom from hunger and from malaria enhances the possibility of living as one chooses to live.<sup>108</sup> These freedoms could be secured by public action.<sup>109</sup> In this sense these public policy-induced freedoms are instrumental for the overall capability development of an individual. Public policy-induced freedoms are not, however, conclusive in themselves. The entitlement freedom (i.e., freedom of access to resources) has to be converted to functionings by “active choice” of an individual.<sup>110</sup> Thus, development as freedom has two axes: freedom to entitlements and entitlement induced freedom, which is ensured by public action, and the freedom of individual agency.<sup>111</sup>

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<sup>106</sup> Sen, *Commodities*, supra note 57 at 13; also see Robeyns, supra note 16 at 99; also Sen, *Development*, supra note 1 at 74.

<sup>107</sup> Sen, “Capability and Well-Being”, supra note 105; also see Robeyns, *ibid.*

<sup>108</sup> Sen, *ibid.*

<sup>109</sup> *Ibid.*

<sup>110</sup> *Ibid.*

<sup>111</sup> *Ibid.*

Despite charting a positive discourse of individual freedom, Sen however, does not deny the significance of negative freedoms in terms of civil and political rights.<sup>112</sup> Sen's view of democracy and public participation in the determination of the priorities for social action and prioritization of functionings (with respect to individual societies) is based on the pillars of civil and political rights.<sup>113</sup> It is useful, in this context to compare the language of human rights to that of the capability approach.

### 4.3. Human Rights and the concept of Freedom

The capability approach shares the substantive basis of the human rights approach, which is the dignity of human beings.<sup>114</sup> However, the two concepts also differ in specific ways.<sup>115</sup> While mention of definite capabilities could be found in Sen's theory only as examples, Martha Nussbaum, the other prominent pioneer of the capability approach, provides us with a universal list of desirable capabilities in a society.<sup>116</sup> The capabilities Sen refers to in his work and the list of capabilities provided by Nussbaum are to a great extent human rights' goals.<sup>117</sup> However, Nussbaum points out the problems with the human rights discourse in the following words:

People differ about what the *basis* of a rights claim is: rationality, sentience, and mere life have all had their defenders. They differ, too, about whether rights are prepolitical or artefacts of laws and institutions. They differ about whether rights belong only to individual persons, or also to groups ... They differ, again, about the relationship between rights and duties ... They differ, finally, what rights are to be understood as *rights to*. Are human rights primarily *rights to* be treated in certain ways? *Rights to* a certain level of achieved well-being? *Rights to* resources with which one may pursue one's life plan? *Rights to* certain opportunities and capacities with which one may make choices about one's life plan?"<sup>118</sup>

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<sup>112</sup> Sen, *Development*, supra note 1 at 3, 63-67.

<sup>113</sup> Ibid at 31-32, 36-40, 51-53, 123, 147-148, 152-155; also see Alexander, "moral pluralism", supra note 72 at 458.

<sup>114</sup> Nussbaum, "Capabilities as Fundamental Entitlements", supra note 67 at 36-37; Amartya Sen, "Human Rights and Capabilities" (2005) 6: 2 Journal of Human development 151 at 152.

<sup>115</sup> Sen, *ibid*.

<sup>116</sup> See generally Martha C. Nussbaum, *Women and Human Development – The Capabilities Approach* (Cambridge: Cambridge University Press, 2000).

<sup>117</sup> See Nussbaum, "Capabilities as Fundamental Entitlements", supra note 67 at 36-37; Alexander, "moral pluralism", supra note 72 at 455, 457-458.

<sup>118</sup> Nussbaum, *Women*, supra note 116 at 97.

Nussbaum argues that the capability approach has answers to these questions in the context of each specific purpose wherein the approach is applied.<sup>119</sup> Quoting Bernard Williams, Nussbaum argues that given the confusing nature of the basic human rights discourse it might be useful to see human rights as combined capabilities.<sup>120</sup> Nussbaum's idea of combined capabilities expresses an individual's innate powers and social opportunities available to her.<sup>121</sup> Alexander argues that combined capabilities are, therefore, a better way of addressing issues of social justice.<sup>122</sup> Nussbaum, however, is not in favour of discarding the rights' language altogether.<sup>123</sup>

Sen, too, argues in favour of retaining rights discourse because of its entrenched nature in the development domain.<sup>124</sup> He further observes that rights discourse is useful because it frames individual entitlements in succinct and concrete language as a "universal ethical demand".<sup>125</sup> Both Nussbaum and Sen emphasize the role of political liberties in seeing development as freedom.<sup>126</sup> They, however, do not prioritize specific rights or liberties. While Sen himself prioritized social and economic rights (viz. hunger) under certain circumstances,<sup>127</sup> equally he emphasized the importance of civil and political rights and democratic dialogue in other situations.<sup>128</sup> Thus, one of the virtues of the capability approach (over human rights language) is that the capability approach successfully avoids the tendency to hierarchize capabilities (and exerts substantial

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<sup>119</sup> Ibid.

<sup>120</sup> Ibid at 97-98. Nussbaum subdivides "capabilities" into "basic capabilities", "internal capabilities" and "combined capabilities" in her work. She contends that human beings have certain "basic capabilities", like speech, love, practical reason etc.; the "basic capabilities" require appropriate external conditions for their development as "internal capabilities"; "internal capabilities" could then be used to choose and fulfill "functionings" – it is at this stage of choosing and realizing functionings that "internal capabilities" becomes "combined capabilities". "Combined capabilities", are therefore manifestation of an individual's "internal capabilities" and external opportunities; also see Alexander, "moral pluralism", supra note 72 at 459; also see David A. Clark, "The Capability Approach: Its Development, Critiques and Recent Advances", GPRG-WPS-032, Global Poverty Research Group at p 9, available at <http://www.gprg.org/pubs/workingpapers/pdfs/gprg-wps-032.pdf> (site visited 26 Dec 2010).

<sup>121</sup> Alexander, *ibid*; also see Clark, *ibid*.

<sup>122</sup> Alexander, *ibid*.

<sup>123</sup> Nussbaum, "Capabilities as Fundamental Entitlements", supra note 67 at 39-40.

<sup>124</sup> Sen, *Development*, supra note 1 at 229-234, 246-247.

<sup>125</sup> Sen, *Idea of Justice*, supra note 36 at 373-376.

<sup>126</sup> Sen, *Development*, supra note 1 at 31-32, 36-40, 51-53, 123, 147-148, 152-155 (He discusses the importance of Rawls' political liberties); also see Nussbaum, *Women*, supra note 116 at 12.

<sup>127</sup> See Amartya Sen, *Hunger and Entitlements* (Helsinki: World Institute for Development Economics Research, 1987); also see Sen, *Idea of Justice*, supra note 36 at 379-385, where Sen argues that the social and economic rights cannot be left outside the human rights domain keeping civil and political rights as the only prerogative of the rights' language.

<sup>128</sup> Sen, *Development*, supra note 1 at 31-32, 36-40, 51-53, 123, 147-148, 152-155.

emphasis on social and economic rights), thereby avoiding the politics associated with the hierarchization of rights.<sup>129</sup>

While the list of capabilities generated by Nussbaum incorporates both the so-called first and second-generations of human rights (civil and political rights, and economic and social rights respectively),<sup>130</sup> Sen leaves it to the democratic deliberation process to decide what a society would value as capabilities.<sup>131</sup> Both of them, however, defend human rights in terms of some fundamental capabilities that are sensitive to socio-cultural contexts.<sup>132</sup> In this sense, Alexander observes that both Sen's and Nussbaum's conception of human rights are compatible with moral pluralism.<sup>133</sup> Thus, the capability approach effectively reduces the tension associated with the human rights language by positioning human diversity in the centre of the human rights debate.<sup>134</sup>

It is important in Sen's view of freedom that the state and other institutions ensure appropriate conditions for the democratic deliberative process through the promotion of civil and political rights that are themselves instrumental in ensuring development of capability of an individual. Thus, what is important in the notion of development as freedom is the active role of institutions in ensuring basic entitlements in the society and creating appropriate conditions for the exercise of civil and political rights by the citizens, which promotes the individual conversion factors that can convert characteristics into capabilities.<sup>135</sup> Accordingly, Alexander observes that the relation between an individual's capabilities and non-individualized social goods is central to the capability approach.<sup>136</sup> In this relation, the institutional framework becomes important in facilitating individual capabilities (or freedom).<sup>137</sup> The next section looks at the role of institutions in promoting freedom of individuals.

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<sup>129</sup> Alexander, "moral pluralism", supra note 120.

<sup>130</sup> Nussbaum, *Women*, supra note 118; also see Nussbaum, "Capabilities as Fundamental Entitlements", supra note 67 at 36-37.

<sup>131</sup> Sen, *Development*, supra note 1 at 31-32, 36-40, 51-53, 123, 147-148, 152-155; Sen, *Idea of Justice*, supra note 36 at 91, 324-327, 392; Sen, "Human Rights", supra note 114 at 157-158.

<sup>132</sup> Alexander, "moral pluralism", supra note 72 at 461.

<sup>133</sup> Ibid at 461-462.

<sup>134</sup> Ibid; also see Nussbaum, "Capabilities as Fundamental Entitlements", supra note 67 at 39.

<sup>135</sup> Robeyns, supra note 16 at 99-100.

<sup>136</sup> Alexander, "moral pluralism", supra note 72 at 465-466.

<sup>137</sup> Ibid.

## 5. Role of Institutions

Sen observes: “Society might accept some responsibility for a person’s well-being, especially when that is in some danger of being particularly low.”<sup>138</sup> He argues that with respect to public goods,<sup>139</sup> it is the duty of the society to ensure the minimum well-being of its people.<sup>140</sup> This claim, however, does not mean that the society is to be responsible for the agency aspect of an individual in the society as well.<sup>141</sup> Society’s role is important with respect to matters (public goods) such as social security, poverty alleviation, removal of gross economic inequality, pursuit of social justice,<sup>142</sup> education, health, nutrition, civil liberties etc.<sup>143</sup> Thus, the conversion of “commodity-characteristics” into individual functionings does not depend only on individual agency, it is also conditional upon social factors.<sup>144</sup>

Sen observes:

[f]reedom is central to the process of development for two distinct reasons. 1) The evaluative reason: assessment of progress has to be done primarily in terms of whether the freedoms that people have are enhanced; 2) The effectiveness reason: achievement of development is thoroughly dependent on the free agency of people.<sup>145</sup>

Thus, for evaluative purposes of social development it is important to analyze the role of institutions from the point of view of their ability to enhance the freedoms that people have.

Pointing to the importance of evaluating institutions for an analysis of development as freedom Sen notes:

Individuals live and operate in a world of institutions. Our opportunities and prospects depend crucially on what institutions exists and how they function. Not only do institutions do contribute to our freedoms, their roles can be sensibly evaluated in the light of their contributions to our

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<sup>138</sup> Sen, *Inequality*, supra note 3 at 71.

<sup>139</sup> Sen, *Development*, supra note 1 at 128.

<sup>140</sup> Sen, *Inequality*, supra note 138.

<sup>141</sup> Ibid.

<sup>142</sup> Ibid.

<sup>143</sup> Jean Dréze and Amartya Sen, *India Development and Participation* (New Delhi: Oxford University Press, 2002) at 6-7.

<sup>144</sup> Sen, *Commodities*, supra note 57 at 25-26.

<sup>145</sup> Sen, *Development*, supra note 1 at 4. The effectiveness reason Sen provides for seeks to answer the question whether people are able to convert their “enhanced” freedom through their ‘agency’ in furtherance of achieving what they want?

freedom. To see development as freedom provides a perspective in which institutional assessment can systematically occur.

Even though different commentators have chosen to focus on particular institutions (such as the market, or the democratic system, or the media, or the public distribution system), we have to view them together, to be able to see what they can or cannot do in combination with other institutions. It is in this integrated perspective that the different institutions can be reasonably assessed and examined.<sup>146</sup>

Thus, Sen takes an “institutionally integrated approach”<sup>147</sup> that takes into account the role of multiple institutions such as the government, the market, the legal system, the judicial system, political parties, public services, the media, public interest groups, and public discussion forums etc.<sup>148</sup>

Even though Sen values the institution of free market<sup>149</sup> (his support for the market arises from his perception of the market as one of the most significant domains for the exercise of freedom and the market’s capacity for economic development), his adherence to the virtues of the free market is far from being unconditional.<sup>150</sup> Sen holds the role of social provisioning of public goods as utmost important for the promotion of basic capabilities of individuals.<sup>151</sup> He argues that social provisioning needs to supplement the free market.<sup>152</sup> However, even though the government is given a preeminent position in social provisioning, there are reasons enough not to expect the government to be a benevolent public good provider: “The implicit faith in the goodness and the good sense of the government that underlies much reasoning in favour government-led economic development cannot, frequently, stand up to scrutiny.”<sup>153</sup> Thus, the role of the executive component of the government needs to be mediated by the parliament, the legal system, the judiciary, opposition parties, the electoral process, the media and so on, all of which together constitutes the concept of the democratic polity.<sup>154</sup>

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<sup>146</sup> Ibid at 142.

<sup>147</sup> Dréze and Sen, supra note 143 at 20.

<sup>148</sup> Sen, *Development*, supra note 1 at xii-xiii; also see Ibid.

<sup>149</sup> Sen, *Development*, ibid at 112-119.

<sup>150</sup> Ibid at 45-49, 120-129; Sen, *Idea of Justice*, supra note 36 at 83.

<sup>151</sup> Sen, *Development*, ibid at 127-129.

<sup>152</sup> Ibid at 142-145.

<sup>153</sup> Dréze and Sen, supra note 143 at 45.

<sup>154</sup> Ibid.

The concept of state is much broader than that of the government.<sup>155</sup> Thus, a debate in terms of either the free market-led development or the government-led development is incomplete at best since both of these perspectives depend on a bunch of other factors, *inter alia* the extent of competition in the market, openness of entry, scope of manipulability, the nature of the government, power of the ruling political groups, political system of the state, legal system, political freedom and treatment of opposition, and value of dissent.<sup>156</sup>

It is not merely the presence of institutions that matters for a freedom-centric idea of development. What is important for the concept of development as freedom is to ascertain what the institutions characterize and the role the institutions play in promoting freedom and well-being.<sup>157</sup> In his *The Idea of Justice*<sup>158</sup> Sen criticizes theories of justice that gives pre-eminence to institutions themselves as “manifestations of justice”.<sup>159</sup> He criticizes David Gauthier,<sup>160</sup> Robert Nozick,<sup>161</sup> and John Rawls<sup>162</sup> for emphasizing the socially agreed installation of institutions as conditions sufficient for social justice.<sup>163</sup> Sen’s view is that even if institutions are installed by social agreement, these institutions may fail to deliver the results for which they were established.<sup>164</sup> It would be a mistake to see the establishment of institutions as an end in itself in furthering social conditions for individual well-being and freedom.<sup>165</sup> Institutions need to be evaluated on the basis of actual consequences generated by such institutions.<sup>166</sup>

What is implied in this argument by Sen is that institutions are important if they facilitate actual freedom and well-being, and thereby, development. Institutions are able to facilitate freedom if they institutionalize certain characteristics with a view to having desired (and targeted) consequences that promote social provisioning for the guarantees of freedom (capability). What is important in Sen’s view is the institutionalization of

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<sup>155</sup> Ibid.

<sup>156</sup> Ibid at 46.

<sup>157</sup> Sen, *Idea of Justice*, supra note 36 at 75-86.

<sup>158</sup> Sen, *Idea of Justice*, supra note 36.

<sup>159</sup> Ibid at 82.

<sup>160</sup> Ibid at 83-84.

<sup>161</sup> Ibid at 84-85.

<sup>162</sup> Ibid at 79-80, 85.

<sup>163</sup> Supra note 160.

<sup>164</sup> Ibid at 81, 83.

<sup>165</sup> Ibid at 81.

<sup>166</sup> Ibid at 82-83.

definite characteristics in furtherance of definite consequences.<sup>167</sup> In this idea, institutions by themselves are not important. They are important for what they characterize and what they ensure. An institution may have been established in furtherance of some consequences, but at a later point of time it may turn out that such institution has failed to deliver the results for which it was established.<sup>168</sup> Under such circumstances, Sen argues, that such an institution would have outlived its requirement.<sup>169</sup> There is a need, therefore, to undertake constant evaluation of institutions to ascertain whether they are able to generate the consequences for which they were established.<sup>170</sup> Sen, therefore, notes: “[t]o ask how things are going and whether they can be improved is a constant and inescapable part of the pursuit of justice.”<sup>171</sup>

What follows from Sen’s analysis of the role of institutions in promoting well-being and capability is that there need not be any prioritization of one institution over the other. Institutions need not be limited to either the government or the market. A society should choose institutions that promote development as freedom in accordance with the necessities of the particular society. No institution is final or conclusive; instead, institutions must be continuously evaluated, and then either continued or discarded based on their performance. There is, thus, no restriction on the creation of new institutions or the institutionalization of new characteristics that promote individual conversion factors in turning commodity-characteristics into functionings. Sen points to the necessity of multiple institutions in a society to ensure that these institutions exercise countervailing power over each other, thereby balancing power in the society by preventing one institution from becoming too powerful.<sup>172</sup> It is in these respects, therefore, that democracy and public participation become very important in Sen’s idea of development as freedom.<sup>173</sup>

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<sup>167</sup> Sen’s idea of consequences is far removed from the utility-based consequentialism that is dependent on ‘happiness’ or ‘desire-fulfilment’ evaluation. Sen’s evaluation of consequences is based on the capability-evaluation of an individual. His approach is a “‘broad consequentialist’ approach to social ethics.” See Alexander, *Amartya Sen and Martha Nussbaum*, supra note 1 at 17-21.

<sup>168</sup> Sen, *Idea of Justice*, supra note 36 at 85-86.

<sup>169</sup> Ibid.

<sup>170</sup> Ibid at 85.

<sup>171</sup> Ibid at 86.

<sup>172</sup> Supra note 165.

<sup>173</sup> Ibid at 345-346.

### 5.1. Role of Democracy in Development as Freedom

According to Sen and Dréze, “the interactions between the state, the public and the market have to be seen in a larger framework, with influences operating in different directions.”<sup>174</sup> They further observe: “In emphasising the role of non-market institutions in successful development, it is extremely important to see the different institutions in an integrated way, and here the practice of democracy – in the fullest sense – can be critically important.”<sup>175</sup> The practice of democracy is central in Sen’s theory,<sup>176</sup> especially if the *integrated institutional* approach is to be pursued. What Sen means by democracy in the fullest sense becomes clear when he links democracy to his idea of development:

Developing and strengthening a democratic system is an essential component of the process of development. The significance of democracy lies ... in three distinct virtues: (1) its intrinsic importance, (2) its instrumental contributions, and (3) its constructive role in the creation of values and norms. No evaluation of the democratic form of governance can be complete without considering each.<sup>177</sup>

In its intrinsic importance democracy is itself constitutive of development. Democracy promotes individual freedom by ensuring and protecting political freedom and civil rights.<sup>178</sup> In its instrumental role, democracy is the means to achieve other freedoms – economic and social.<sup>179</sup> In its constructive role, democracy helps create social norms: it is this constructive role of democracy that Sen depends on for the ascertainment of capabilities and functionings that every society would value.<sup>180</sup> He leaves the prioritization of functionings in a particular society to the democratic deliberative process practiced in that particular society.

The focus of Sen’s idea of democracy is public participation and democratic deliberation.<sup>181</sup> Sen asserts that the mere presence of democratic institutions (the

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<sup>174</sup> Dréze and Sen, *supra* note 143 at 21.

<sup>175</sup> *Ibid* at 24.

<sup>176</sup> Sen, *Idea of Justice*, *supra* note 36 at 345-354.

<sup>177</sup> Sen, *Development*, *supra* note 1 at 157-158.

<sup>178</sup> *Ibid* at 147-148, 154-155.

<sup>179</sup> *Ibid* at 147, 152-153.

<sup>180</sup> *Ibid* at 153-154.

<sup>181</sup> *Ibid* at 155-157; also see Sen, *Idea of Justice*, *supra* note 36 at 91, 324-327, 392. It is not totally irrelevant at this point to note that public participation and democratic deliberation underlies Sen’s overall conceptualization of the idea of justice. Instead of providing a substantive basis of ‘justice’, Sen argues for

integrated institutions of government, market, legal system, judiciary, media etc.) does not suffice for an idea of development as freedom.<sup>182</sup> Formal democracy, in the sense of public balloting<sup>183</sup> is of little use in Sen's theory.<sup>184</sup> What is required for the concept of democracy in Sen's theory is actual participation of the people. Sen conceptualizes democracy in its substantive sense. The essence of democracy, in his view, lies in public discussion.<sup>185</sup> In this view of democracy, free speech, access to information, and freedom of dissent is prioritized over balloting.<sup>186</sup> Sen gives centrality to the collective decision making process in a society. Such a process requires the continuous practice of democracy rather than only the establishment of democratic institutions. This distinction relates back to Sen's idea of the role of institutions in promoting freedom. He proposes a continuous evaluative process that social institutions should be subjected to with a view to justifying their effectiveness at all times. Such an evaluation should be based on the process of democratic dialogue and social participation. The democratic process is a dynamic one that involves participation and continuity.

Thus, from the capability point of view the democratic deliberative process has two central functions: one, prioritization of values as functionings (and corresponding capabilities) for every society; and, two, the institutionalization of characteristics with a view to ensure social provisioning for the realization and promotion of capabilities. It is here that Sen's conceptualization of capabilities differs from that of Martha Nussbaum's capabilities framework.<sup>187</sup> While Sen thinks that the formulation and prioritization of capabilities and functionings should be left to the democratic deliberation process of respective societies, Nussbaum provides a general list of capabilities that every society needs to value. Moreover, while the question of institutionalization remains implicit in Sen's theory, it is central to Nussbaum's project.<sup>188</sup> It is, therefore, worthwhile to note the divergences between the conceptualization of capability in Sen and Nussbaum's theories.

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an idea of justice that is indeterminate in substance and is shaped by a participatory process in a democratic polity. See generally Sen, *Idea of Justice*, *ibid* at 388-415.

<sup>182</sup> Sen, *Development*, *ibid* at 155-157; also see Sen, *Idea of Justice*, *ibid* at 81, 83, 354.

<sup>183</sup> Sen, *Idea of Justice*, *ibid* at 324.

<sup>184</sup> *Ibid* at 354.

<sup>185</sup> Sen, *Development*, *supra* note 1 at 9.

<sup>186</sup> Sen, *Idea of Justice*, *supra* note 36 at 327, 335-337.

<sup>187</sup> See generally Nussbaum, *Women*, *supra* note 116.

<sup>188</sup> See generally *ibid*; also see Nussbaum, "Capabilities as Fundamental Entitlements", *supra* note 67 at 55-56.

## 6. Sen and Nussbaum

Even though both Sen and Nussbaum are the pioneers of the capability approach, their theories have different goals.<sup>189</sup> Sen's project is evaluative and comparative.<sup>190</sup> His idea of development as freedom is based on the evaluation of social provisioning to determine if people's freedom has been enhanced.<sup>191</sup> The Human Development Report of the United Nations Development Programme (UNDP), which is based on the capability approach developed by Sen,<sup>192</sup> uses capabilities to compare development amongst countries. By contrast, the principal focus of Nussbaum's project is the institutionalization of characteristics that enhances capabilities of individuals.<sup>193</sup> Nussbaum proposes such institutionalization through constitutional incorporation of the social basis<sup>194</sup> of the desired capabilities.<sup>195</sup> Synthesizing the capability approach offered by Sen and Nussbaum in his own terms, Alexander asserts that the capability approach can offer a theory of social justice that aims at the "realization of basic capabilities for all" by the creation of "greatest possible condition" through appropriate designing of a "society's economic and political institutions".<sup>196</sup> Alexander, while not committing himself to the constitutional incorporation of listed capabilities, nonetheless endorses the idea of institutionalization of basic capabilities.

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<sup>189</sup> Robeyns, *supra* note 16 at 103.

<sup>190</sup> Nussbaum, *Women*, *supra* note 116 at 12; also see Nussbaum, "Capabilities as Fundamental Entitlements", *supra* note 67 at 35; also Robeyns, *ibid* at 94, 96.

<sup>191</sup> Sen, *Development*, *supra* note 1 at 4; *supra* note 99.

<sup>192</sup> The UNDP describes the concept of human development in the following terms:

"Human Development is a development paradigm that is about much more than the rise or fall of national incomes. It is about creating an environment in which people can develop their full potential and lead productive, creative lives in accord with their needs and interests. People are the real wealth of nations. Development is thus about expanding the choices people have to lead lives that they value. And it is thus about much more than economic growth, which is only a means – if a very important one – of enlarging people's choices.

Fundamental to enlarging these choices in building human capabilities – the range of things that people can do or be in life. The most basic capabilities for human development are to lead long and healthy lives, to be knowledgeable, to have access to the resources needed for a decent standard of living and to be able to participate in the life of the community. Without these, many choices are simply not available, and many opportunities in life remain inaccessible." Available at <http://hdr.undp.org/en/humandev/> (site visited 24 September 2010).

<sup>193</sup> Nussbaum, *Women*, *supra* note 116 at 6, 12, 34-35, 70-71, 74-75; Nussbaum, "Capabilities as Fundamental Entitlements", *supra* note 67 at 55-56; also see Alexander, "moral pluralism", *supra* note 72 at 457-458.

<sup>194</sup> Nussbaum, *Women*, *ibid* at 12, 81-82.

<sup>195</sup> *Ibid* at 12, 70-71; also see Robeyns, *supra* note 16 at 103.

<sup>196</sup> Alexander, *Amartya Sen and Martha Nussbaum*, *supra* note 1 at 1-2.

In Sen's project, the process of institutionalization is implicit, and he does not provide any specific direction in that regard. Nussbaum, on the other hand, provides a general list of capabilities that is to be achieved through the institutionalization process.<sup>197</sup> The general list of capabilities that she provides consists of: life; bodily health; bodily integrity; senses, imagination and thought; emotions; practical reason; affiliation; living together and concern for other species; play; and control over one's environment.<sup>198</sup> Nussbaum mentions that her list is "open-ended and humble; it can always be contested and remade,"<sup>199</sup> and that the list is culturally sensitive.<sup>200</sup> In line with Nussbaum, Anderson, too, thinks that there needs to be some minimum list of capabilities.<sup>201</sup> She identifies three spheres of capability that should constitute core human capabilities: capabilities as a human being; capabilities as a participant in a system of co-operative production; and capabilities as a citizen of a democratic state.<sup>202</sup> Even if Sen himself does not provide any list of desired capabilities, he thinks that it is a useful endeavour to pursue such a list.<sup>203</sup>

Sen himself, however, prefers to leave it to the democratic deliberation process to decide on the desired capabilities for individual societies.<sup>204</sup> Even though he gives examples of desired capabilities<sup>205</sup> and uses some basic capabilities index in Indian context to chart a development discourse,<sup>206</sup> he refrains from providing a list in his works. Sen reasons for omitting a list:

The problem is not with listing important capabilities, but with insisting on one pre-determined canonical list of capabilities, chosen by theorists without any general social discussion or public reasoning. To have such a fixed list, emanating entirely from pure theory, is to deny the possibility of fruitful public participation on what should be included and why.<sup>207</sup>

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<sup>197</sup> Nussbaum, *Women*, supra note 116 at 77-80; also see Nussbaum, "Capabilities as Fundamental Entitlements", supra note 67 at 40.

<sup>198</sup> Nussbaum, *Women*, ibid at 78-80.

<sup>199</sup> Ibid at 77; also see Nussbaum, "Capabilities as Fundamental Entitlements", supra note 67 at 40-42.

<sup>200</sup> Nussbaum, *Women*, ibid at 77, 96; also see Nussbaum, "Capabilities as Fundamental Entitlements", ibid at 42.

<sup>201</sup> Anderson, supra note 53 at 317-318.

<sup>202</sup> Ibid.

<sup>203</sup> See Sen, "Human Rights", supra note 114 at 159-160.

<sup>204</sup> Supra note 131; also see Sen, ibid at 158-163.

<sup>205</sup> Sen, "Human Rights", supra note 114 at 158.

<sup>206</sup> See generally Dréze and Sen, supra note 143 at 143-274. The basic capabilities that Sen and Dréze analyses in Indian context are: basic education, health and environment, and gender equality.

<sup>207</sup> Supra note 205.

Supporting Sen's stand on a list of capabilities, Sabina Alkire argues that since Sen's theory is a general theory capable of application to specific evaluations, a list will always depend on (and differ on the basis of) the nature of specific evaluation (application) undertaken.<sup>208</sup> Nussbaum, however, argues that in absence of a list of desired capabilities Sen's theory lacks normative power.<sup>209</sup> She further asserts that in absence of a list of freedoms (or capabilities), Sen's development as freedom perspective suffers from some inherent flaws.<sup>210</sup> She argues that if the goal of development is to promote freedom of all, there is a genuine problem that the freedom of some people will be an impediment in the realization of freedom for other people.<sup>211</sup> In this debate, Alexander, however, takes a mediatory position by asserting that Anderson's spheres of capabilities concept is a mid-way point between Sen's lack of list and Nussbaum's elaborate list in providing a capabilities concept of social justice.<sup>212</sup> In view of the nature of Sen's objection to the list of capabilities, there is scope to construe Nussbaum's list with Sen's objections in a harmonious manner, because Nussbaum categorically asserts that her list is open-ended and leaves room for democratic deliberation on the list of capabilities.<sup>213</sup>

## 7. Conclusion

The capabilities approach, developed by Sen and Nussbaum, thus, provides an alternative theoretical framework that is concerned with aspirations of individuals in their lives. Sen's conceptualization of development as freedom (where freedom is synonymous with capabilities) is particularly useful in public policy studies. Sen has himself (along with Jean Dr ze) applied the concept of freedom to reconceptualize development in the Indian context. From a feminist perspective, Nussbaum has also applied the concept to

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<sup>208</sup> Alkire, "Capability Approach?", supra note 58 at 115-117, 119.

<sup>209</sup> See Nussbaum, "Capabilities as Fundamental Entitlements", supra note 67 at 35, 46-48.

<sup>210</sup> See Nussbaum, "Capabilities as Fundamental Entitlements", supra note 67 at 44-47.

<sup>211</sup> See Ibid; Sen replied to these objections by observing that 'freedom' *per se* is good, but it might be used for bad purposes [Sen's response to Nussbaum's paper at the Zentrum f r interdisziplin re Forschung in Bielefeld at which it was first presented, in July 2001, cited in Nussbaum, "Capabilities as Fundamental Entitlements", supra note 67 at 46].

<sup>212</sup> Alexander, *Amartya Sen and Martha Nussbaum*, supra note 1 at 70-71.

<sup>213</sup> See Sen, "Human Rights", supra note 114 at 158-160; also see Nussbaum, "Capabilities as Fundamental Entitlements", supra note 67 at 40-42.

the Indian context to analyze gender development. There are other studies that use the development as freedom framework to analyze freedom as a normative basis of development, prominent amongst which is the comparative Human Development Report annually prepared by the UNDP. These studies have shown that it is possible to invoke the capability approach for evaluative and normative purposes to a diverse range of issues.

Use of the capability approach for normative policy purposes is to be mediated by public participation and democratic dialogue process. Even though the capability approach is primarily an individual-centric concept, in addition to agency, individual capabilities are dependent on social, economic, political, environmental, and cultural factors, which are determined through public policy. Since the capability approach envisioned by Sen is non-paternalistic, individuals in a society are themselves to decide the desirable capabilities and consequent public policy through participation and democratic deliberation. Effective democratic deliberation is central to Sen's conceptualization of the capability approach. Even though Nussbaum offers a list of desirable capabilities, she leaves space for democratic deliberation in furtherance of modification of her list. Thus, democratic dialogue with active participation of social partners is central to the capability approach.

The International Labour Organization (ILO) advocates a strategy of democratic dialogue in furtherance of promoting a dignified life for workers. While tripartite participants – government representatives, workers' representatives and employers' representatives – and democratic dialogue is central to the Organization's decision-making process, the Organization mandates its member-states to promote social dialogue process in their respective jurisdictions. In furtherance of the ILO's mandate of social dialogue, the Organization developed the 1998 Declaration on Fundamental Principles and Rights at Work mandating the recognition of collective bargaining. In 1999 the ILO made social dialogue a constitutive principle of the Organization's thematic agenda – Decent Work (DW). The DW Agenda, which is now the Organization's motto, was specifically created in order to account for informal and atypical economic activities (as I explain in the next chapter). These developments at the ILO show that the Organization has positioned democratic dialogue at the centre of policy-making for informal workers.

The ILO strategy is an example of how a democratic dialogue mechanism could be employed in a specific policy-context.

The capability approach along with the social dialogue strategy of the ILO provide an appropriate theoretical basis for an analysis of informal economic activities and informal workers. Informal workers encounter working and living conditions that are very different from factory based formal workers. Moreover, informal economic activities are heterogeneous in nature. Accordingly, in order to understand the problems of informal workers their own perspective and participation is necessary. Any policy-initiative needs to understand what informal workers need in their lives in order to fulfill their aspirations. The capability approach provides the basis for such an aspiration-centric analysis of informal workers' working conditions and living standards. My discussion of the capability approach in this chapter will contribute towards the theoretical underpinning for my study.

In the next chapter, I discuss the developments at the ILO that culminate in the DW Agenda. The DW Agenda is based on four strategic principles: productive employment, rights at work, social protection, and social dialogue. I specifically focus on the social dialogue strategy and analyze how far the strategy can integrate multiple stakeholders engaged in and related to informal economic activities in furtherance of policy-making. My larger purpose is to ascertain whether the ILO social dialogue strategy is adequate for enhancing capabilities for informal workers through a democratic process. I also aim to find out if the ILO social dialogue strategy can help institutionalize capability-enhancing factors for informal workers. My next chapter is a stepping stone towards these directions.

## Chapter 5

### *Social Dialogue in Promoting Decent Work for Informal Workers*

#### 1. Introduction

In chapter 4, I discuss the nuances of the capability approach as a human development framework. The essence of the capability approach is that it takes freedom to choose as the determinant of development and analyzes the role of resources in the promotion of capabilities. Resources *per se* are not important for the capability approach – the evaluative reference point of the capability approach is what resources do for the enhancement of capabilities. In a capability approach framework, even though individuals would determine which capabilities are desirable to them, for policy purposes it becomes important to ascertain desirable capabilities for the society as a whole (i.e., which capabilities are deemed desirable by individuals in a society/community). As I discuss in chapter 4, Martha Nussbaum provides a generic list of capabilities that she deems desirable for all societies situated in any developmental stage, albeit with a caveat that her list is only indicative, not exhaustive.

Amartya Sen, on the other hand, refrains from providing a list of desirable capabilities. According to Sen, specific societies or communities need to decide the desirable capabilities for that particular society or community through a democratic dialogue process. The dialogue process Sen envisages needs to be broad-based with effective participation of concerned social partners. Sen's abstract formulation of social dialogue could be found in strategic policy elaboration in the work of the International Labour Organization (ILO).

The ILO is a specialized agency of the United Nations (UN),<sup>1</sup> which is concerned with the welfare of workers and fair competition around the globe.<sup>2</sup> The ILO seeks to achieve these goals through the promulgation and supervision of labour standards,<sup>3</sup> and

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<sup>1</sup> See United Nations, "Structure and Organization", available at <http://www.un.org/en/aboutun/structure/index.shtml> (site visited 22 April 2012); For an account of how the ILO became a part of the United Nations, also see David A. Morse, *The Origin and Evolution of the I.L.O. and Its Role in the World Community* (New York: Cornell University, 1969) at 30-32.

<sup>2</sup> See ILO, "Mission and objectives", available at <http://www.ilo.org/global/about-the-ilo/mission-and-objectives/lang--en/index.htm> (site visited 22 April 2012).

<sup>3</sup> See ILO, "About the ILO", available at <http://www.ilo.org/global/about-the-ilo/lang--en/index.htm> (site

through technical cooperation.<sup>4</sup> The ILO presently has 183 member-states, and each member-state participates in the ILO decision-making process through tripartite representation: government representatives, employer representatives, and worker representatives.<sup>5</sup> Accordingly, social dialogue through tripartite participation is the functional basis of the ILO.

The ILO defines social dialogue as “all types of negotiation, consultation and exchange of information between, or among, representatives of governments, employers and workers, on issues of common interest.”<sup>6</sup> The social dialogue strategy of the ILO is a constitutive pillar of the ILO’s thematic goal - the Decent Work (DW) Agenda. The DW Agenda is expressed as a fourfold strategy of employment, rights at work, social protection, and social dialogue, which operate simultaneously without prioritization of any one strategy over another. These strategies are also known as the pillars of the DW Agenda. The novelty of the DW Agenda lies in the fact that the Agenda is targeted to informal economic activities and all four pillars are intended for all workers including informal workers.<sup>7</sup>

The DW Agenda is a flexible concept wherein the content of each of the four constitutive pillars are to be determined by the ILO member-states themselves. This flexibility in realizing the goal of DW allows ILO member-states leeway to devise their labour welfare regimes suited to their respective socio-economic-political conditions. The flexibility in the DW Agenda creates scope for policy space in favour of informal workers. The social dialogue pillar of the DW Agenda acts as a check and balance device against a flexible principle-based international regime to counter member-states’ flexibility in acting upon the DW Agenda.

In this chapter, I analyze the DW pillar of social dialogue and discuss the pillar’s efficacy in the context of informal workers. The strategy of social dialogue, conceptualized in the context of informal economic activities, could facilitate informal

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visited 4 January 2013).

<sup>4</sup> See ILO, “Programmes and projects”, available at <http://www.ilo.org/global/programmes-and-projects/lang--en/index.htm> (site visited 22 April 2012).

<sup>5</sup> Morse, *supra* note 1 at 8-9.

<sup>6</sup> ILO, “Social Dialogue”, available at <http://www.ilo.org/global/about-the-ilo/decent-work-agenda/social-dialogue/lang--en/index.htm> (site visited 20 May 2012); also see ILO, *Decent Work*, Report of the Director-General, International Labour Conference, 87<sup>th</sup> Session, June 1999 (Geneva: ILO, 1999) at 38-39, 42-43.

<sup>7</sup> See ILO, *Decent Work*, *ibid* at 3-4.

workers' voice in policy circles.<sup>8</sup> An innovative social dialogue mechanism specially crafted for informal economic activities could also shed light on the operationalization of other pillars of the DW Agenda, such as rights at work and social protection. Therefore, in this chapter, I consider the scope and role of the social dialogue pillar of the DW Agenda in enhancing capabilities for informal workers. I argue that if the social dialogue strategy is to be effective in the context of informal workers, such strategy needs to transcend the tripartite structure of social dialogue promoted by the ILO. Social dialogue for informal economic activities needs to be multipartite, involving as many concerned social partners as possible.

In the next section of the chapter (section 2), I briefly explain the function and *modus operandi* of the ILO. In this section I point out that the ILO was established to cater to the needs of developed countries. However, in order to address developing country concerns the organization has modified its approach over the decades. In section 3, I analyze the genesis of the DW Agenda. I look into the shift in the ILO strategy from promulgation of Conventions and Recommendations to the facilitation of statement of principles. I look at the contribution of the DW Agenda to the overall ILO policy. In this section, I also discuss the four pillars that the DW Agenda promotes (section 3.1). I discuss how the 2008 ILO Declaration on Social Justice for a Fair Globalization adds significance to the principle of DW (section 3.2). In section 4 of the chapter, I analyze the social dialogue pillar of the DW Agenda and look into its efficacy in the context of informal economic activities. I argue that the pillar of social dialogue offers a democratic way to decide on the nature and level of protection afforded to informal workers with active participation of stakeholders and social partners. I discuss the role that integrated institutions could play in promoting social dialogue for informal workers (sections 4.1 and 4.2). Having discussed the efficacy of the DW Agenda and the social dialogue pillar, I compare the DW Agenda as an analytical framework with the capability approach in the next section of the chapter (section 5). This discussion is necessary because I will be using one of these two analytical frameworks to analyze my case study of informal waste-pickers in Kolkata, India, in chapter 7.

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<sup>8</sup> See generally Ela R. Bhat, *We Are Poor but So Many – The Story of Self-Employed Women in India* (New York: Oxford University Press, 2006).

## 2. The ILO: What it is and How it Works

The most significant role of the ILO is "drawing up and overseeing international labour standards."<sup>9</sup> Therefore, the ILO works through the creation and supervision of *Conventions, Recommendations, and Declarations*.<sup>10</sup> While Conventions are binding on ILO member-states upon ratification,<sup>11</sup> Recommendations have only persuasive significance.<sup>12</sup> Declarations are statements of principles that inspire policy.<sup>13</sup>

The ILO was founded on the principle of social justice; both in its initial version as Part XIII of the Treaty of Versailles,<sup>14</sup> and in its later incarnation as a specialized agency of the United Nations (UN).<sup>15</sup> The Preamble of the Constitution of the ILO reads:

And whereas conditions of labour exist involving such injustice hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled; and an improvement of those conditions is urgently required; as, for example, by the regulation of the hours of work including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provisions for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of equal remuneration for work of equal value, recognition of the principle of freedom of association, the organization of vocational and technical education and other measures;

<sup>9</sup> See ILO, "About the ILO", supra note 3; also see Morse, supra note 1 at 9.

<sup>10</sup> See Article 19 of the *Constitution* of the International Labour Organization, available at <http://www.ilo.org/ilolex/english/constq.htm> (site visited 22 April 2012).

<sup>11</sup> See Article 19, Article 20 of the *Constitution* of the International Labour Organization, *ibid*; also see Article 102 of the *Charter of the United Nations, 1945*, available at <http://treaties.un.org/doc/Publication/CTC/uncharter.pdf> (site visited 22 April 2012).

<sup>12</sup> See Article 19 of the *Constitution* of the International Labour Organization, *ibid*; also see Nicolas Valticos, "Fifty years of standard-setting activities by the International Labour Organisation" (1996) 135: 3-4 *International Labour Review* 393 at 404-405, for a discussion of the utilities of ILO Conventions and Recommendations.

<sup>13</sup> See ILO, "Declaration concerning the aims and purposes of the International Labour Organisation", available at <http://www.ilo.org/ilolex/english/constq.htm> (site visited 22 April 2012).

<sup>14</sup> Part XIII of the *Treaty of Versailles* begins by declaring "[w]hereas the League of Nations has for its object the establishment of universal peace, and such a peace can be established only if it is based upon social justice". See Section I, Part III of the *Treaty of Versailles, 1919*, Official Bulletin, International Labour Office (Geneva: ILO, 1923), available at <http://www.ilo.org/public/english/bureau/leg/download/partxiii-treaty.pdf> (site visited 14 Sep 2011).

<sup>15</sup> The ILO Constitution, in its preamble reiterates its objective: "[w]hereas universal and lasting peace can be established only if it is based upon social justice". See Preamble to the *Constitution* of the ILO, supra note 10.

Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries;

The High Contracting Parties, moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world, and with a view to attaining the objectives set forth in this Preamble, agree to the following Constitution of the International Labour Organization.

The official ILO history explains the three main motivations for the establishment of the ILO.<sup>16</sup> The motivations are: humanitarian, in so far as injustice and exploitation are meted out to the ever increasing number of workers in the increasingly industrialized world;<sup>17</sup> political, in so far as workers in precarious conditions could cause social unrest and revolt;<sup>18</sup> and economic, in so far as low labour conditions in one country would allow it to have competitive advantage in trade over its competitors by reducing the cost of production.<sup>19</sup> Principally the ILO was to provide “equality of trade conditions”<sup>20</sup> among nations by establishing “a social framework for economic exchange.”<sup>21</sup> The Organization provides for a space wherein employers, workers, and governments can meet and discuss in order to find a non-conflicting middle ground of cooperative coexistence.<sup>22</sup> Even though this tripartism gives legitimacy to the ILO, as I will explore later in this chapter,

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<sup>16</sup> See ILO, “ILO History”, available at <http://www.ilo.org/public/english/about/history.htm> (site visited 14 Sep 2011); also see Morse, *supra* note 1 at 6; also see Nigel Haworth & Stephen Hughes, “Trade and International Labour Standards: Issues and Debates Over a Social Clause” (1997) 39: 2 *Journal of Industrial Relations* 179 at 182; also see Robert W. Cox, “The Idea of International Labour Regulation” (1953) 67 *International Labour Review* 191 at 191-194.

<sup>17</sup> See generally ILO, “ILO History”, *ibid*.

<sup>18</sup> See Gerry Rodgers et al, *The International Labour Organization and the quest for social justice, 1919-2009* (Geneva: ILO, 2009) at 2; also see Guy Standing, “The ILO: An Agency for Globalization?” (2008) 39: 3 *Development and Change* 355 at 357; also see Steve Hughes & Nigel Haworth, *The International Labour Organisation (ILO)* (New York: Routledge, 2011) at xvi; also see Cox, “The Idea”, *supra* note 16 at 191-194; also see Robert W. Cox, “Labor and Hegemony” (1977) 31: 3 *International Organization* 385 at 387.

<sup>19</sup> Karl Polanyi noted that the International Labour Office was instituted “partly in order to equalize conditions of competition amongst the nations . . . .” See Karl Polanyi, *The Great Transformation* (Boston: Beacon Press, 1957) at p. 26.; also see Alfred Wisskirchen, “The standard-setting and monitoring activity of the ILO: Legal questions and practical experience”, (2005) 144: 3 *International Labour Review* 253 at 255; also see Haworth & Hughes, “Trade and International”, *supra* note 16 at 182; also see Cox, “The Idea”, *supra* note 16 at 195.

<sup>20</sup> Asserted by Woodrow Wilson, as quoted in Rodgers et al, *1919-2009*, *supra* note 18 at 6.

<sup>21</sup> *Ibid* at 6.

<sup>22</sup> *Ibid* at 2.

the tripartite structure sometimes restricts the Organization's effort in ameliorating the conditions of workers around the globe.<sup>23</sup>

The ILO was established in 1919. In the first few years some of the Conventions and Recommendations enacted by the Organization were: Hours of Work (Industry) Convention, 1919; Minimum Wage-Fixing Machinery Convention, 1928;<sup>24</sup> Hours of Work (Inland Navigation) Recommendation, 1920; Social Insurance (Agriculture) Recommendation, 1921.<sup>25</sup> The ILO was, thus, busy in setting a minimum floor to ward off the competitive advantage that a country might enjoy because of its low labour standards, a Constitutional goal "designed to reconcile the requirements of social justice with the realities of international competition."<sup>26</sup>

Since the ILO was created by western nations, the ILO has principally been concerned with the labour problems of industrialized developed countries.<sup>27</sup> This bias is evident from the nature of issues and labour standards that the Organization was concerned with until the 1950s and 1960s.<sup>28</sup> However, after the 1950s the ILO gradually and incrementally began to address labour problems of developing countries.<sup>29</sup> In recent

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<sup>23</sup> The tripartite ILO framework is problematic so far as representation of informal workers are concerned. Informal workers mostly do not have unions. Some NGOs work with informal workers, and therefore claim to be representative of informal workers. However, ILO employer and employee constituents object to NGO representation in the ILO (sometimes rightly so) on the ground that NGOs are non-democratic and non-representative. See *Ibid* at 17-18.

<sup>24</sup> A list of ILO Conventions till the Work in Fishing Convention, 2007 can be found at the ILO website at <http://www.ilo.org/ilolex/english/conventions.pdf> (site visited 16 September 2011).

<sup>25</sup> A list of ILO Recommendations till the HIV and AIDS Recommendation, 2010 can be found at the ILO website at <http://www.ilo.org/ilolex/english/recommendations.pdf> (site visited 16 September 2011).

<sup>26</sup> Francis Maupain, "New Foundation or New Façade? The ILO and the 2008 Declaration on Social Justice for a Fair Globalization" (2009) 20: 3 *EJIL* 823 at 825.

<sup>27</sup> See Morse, *supra* note 1 at 18-23; also see Bob Hepple, *Labour Laws and Global Trade* (Oxford and Portland: Hart, 2005) at 28-29; also see Rodgers et al, *1919-2009*, *supra* note 18 at 41, 178, 183; also see Standing, "The ILO", *supra* note 18 at 356-357; also see Hughes & Haworth, *International Labour Organisation*, *supra* note 18 at xvi 7-8, 16; also see Daniel Maul, *Human Rights, Development and Decolonization – The International Labour Organization, 1940-70* (Basingstoke: Palgrave Macmillan & Geneva: ILO, 2012) at 114-115; Jasmien Van Daele notes that the ILO's eurocentrism also has a deep impact on the literature involving the Organization, see Jasmien Van Daele, "The International Labour Organization (ILO) in Past and Present Research" (2008) 53 *International Review of Social History* 485 at 491, 509; also see Cox, "Labor", *supra* note 18 at 409-410.

<sup>28</sup> See Morse, *supra* note 1 at 43, 64-68, wherein the then Director-General of the ILO, Morse describes the industry-based understanding of labour problems, which was significantly a developed industrialised country phenomenon; also see Rodgers et al, *ibid* at 41, 178, 183; also see Valticos, *supra* note 12 at 398-399.

<sup>29</sup> See Maul, *supra* note 27 at 64, 70, 77-78, 105, 111-118, 121, 124-139, 160-184, 192-214, 220-223, 227-258; also see Morse, *ibid* at 45-56; also see generally See Rodgers et al, *ibid* at 180-185; also see Hepple, *Labour Laws*, *supra* note 27 at 34; also see Hughes & Haworth, *International Labour Organisation*, *supra* note 18 at 14-15, 29; also see Valticos, *ibid* at 399-401.

decades the ILO has focused on principles rather than specific labour standards in order to integrate informal workers in developing countries into its policy-fold. The latest of such initiative is the DW Agenda, which I discuss in the following sections.

### 3. Genesis of the Decent Work Agenda

The approach of promulgating detailed trade and industry-specific conventions, and getting member-states to ratify those conventions, worked well for the Organization and its member-states for some time. The ILO's survival through the World War II was dependent to a large extent on the success of the "reformist vision of social justice" (in distinction to a revolutionary vision, as I discuss presently), which the Organization was furthering through its Conventions and Recommendations.<sup>30</sup> During this phase of the Organization, the support of the United States of America (USA) was also central for its survival.<sup>31</sup> Scholars assert that the Cold War era after the World War II was a "golden age" for the ILO's standard-setting function.<sup>32</sup> This was because the world had two versions of social justice at that time – the reformist vision and the revolutionary vision of social justice.<sup>33</sup> The ILO's standard-setting succeeded during this period because the Organization's reformist vision of social justice drew sympathy and support from capitalist developed countries and their workers.<sup>34</sup> The ILO was a model that was antithetical to the revolutionary model of social justice<sup>35</sup> and capitalist developed countries could project the ILO model as an alternative to the revolutionary model of social justice in order to discourage workers from revolting against capitalism. Unprecedented expansion of international trade and commerce<sup>36</sup> also contributed to the ILO's success during this period.<sup>37</sup> However, some observers note that the connection

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<sup>30</sup> Maupain, *supra* note 26 at 825-826.

<sup>31</sup> See Rodgers et al, *1919-2009*, *supra* note 18 at 29.

<sup>32</sup> See Haworth & Hughes, "Trade and International", *supra* note 16 at 184; also see Hughes & Haworth, *International Labour Organisation*, *supra* note 18 at 15-16; also see Maupain, *supra* note 26 at 826.

<sup>33</sup> Maupain, *ibid* at 826; also see Hepple, *Labour Laws*, *supra* note 27 at 34-35.

<sup>34</sup> Maupain, *ibid*; also see Cox, "Labor", *supra* note 18 at 387.

<sup>35</sup> Maupain, *ibid*.

<sup>36</sup> Competitive concern about international trade and commerce, and the need to set a minimum platform of labour standards in furtherance of such competitive concern is well articulated in the Preamble of the Constitution of the ILO. See *The ILO Constitution*, *supra* note 10.

<sup>37</sup> Maupain, *supra* note 26 at 826.

between ILO standards and economic and commercial growth during this time was much less evident than in the pre-World War II period.<sup>38</sup>

In its quest to promulgate industrial model-based detailed labour standards, the ILO failed to pay enough attention to the realities of non-industrial developing and least developed member-states. As early as in 1947, the ILO was told that ILO Conventions need to be tailored to local conditions in Asian countries.<sup>39</sup> India's first Prime Minister, Jawaharlal Nehru, urged the ILO to work with informal agricultural workers in India (which engaged, and still engages the majority of Indian workforce) during the first ILO Asian Regional Conference in Delhi in 1947.<sup>40</sup> However, these proposals did not resonate with the ILO, because at that time the ILO's priority was to universalize labour standards globally within a frame of industrial establishments;<sup>41</sup> the Organization had no intention to attune its activities to local conditions.<sup>42</sup>

Bob Hepple expresses serious doubts about the relevance of ILO standards for the majority of workers around the world, especially in developing countries.<sup>43</sup> He is also sceptical of the actual implementation of ratified ILO standards in developing countries.<sup>44</sup> Hepple notes:<sup>45</sup>

My own experience when providing technical assistance in developing countries has been that it is not the magnitude of the International Labour Code that prevents compliance but rather a deeply held view, shared by government and influential national and transnational employers, that the ILO's standards are too remote from the reality of their stage of economic and social development. In theory, use can be made of flexibility clauses in ILO conventions to adjust the scope and level of protection, but it seems that in practice such clauses are infrequently invoked.

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<sup>38</sup> See Rodgers et al, *1919-2009*, supra note 18 at 209-210.

<sup>39</sup> See Maul, supra note 27 at 117.

<sup>40</sup> See Maul, *ibid* at 116-117.

<sup>41</sup> See Cox, "Labor", supra note 18 at 409-410.

<sup>42</sup> See Maul, supra note 27 at 118, 132; also see Van Daele, supra note 27 at 501.

<sup>43</sup> See Bob Hepple, *Labour Law, Inequality and Global Trade*, Sinzheimer Lecture 2002 (Amsterdam: Hugo Sinzheimer Instituut, 2002) at 25, 27; also see Hepple, *Labour Laws*, supra note 27 at 39-47; also see Simon Deakin, "The Contribution of Labour Law to Economic and Human Development" in Guy Davidov & Brian Langille eds, *The Idea of Labour Law* (New York: Oxford University Press, 2011) 156 at 163; also see Standing, "The ILO", supra note 18 at 375-376.

<sup>44</sup> Hepple, *Labour Law, Inequality*, *ibid* at 19-20, 25; also see Hepple, *Labour Laws*, *ibid* at 47.

<sup>45</sup> Hepple, *Labour Law, Inequality*, *ibid* at 27; also see Rodgers et al, *1919-2009*, supra note 18 at 210-213.

Moreover, Hepple attributes non-ratification and non-implementation of ILO standards, especially by developing countries, to the perception of competitive advantage on labour that developing countries (believe they) enjoy.<sup>46</sup> He notes that developing countries perceive that adoption and compliance with ILO standards would put them in a disadvantageous position as far as the cost of labour is concerned.<sup>47</sup> Thus, developing countries allege that developed countries are guilty of social imperialism whenever there is talk of linking trade to labour standards.<sup>48</sup> Because of such a stand adopted by developing countries there is a disparity between developed and developing countries in adopting and implementing ILO standards.<sup>49</sup> According to Hepple, these developments question the very legitimacy and survival of the ILO.<sup>50</sup>

Additionally, the ILO was also suffering from internal incoherence during the post-World War II period. During the post-World War II era, because of its engagement with a range of issues, for example, from working time to social insurance, the ILO was internally pursuing fragmented policy approaches, apparently unconnected to each other.<sup>51</sup> Even if these ILO policies were connected, connections between them were difficult to discern, by insiders as well as by outsiders.<sup>52</sup>

According to Rodgers et al, the ILO Industrial Committees are yet another example of internal weaknesses of the Organization. In the post-World War II period, the ILO was to be a part of the overall framework of international bodies that were to pursue a global policy of economic and social development.<sup>53</sup> The ILO Industrial Committees were set up in this regard to facilitate international tripartite discussion on global policy issues in specific sectors.<sup>54</sup> However, internally, the original scope of the Industrial Committees was trimmed by the ILO Governing Body, resulting in ILO's inability to shape and influence global development policy.<sup>55</sup>

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<sup>46</sup> Hepple, *Labour Law, Inequality*, ibid at 28.

<sup>47</sup> Ibid at 27-28.

<sup>48</sup> Ibid.

<sup>49</sup> Ibid at 28.

<sup>50</sup> Ibid at 28.

<sup>51</sup> See Rodgers et al, *1919-2009*, supra note 18 at 207-209.

<sup>52</sup> Ibid at 207-209.

<sup>53</sup> Ibid at 209-210.

<sup>54</sup> Ibid at 209-210.

<sup>55</sup> Ibid at 210.

Externally, after 1989 and during the post-Cold War period the ILO's standard-setting function faced serious challenge.<sup>56</sup> After the disintegration of support for the revolutionary vision of social justice, the need to have a countervail of reformative social justice subsided. Therefore, production of labour-standards by the ILO was perceived to be politically redundant.<sup>57</sup> The ILO standards were also perceived to be economically inefficient because over-regulation of labour was perceived to be an obstacle in foreign direct investment.<sup>58</sup> Additionally, the ILO standards were found to be failing to provide a universal "level playing field" (so far as labour standards were concerned) because member-states were free to ratify standards or reject them.<sup>59</sup> With the erosion of trade union membership and bargaining power, labour unions could not influence governments to ratify ILO standards.<sup>60</sup> Moreover, Francis Maupain identifies "standards fatigue" as another reason for the decreasing popularity of ILO standards,<sup>61</sup> by which he means that the ILO instruments have covered almost all aspects of labour issues,<sup>62</sup> and hence, fewer issues remain wherein the ILO can promulgate an instrument.<sup>63</sup> Maupain reasons that these factors in the post-Cold War era slowed down the ratification rate of ILO instruments, resulting in an existential crisis of the ILO.<sup>64</sup>

Observers point out other causes of the ILO's existential crisis. During the post-Cold War period, the ILO's internal weaknesses and external survival prospects were aggravated by political pressures from major economic powers and funding concerns for the organization's programs.<sup>65</sup> When the major economic powers, such as the United

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<sup>56</sup> Maupain, *supra* note 26 at 826-829.

<sup>57</sup> *Ibid* at 826-827.

<sup>58</sup> *Ibid* at 826-827. Maupain, however, does not agree with this economic view. He cites an ILO inquiry report in 1996 and an OECD study of 1996 to argue that this economic argument is not supported by reality. See footnote 10 at 826-827.

<sup>59</sup> *Ibid* at 827.

<sup>60</sup> *Ibid* at 827; also see Hughes & Haworth, *International Labour Organisation*, *supra* note 18 at 47-51.

<sup>61</sup> Maupain, *ibid* at 827.

<sup>62</sup> This is evident from the list of Conventions and Recommendations that the ILO has promulgated so far. ILO Conventions and Recommendations address topics as varied as Unemployment Indemnity (Shipwreck) Convention, 1920 to Labour Statistics Recommendation, 1985. For the list of ILO Conventions see <http://www.ilo.org/ilolex/english/conventions.pdf> (site visited 16 September 2011); for the list of ILO Recommendations see <http://www.ilo.org/ilolex/english/recommendations.pdf> (site visited 16 September 2011).

<sup>63</sup> Maupain, *supra* note 26 at 827.

<sup>64</sup> *Ibid* at 827; also see generally Laurence R. Helfer, "Understanding Change in International Organizations: Globalization and Innovation in the ILO", (2006) 59 *Vanderbilt Law Review* 649; also see Hepple, *Labour Laws*, *supra* note 27 at 35-37; also see Wisskirchen, *supra* note 19 at 261-265, 268.

<sup>65</sup> Rodgers et al, *1919-2009*, *supra* note 18 at 197.

States and the United Kingdom, pushed for neo-liberal global trading regime led by the Bretton Woods institutions,<sup>66</sup> they did not encourage ideologically alternative policies from the ILO.<sup>67</sup> These developments sidelined the legitimacy and significance of the ILO as an organization having valid concern in trade and labour debate.

The 1998 ILO Declaration on Fundamental Principles and Rights at Work marked the culmination of the developments in the preceding decades that first threatened the survival of the ILO and then presented the organization with new opportunities in view of the re-emergence of the trade and labour standards debate.<sup>68</sup> The 1998 Declaration provided for a social floor of labour standards, without requiring member-states to ratify any Convention in that regard.<sup>69</sup> In principle, the Declaration mandated adherence to the identified core labour standards by ILO member-states. The labour standards identified by the Declaration are: “freedom of association and the effective recognition of the right to collective bargaining”; “elimination of all forms of forced or compulsory labour”; “effective abolition of child labour”; and “elimination of discrimination in respect of employment and occupation”.<sup>70</sup>

The Declaration, which is a joint expression of commitment by the ILO and its member-states, forms the core labour standards, as distinguished from cash standards (that have direct financial implications on the part of the employers or the government).<sup>71</sup> The core standards identified in the 1998 Declaration do not necessarily have financial

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<sup>66</sup> See David Harvey, “From Globalization to the New Imperialism” in Richard P. Appelbaum & William I. Robinson eds, *Critical Globalization Studies* (New York: Routledge, 2005) 91 at 98-100; also see Fred Halliday, “The pertinence of imperialism” in Mark Rupert & Hazel Smith, eds, *Historical Materialism and Globalization* (London: Routledge, 2002) 75 at 83-84, 86-87.

<sup>67</sup> See Rodgers et al, *1919-2009*, supra note 18 at 197-198; also see Hughes & Haworth, *International Labour Organisation*, supra note 18 at 35-36.

<sup>68</sup> Hepple, *Labour Laws*, supra note 27 at 35-59; also see generally Helfer, supra note 64.

<sup>69</sup> A Declaration is not a one way tool imposed by an Organization (in this case, the ILO) over the member-states to accept (or reject); a Declaration is an expression of joint commitment shared by an organization and its member-states issued in rare occasions of long-term significance. See ILO, Report VII, “Consideration of a possible Declaration of principles of the International Labour Organization concerning fundamental rights and its appropriate follow-up mechanism”, 86<sup>th</sup> Session, Geneva, June 1998, available at <http://www.ilo.org/public/english/standards/relm/ilc/ilc86/rep-vii.htm> (site visited 20 September 2011); also see Maupain, supra note 26 at 831-832.

<sup>70</sup> *Declaration on the Fundamental Principles and Rights at Work, 1998*, available at <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm> (site visited 20 August 2010).

<sup>71</sup> See Brian A. Langille, “Core Labour Rights – The True Story (Reply to Alston)” (2005) 16: 3 *European Journal of International Law* 409 at 413-417, 418-420, 423, 425-426; also see Maupain, supra note 26 at 442, 444-445, 447, 453-455, 459-463; also see generally Supriya Routh, “Globalizing Labor Standards: The Developed-Developing Divide” (2010) 2: 1 *Jindal Global Law Review*, 153.

implications that cash standards might have. Member states do not need substantial spending to ensure freedom of association, abolition of forced or child labour, or non-discrimination.<sup>72</sup> Ensuring these conditions would therefore not make labour more costly, and deny the comparative advantage that developing countries might have in global trade.<sup>73</sup>

However, Philip Alston argues that by providing for *core* labour standards, the 1998 Declaration has envisaged a hierarchy of labour rights, thereby transforming the international labour rights regime.<sup>74</sup> He notes that the 1998 Declaration aims at addressing the trade-labour linkage,<sup>75</sup> and does little to protect and promote workers' rights.<sup>76</sup> Moreover, the Declaration is not binding<sup>77</sup> and hence cannot mandate member-states to adhere to the so-called core rights.<sup>78</sup>

As pointed out by Alston, the Declaration does not include cash standards or economic guarantees, such as maternity benefits or health insurance, within its scheme. However, as I discuss in chapter 3, for an overall development of workers and the promotion of their dignified life, cost standards or economic provisioning are immensely important. This absence of cost standards in the 1998 Declaration was addressed through the DW Agenda envisaged by the ILO in 1999.<sup>79</sup>

In 1999, under the leadership of the Director General Juan Somavia, the ILO arranged the entire Organization's work around the concept of DW.<sup>80</sup> The DW Agenda

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<sup>72</sup> There might, however, be costs to ensure appropriate conditions in which freedom of association or abolition of child labour can become a reality. These costs are mostly inherent in the administration of the (primarily democratic) member-states, and do not require additional budgetary allocation under separate heads of expenses.

<sup>73</sup> See Leah Vosko, "'Decent Work': The Shifting Role of the ILO and the Struggle for Global Social Justice" (2002) 19: 2 *Global Social Policy* 19 at 27-29, 31-32.

<sup>74</sup> Philip Alston, "'Core Labour Standards' and the Transformation of the International Labour Rights Regime" (2004) 15: 3 *European Journal of International Law* 457 at 458.

<sup>75</sup> *Ibid* at pp. 460-517; also see Hepple, *Labour Laws*, supra note 27 at 59; also see Vosko, supra note 73 at 20, 27-28, 31.

<sup>76</sup> Alston, *ibid* at p. 461.

<sup>77</sup> The 1998 Declaration is not binding in the sense that the ILO member-states are not required to ratify the underlying Conventions of the Declaration. Since the member-states are not required to ratify these Conventions, they are not obligated to adhere to the Conventions.

<sup>78</sup> Alston, supra note 74 at 461, 465, 518-520.

<sup>79</sup> Civil and political rights converge with social and economic goals in the DW Agenda. See Adelle Blackett, "Situating Reflections on International Labour Law, Capabilities, and Decent Work: The Case of Centre *Maraîcher* Eugène Guinot", (2007) *Revue québécoise de droit international (Hors-série)* 223 at 224-226, 242-243.

<sup>80</sup> See generally ILO, *Decent Work*, supra note 6.

consists of four strategic pillars: “fundamental principles and rights at work”; “employment”; “social protection”; and “social dialogue”.<sup>81</sup> Thus, over the years, the ILO’s preambulatory goal of social justice is expressed through different strategies, initially through the promulgation of definite labour standards and presently through the expression of principles through the 1998 Declaration and the 1999 DW Agenda.

Dharam Ghai observes that the DW Agenda signifies both continuity and innovation at the ILO.<sup>82</sup> The DW concept is a succinct declaration of the ILO’s work through Conventions and Recommendations over the years.<sup>83</sup> It is also the expression of a new intellectual effort that points out the unity of different components in promoting workers’ causes, such as the existence of norms, importance of institutional infrastructure, and requirement of real resources.<sup>84</sup> According to Ghai, the DW Agenda facilitates a universalistic approach that is attentive to the concerns of both formal as well as informal workers.<sup>85</sup>

The DW Agenda offers a new integrated and proactive ILO approach.<sup>86</sup> It is an integrated approach because it is a non-controversial synthesis of a range of ILO instruments, where member-states are free to decide the content of each pillar.<sup>87</sup> It is a proactive approach because the ILO moved from a strategy of negative safeguards to a policy of positive promotion,<sup>88</sup> which is evident in the shift in the ILO policy: from *prevention of unemployment* in the 1919 Constitution to *creation and development of work* in the 2008 Declaration.<sup>89</sup> Another example of this shift is from “protecting tripartism” as per the Constitution to “promoting social dialogue” in the DW Agenda and the 2008 Declaration.<sup>90</sup>

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<sup>81</sup> See Ibid at v, 3.

<sup>82</sup> Dharam Ghai, “Decent work: Universality and diversity” in Dharam Ghai ed, *Decent Work: Objectives and Strategies* (Geneva: ILS, ILO, 2006) at 3.

<sup>83</sup> Ibid at 3.

<sup>84</sup> Ibid at 3-4; also see Blackett, supra note 79 at 225-226, 242-243.

<sup>85</sup> Ghai, ibid at 4-6.

<sup>86</sup> Maupain, supra note 26 at 834-839.

<sup>87</sup> Ibid at 837-839.

<sup>88</sup> Ibid at 834-837.

<sup>89</sup> See *ILO Declaration on Social Justice for a Fair Globalization*, available at [http://www.ilo.org/public/english/bureau/dgo/download/dg\\_announce\\_en.pdf](http://www.ilo.org/public/english/bureau/dgo/download/dg_announce_en.pdf) (site visited 20 September 2011).

<sup>90</sup> Maupain, supra note 26 at 834-835.

However, there is another way of looking at the DW Agenda. The DW Agenda can also be seen as a compromise by the ILO under pressure from its member-states. Countries such as the United States claim to provide a right to association and collective bargaining in their domestic legislation, even if they have not ratified ILO Conventions on these issues.<sup>91</sup> Non-ratifying member-states such as the United States contend that since they already provide these guarantees in their domestic legislation and since some of the ILO standards are in conflict with their *law and practice*, they are unable to ratify ILO instruments.<sup>92</sup> On the other hand, there are ILO member-states such as India who contend that if they are required to ratify some ILO Conventions, they will not have any flexibility in exempting certain categories of workers (such as government servants, otherwise known as public sector employees) from the scope of the guarantees specified under those Conventions.<sup>93</sup> Now that the ILO has adopted the DW Agenda, which specifies that even if member-states do not ratify ILO instruments, they are bound by it, countries such as the US or India do not need to ratify these ILO instruments any longer. In this sense, the DW Agenda is a compromise that holds the diverse ILO membership together.<sup>94</sup>

From a positive point of view, the DW Agenda supplements and transcends the 1998 ILO Declaration.<sup>95</sup> Through the 1998 Declaration, the ILO mandated adherence to *core* labour standards by its member-states. As previously noted, *cash* standards such as old age or maternity benefits, unemployment benefits, insurance against occupational

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<sup>91</sup> See “Reich Urges Adherence to “Core” Labor Standards (Reconciliation of trade, labor rules needed)”, available at [http://www.usembassy-israel.org.il/publish/press/labor/archive/june/dl1\\_6-12.htm](http://www.usembassy-israel.org.il/publish/press/labor/archive/june/dl1_6-12.htm) (site visited 30 March 2012); also see United States Council for International Business, “Issue Analysis: US Ratification of ILO Core Labor Standards”, April 2007, available at [http://www.uscib.org/docs/US\\_Ratification\\_of\\_ILO\\_Core\\_Conventions.pdf](http://www.uscib.org/docs/US_Ratification_of_ILO_Core_Conventions.pdf) (site visited 30 March 2012); also see Bureau of International Labor Affairs, “United States Department of Labor, ILO Standards”, available at <http://www.dol.gov/ilab/programs/oir/PC-ILO-page2.htm> (30 March 2012).

<sup>92</sup> See Bureau of International Labor Affairs, *ibid.*

<sup>93</sup> See Government of India, “India and the ILO”, available at <http://labour.nic.in/ilas/indiaandilo.htm> (site visited 30 March 2012).

<sup>94</sup> The ILO does not have an impeccable record of commanding allegiance from its members. The United States withdrew from the organization in 1975. The US withdrawal not only had symbolic and strategic significance, it was also important for the funding of the Organization. Some scholars note that the ILO never fully recovered from the shock of US withdrawal from the Organization. See Standing, “The ILO”, *supra* note 18 at 359-362; also see Hughes & Haworth, *International Labour Organisation*, *supra* note 18 at 17; also see Cox, “Labor”, *supra* note 18 at 401-402, 404, 422.

<sup>95</sup> Gary S. Fields, “Decent work and development policies” (2003) 142: 2 *Intl. Lab. Rev.* 239 at 239, 252; also see Hepple, *Labour Laws*, *supra* note 27 at 22; also see Amartya Sen, “Work and rights” (2000) 139: 2 *International Labour Review* 119 at 123-124.

accidents etc., were not made part of the 1998 Declaration. The DW Agenda, by providing for pillars such as productive employment and social protection, incorporates cash standards as an inseparable part of the Agenda. Incorporation of both core standards as well as cash standards as part of the DW Agenda was possible in part because the Agenda did not mandate definite legal obligations (on ILO member-states) and because the Agenda was vaguely stated and couched in aspirational terms. Since member-states were free to decide on the level of cash standards that are suited to their developmental level, the DW Agenda received support from all ILO constituents. The 2008 ILO Declaration on Social Justice for a Fair Globalization eventually gives legal meaning to the DW Agenda as I discuss later. In the following section I discuss the content of the DW Agenda in detail.

### 3.1. The Decent Work Agenda

The DW Agenda was aimed at improving the relevance of the ILO in the international community in the 21<sup>st</sup> century by capturing the disparate ILO functions within a single theme.<sup>96</sup> Addressing varied concerns of the tripartite constituency, ILO programs were dealing with a wide range of issues such as rights at work, employment, enterprise growth, security and protection, development and dialogue etc.<sup>97</sup> These programs were executed as independent distinct programs.<sup>98</sup>

The DW Agenda signified a new regime at the ILO. In his 1999 Report<sup>99</sup> to the International labour Conference, identifying the priorities of the ILO, the Director-General Juan Somavia stated that:<sup>100</sup>

The primary goal of the ILO today is to promote opportunities for women and men to obtain decent and productive work, in conditions of freedom, equity, security and human dignity.

He noted that the DW Agenda is the converging focus of the ILO's strategic objectives and must shape the organization's policies and sketch its international role.<sup>101</sup> This shift

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<sup>96</sup> See Rodgers et al, *1919-2009*, supra note 18 at 222, in particular the Interview of the Director-General.

<sup>97</sup> Ibid at 223.

<sup>98</sup> ILO, *Decent Work*, supra note 6 at 2-3.

<sup>99</sup> Ibid.

<sup>100</sup> Ibid at 3.

<sup>101</sup> Ibid.

in ILO policy, he observed, was mandated by the changes in socio-economic conditions worldwide brought about by globalization in the previous two decades.<sup>102</sup> The DW Agenda was envisaged to overcome two distinct ILO problems: first, the problem of multiple distinct ILO programs without any clear overall agenda; and second, the weakening of a sense of purpose amongst the ILO constituents resulting in diminishing external influence of the organization.<sup>103</sup>

The DW Agenda sought to provide synergy between different ILO programs and the different departments of the ILO.<sup>104</sup> The DW Agenda is a substantive, political, and management strategy of the ILO.<sup>105</sup> It provides for substantive rights of the workers; it promotes a smooth and unified management system within the ILO; and politically, it bridges the concerns of developed and developing countries without mandating ratification of specific standards.<sup>106</sup> The DW Agenda envisages a *comprehensive approach* to ILO work.<sup>107</sup> The Agenda merges legal rights with social goals.<sup>108</sup>

Politically, one of the significant achievements of the DW Agenda is that the Agenda seeks to bridge the gap between formal and informal workers so far as the promotion of decent work is concerned.<sup>109</sup> The ILO's traditional focus has been wage workers in industrialized countries – i.e., workers who are part of an employment

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<sup>102</sup> Ibid at 1.

<sup>103</sup> Ibid at 2-3, 11.

<sup>104</sup> See ILO, *Reducing the Decent Work Deficit: A Global Challenge*, Report of the Director-General, International Labour Conference, 89<sup>th</sup> Session, 2001 (Geneva: ILO, 2001), 33-40, available at <http://www.ilo.org/public/portugue/region/eurpro/lisbon/pdf/rep-i-a.pdf> (site visited 20 may 2012); also see Rodgers et al, *1919-2009*, supra note 18 at 223.

<sup>105</sup> Rodgers, et al, *ibid* at 223.

<sup>106</sup> Ibid at 223. Rodgers et al, notes:

It [the DW Agenda] reflected the concerns of workers with rights at work as well as those of employers around enterprise development, as a major determinant of employment creation. It responded to the needs of developing countries for better ways to embed labour and employment goals in development. At the same time, it offered a way to promote core labour standards in the global economy, which could satisfy industrialized countries without getting trapped in the contentious social clause issue. By making social dialogue a strategic objective, it underlined the particular contribution of the ILO's tripartite process to building consensus on these goals.

<sup>107</sup> Sen, "Work and rights", supra note 95 at 120; also see Gerry Rodgers, "The Goal of Decent Work" (2008) 39: 2 IDS Bulletin 63 at 66; also see generally Ignacy Sachs, "Inclusive development and decent work for all" (2004) 143: 1-2 International Labour Review 161; also see Wisskirchen, supra note 19 at 266-269.

<sup>108</sup> Sen, "Work and rights", *ibid* at 123, 127; also see Amartya Sen, "Human Rights and the Limits of Law" (2006) 27 Cardozo Law Rev 2913 at 2916, 2924.

<sup>109</sup> ILO, *Decent Work*, supra note 6 at 3-4; also see Hepple, *Labour Laws*, supra note 27 at 64; also see Sen, "Work and rights", *ibid* at 120; also see Vosko, supra note 73 at 20-21, 26, 32.

relationship.<sup>110</sup> One of the reasons for the ILO's diminishing influence internationally was the organization's inability to address the problems of informal workers.<sup>111</sup> The DW Agenda was seen as a tool to promote decent working conditions of all workers, formal or informal, taking account of the diverse regional needs for worker welfare.<sup>112</sup> It is necessary to look at the four pillars of the DW Agenda to understand the capacity of the Agenda to fulfil its promises. I briefly look into the founding pillars of the DW Agenda: employment, rights at work, social protection, and social dialogue.

### 3.1.1. Employment

The pillar of productive employment is central to the concept of DW. Employment is a "source of dignity, satisfaction and fulfilment" for workers<sup>113</sup> and it inculcates a sense of participation amongst workers, which is conducive to democracy and political stability.<sup>114</sup> The concept of productive employment suggests that the ILO is concerned not only about employment of any kind; the organization seeks to promote quality employment for all workers.<sup>115</sup>

In furtherance of its goal of full and productive employment, the ILO has pursued a three-pronged policy: first, employment promoting macroeconomic policies; second, an enterprise strategy for employment growth; and third, a labour market strategy to promote equality and access to employment.<sup>116</sup> One of the determinants of productive employment is that workers must be able to develop their skills and capabilities through their employment.<sup>117</sup> The 1999 report of the Director-General pledged to improve the conditions of informal workers through the promotion of employment and productivity in the informal sector.<sup>118</sup> The employment pillar in the DW Agenda refers to all kinds of

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<sup>110</sup> ILO, *ibid* at 3; also see Standing, "The ILO", *supra* note 18 at 357-359.

<sup>111</sup> As many scholars have speculated, this might be one of the reasons that hindered ratification of ILO Conventions by member-states. See Hepple, *Labour Law, Inequality*, *supra* note 43 at 25-28; Langille, "Core Labour Rights", *supra* note 71 at 414, 420, 423; also see Vosko, *supra* note 73 at 20.

<sup>112</sup> ILO, *Decent Work*, *supra* note 6 at 3-5, 9.

<sup>113</sup> Ghai, "Universality and diversity", *supra* note 82 at 11.

<sup>114</sup> ILO, *Decent Work*, *supra* note 6 at 11.

<sup>115</sup> *Ibid.* at 21, 25.

<sup>116</sup> *Ibid.* at 22.

<sup>117</sup> *Ibid.* at 26.

<sup>118</sup> *Ibid.* at 24. The Report notes that the organization will focus on enterprises in order to promote employment for informal workers.

employment including wage employment, self-employment, work from home, and unpaid work done by men and women.<sup>119</sup>

### 3.1.2. Rights at Work

Rights at work constitute the very heart of the concept of DW. Labour rights emanate from ideas of social justice<sup>120</sup> and thus provide the “ethical and legal framework” in furtherance of dignity, equality, and freedom of workers.<sup>121</sup> The Director-General’s 1999 report identifies the 1998 Declaration on Fundamental Principles and Rights at Work as providing for the substantive content to the pillar of rights at work.<sup>122</sup> As part of the DW, workers should have freedom of association and recognition of their right to collective bargaining, freedom from forced work, freedom against child labour, and non-discriminatory treatment at work in furtherance of their overall claim to decent work.<sup>123</sup> Through the DW Agenda, the ILO seeks to promote its labour standards and analyze the compatibility of its labour standards with the informal economy, in order to promote the overall rights at work.<sup>124</sup> The ILO-identified rights at work are principally procedural rights (civil and political in nature) through which substantive rights could be achieved.<sup>125</sup>

However, a limiting factor with the ILO’s conceptualization of rights at work is that it is principally based on the employer-employee model of industrialized developed countries.<sup>126</sup> In this respect, Hepple notes that in the modern economy, much of which involves services and production chains, rights at work can only be realized if the traditional way of conceptualizing them is abandoned, which means that such rights have to be conceptualized beyond the employer-employee relationship.<sup>127</sup> If rights at work could not be conceptualized outside the domain of employment relationship, informal

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<sup>119</sup> Ghai, “Universality and diversity”, supra note 82 at 10.

<sup>120</sup> Bob Hepple, “Rights at work” in Ghai ed, *Decent Work*, supra note 82, 33.

<sup>121</sup> Ghai, “Universality and diversity”, supra note 82 at 7. Also see Hepple, *ibid* at 33.

<sup>122</sup> ILO, *Decent Work*, supra note 6 at 14-17.

<sup>123</sup> *Ibid.* at 14-17.

<sup>124</sup> *Ibid.* at 17-20.

<sup>125</sup> Hepple, “Rights at work”, supra note 120 at 34, 43.

<sup>126</sup> *Ibid* at 38.

<sup>127</sup> *Ibid* at 63-67.

workers not part of an employment contract would perpetually remain outside the scope of such rights.

### 3.1.3. Social Protection

Social protection is the third pillar of the DW Agenda, the aim of which is to safeguard workers from insecurity in relation to a range of contingencies and vulnerabilities.<sup>128</sup> Social protection, if achieved, would significantly enhance workers' capabilities.<sup>129</sup> Calling for reform of social protection systems, the Director-General's Decent Work Report noted that in developing countries the problem is an *inadequate* level of protection available to workers, whereas in industrialized developed countries the concern is the *expensive* social protection system that provides extensive protection to workers.<sup>130</sup> The Report proposed a flexible social protection framework attuned to the necessities and capacities of individual countries and specific trades, including informal economic activities.<sup>131</sup>

Adopting a pluralistic approach, the Report called upon the developing countries to ensure health, safety, and insurance against incapacity or death of its workers, and the developed countries to ensure income security for old age and related protections for their workforce.<sup>132</sup> The report noted that *healthcare coverage, unemployment insurance, and occupational health and safety* are fundamental in allowing workers to enjoy productive employment and decent work.<sup>133</sup> An important aspect of the pluralistic nature of social protection envisaged by the Director-General is social dialogue.<sup>134</sup> The DW Agenda envisages social dialogue as the *modus operandi* in deciding the level and nature of protection that a country can provide.<sup>135</sup> In fact, the pillar of social dialogue runs as a

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<sup>128</sup> Ghai, "Universality and diversity", supra note 82 at 14-15.

<sup>129</sup> Ibid at 14-15.

<sup>130</sup> ILO, *Decent Work*, supra note 6 at 30-32. The report observes that in most developing countries the traditional system of social protection applies to less than 20 per cent of the total workforce; and in sub-Saharan Africa social protection is available to only less than 10 per cent of the population. Additionally, there are persistent problems regarding the implementation of social protection schemes. Such an observation also points towards the inadequacy of the rights-based/resource-specific protection that labour law guarantees without regard to the consequence of such rights or protections. See Ibid at 32-33.

<sup>131</sup> Ibid at 31-33.

<sup>132</sup> Ibid at 32-33, 35-37.

<sup>133</sup> Ibid at 35-37.

<sup>134</sup> Ibid at 31-32.

<sup>135</sup> Ibid at 31-32.

cross-cutting theme through the DW Agenda. Social dialogue is necessary in ensuring productive employment, providing rights at work, and deciding the level of social protection.

#### **3.1.4. Social Dialogue**

The idea of social dialogue is not limited to collective bargaining - social dialogue suggests consultation, sharing of information, negotiation, and discussion amongst social partners. The pillar of social dialogue, an important constituent of the DW Agenda, provides a mechanism to arrive at a consensus, or at least compromise, through democratic deliberation between the stakeholders in the world of work.<sup>136</sup> Social dialogue provides a mechanism to balance bargaining power in the market.<sup>137</sup> The ILO has a tripartite constituency – employers, governments, and workers. Social dialogue within the organization engages this tripartite structure in deciding the policies and priorities of the organization.<sup>138</sup> However, while elaborating upon the social dialogue pillar, the Director-General’s Report calls upon the member-states to engage “other groups” in addition to employers, governments, and workers in policy deliberations and decisions.<sup>139</sup>

The Report notes that the ILO would benefit from the contributions of the civil society, particularly from groups and people engaged in informal sector.<sup>140</sup> Thus, the ILO proposes moving beyond the traditional tripartite dialogue process to incorporate newer and diverse stakeholders and social partners. In view of the complexities of the modern world of work, the Director-General’s Report also calls for innovative trade unionism through the expansion of services rendered by trade unions and through effective collaboration with civil society,<sup>141</sup> something that resonates with the realities of Indian informal workers’ organizations (discussed in chapter 3). The ILO’s goal is to facilitate social dialogue through advocating for the social dialogue pillar, strengthening the

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<sup>136</sup> Ibid at 38-39.

<sup>137</sup> Ghai, “Universality and diversity”, supra note 82 at 18.

<sup>138</sup> Ibid at 18-19.

<sup>139</sup> ILO, *Decent Work*, supra note 6 at 39.

<sup>140</sup> Ibid at 39; also see Ghai, “Universality and diversity”, supra note 82 at 19-21.

<sup>141</sup> ILO, *Decent Work*, ibid at 41.

capacity of social partners, forging links with civil society, and showcasing successful social dialogue initiatives.<sup>142</sup>

### **3.2. ILO Declaration on Social Justice for a Fair Globalization & Decent Work, 2008**

The 2008 ILO Declaration “imparts legal meaning to the concept of ‘DW’ within the ILO.”<sup>143</sup> Before the 2008 Declaration, the DW Agenda was *only* a policy goal, a principle, or an aspirational agenda. At least formally, the 2008 Declaration, by recognizing the DW Agenda, gave legal force to the concept. The DW Agenda has now become an expression of commitment shared by the ILO and the governments, workers, and employers of the ILO member-states. By virtue of being part of the Declaration, the ILO member-states commit themselves to adhere to both the core as well as the cash standards as per the DW Agenda. It is in this sense that the DW Agenda is an addition and a supplement to the 1998 Declaration.

Having conceptualized the DW Agenda, the Director-General’s (and the ILO’s) job was to implement the idea in ILO activities and garner support for the idea globally. Initially, the idea of DW was not even appreciated internally by the ILO; ILO programs ran independently or at the best paid lip service to the Agenda.<sup>144</sup> Over the years the DW Agenda gained acceptance internationally as a policy goal, so much so that the 2005 United Nations World Summit recognized the role of the DW Agenda for fair globalization.<sup>145</sup> The DW Agenda was consolidated and found further legitimacy through the 2008 Declaration on Social Justice for a Fair Globalization.<sup>146</sup>

However, as innovative, influential, and politically successful as the DW Agenda may be, doubts have been expressed as to the exact nature of the DW Agenda.<sup>147</sup> Stakeholders are not sure of the substantive contents of the different DW pillars.<sup>148</sup>

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<sup>142</sup> Ibid at 42.

<sup>143</sup> Maupain, *supra* note 26 at 832; also see Hughes & Haworth, *International Labour Organisation*, *supra* note 18 at 80.

<sup>144</sup> See Rodgers et al, *1919-2009*, *supra* note 18 at 225.

<sup>145</sup> Hughes & Haworth, *International Labour Organisation*, *supra* note 18 at 30, 84; also see Ibid at 225-232.

<sup>146</sup> See *ILO Declaration on Social Justice*, *supra* note 89.

<sup>147</sup> See Rodgers et al, *1919-2009*, *supra* note 18 at 233-235; also see Fields, *supra* note 95 at 239.

<sup>148</sup> See Rodgers et al, *ibid* at 233-235; also see Fields, *ibid* at 239.

Existing statistical systems do not provide adequate data through which DW could be empirically measured.<sup>149</sup> All this contributes to the vagueness of the DW Agenda.<sup>150</sup> Senior ILO officials and policy-makers are themselves not sure of the appropriate import of the DW Agenda.<sup>151</sup> While ILO officials sympathetic to the DW Agenda hold the view that the actual import of the DW Agenda is to be determined by respective member-states and societies that are working with the DW Agenda,<sup>152</sup> ILO officials critical of the DW Agenda hold the view that the DW Agenda is, at best, political rhetoric, devoid of any practical meaning.<sup>153</sup>

One former high-level ILO official, who was closely associated with the processes of formulation of the 1998 Declaration, 2008 Declaration, and the DW Agenda notes:

You might find the DW Agenda mentioned in several international documents published by other international agencies [i.e., other than the ILO]. This should not be taken to mean that the DW Agenda is an extremely successful ILO strategy. The concept is vague – no one knows what it means. In essence the ILO leaves it to the member-states to decide what DW means for their respective jurisdictions.<sup>154</sup>

Another senior ILO staff adds: “Before joining the ILO I thought that people at the ILO would know what the DW Agenda stands for. Once I joined the Organization, I found that everyone is happy to leave it to the member-states to decide what DW means for them.”<sup>155</sup> She was only reiterating the official ILO position, which states: “Decent work

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<sup>149</sup> See Rodgers et al, *ibid.*

<sup>150</sup> *Ibid.*

<sup>151</sup> This observation and the consecutive assertions are based on my interviews with retired and senior ILO officials who were and are directly involved in the policy-making process within the ILO. I had interviewed ILO officials in New Delhi and Geneva during April to October 2011.

<sup>152</sup> The 2008 Declaration leaves it to the ILO member-states to develop appropriate indicators to determine the substantive import of DW in their countries, and if necessary, seek ILO assistance in this regard. See Paragraph C, Part I: Scope and Principles; Paragraph A, Part II: Method of Implementation, of the 2008 *ILO Declaration on Social Justice*, *supra* note 89.

<sup>153</sup> Interview with senior ILO Official of P4 level at the ILO, Geneva, on 10<sup>th</sup> October 2011.

<sup>154</sup> Interview with a recently retired high-level ILO Official, 21 October 2011, in Geneva, Switzerland; also see Standing, “The ILO”, *supra* note 18 at 368; also see Shelley Marshall, (undated) “Main Findings Concerning the Role of Labour Law in Promoting Decent Work” in *Promoting Decent Work: The Role of Labour Law* (in file with author).

<sup>155</sup> Interview with an ILO Official, 24 October 2011, in Geneva, Switzerland.

is not defined in terms of any fixed standard or monetary level. It varies from country to country. But everybody, everywhere, has a sense of what decent work means ...<sup>156</sup>

Commentators point out that this flexibility might instigate trade-offs between different DW pillars, which might adversely affect workers interests. Rodgers et. al. identify an important conceptual dilemma of the DW Agenda:<sup>157</sup>

[T]he extent to which there are trade-offs between different DW goals needs to be better explored. To state, as the 2008 Declaration does, that the goals are mutually supportive is perfectly accurate as a political objective, because it is the fact that this is a package which makes it acceptable to all and therefore politically viable. But it is obviously not true of all relationships and in all situations; more social protection can be at the expense of employment, if it is not designed with the interrelationships in mind.

Even though the DW Agenda suffers from vagueness and allows leeway to member-states to determine the nature and scope of protection afforded to workers, the Convention-based international labour standards regime is ill-suited for workers engaged in informal economic activities.<sup>158</sup> ILO Conventions are primarily targeted towards formal workers employed in an industry. Accordingly, the 1998 Declaration and the DW Agenda allow flexibility to governments of member-states to promote informal workers' interests. While this flexibility has the risk of allowing member-states to escape responsibility and accountability internationally, such flexibility can be beneficially used by stakeholders in the domestic context of the ILO member-states.<sup>159</sup>

In this sense, Sen argues that the DW Agenda signifies the beginning of a truly global approach<sup>160</sup> to labour regulation that concerns people, rather than an international approach that concerns nations.<sup>161</sup> The pillars of the DW Agenda are particularly enabling in furtherance of improving conditions of informal workers. The DW Agenda

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<sup>156</sup> Juan Somavia, "Decent Work in the Global Economy", Vigyan Bhawan, New Delhi, 18 February 2000, available at <http://www.ilo.org/public/english/bureau/dgo/speeches/somavia/2000/delhi.htm> (site visited: 25 March 2012); also see Rodgers, "The Goal", supra note 107 at 66-67; also see Juan Somavia, "Promoting the MDGs – The Role of Employment and Decent Work" (2007) 4 UN Chronicle 28 at 30.

<sup>157</sup> See Rodgers et al, *1919-2009*, supra note 18 at 234; also see Rodgers, "The Goal", ibid at 67.

<sup>158</sup> Rodgers et al, *1919-2009*, ibid at 16.

<sup>159</sup> See Blackett, supra note 79 at 230, 243-244; also see Rodgers, "The Goal", supra note 107 at 67.

<sup>160</sup> Sen, "Work and rights", supra note 95 at 127. In the same vein, Leah Vosko notes that the DW Agenda opens up a transnational space, which could be beneficially used to challenge the ILO's hegemonic practices. See Vosko, supra note 73 at 20.

<sup>161</sup> Sen, ibid at 120, 127-128; also see Sachs, supra note 107 at 180.

encourages informal workers themselves to become active participants in the improvement of their working conditions and living standards.<sup>162</sup> The social dialogue pillar of the DW Agenda envisages participation of stakeholders in the policy-making process, and promotes responsibility and accountability of governments to domestic stakeholders (instead of the international community). Hepple indicates that the framework of rights established through social dialogue is an appropriate substitute for harmonization of labour law.<sup>163</sup>

While the DW Agenda provides for a flexible approach that could be beneficial for informal workers, the danger of trade offs inherent in the Agenda (pointed out by Rodgers et al) could not be totally ignored.<sup>164</sup> However, the DW Agenda has an inbuilt mechanism that restricts the governments of the member-states from having a free reign on labour standards. The social dialogue pillar provides for the inbuilt check and balance system in the DW Agenda.<sup>165</sup> The social dialogue mechanism is capable of determining the content of the otherwise flexible DW Agenda.<sup>166</sup> The social dialogue pillar of the DW Agenda envisages a much broader democratic agenda than the traditional ILO tripartite dialogue process.<sup>167</sup> In the following section, I analyze the social dialogue pillar and ascertain its relevance in enhancing capabilities of informal workers.

#### 4. Social Dialogue Pillar and Integrated Institutions

The concept of social dialogue is central for the achievement of *decency* in work.<sup>168</sup> Sarosh Kuruvilla asserts that the ILO's conceptualization of social dialogue is

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<sup>162</sup> Blackett, *supra* note 79 at 230, 243-244.

<sup>163</sup> Hepple, *Labour Laws*, *supra* note 27 at xii-xiii; also see Sen, "Human Rights", *supra* note 108 at 2925, 2927; also see Deakin, "The Contribution", *supra* note 43 at 172-173.

<sup>164</sup> Gary S. Fields notes that one of the principal operational goals of the DW Agenda needs to be the resolution of the trade-off between quantity and quality of employment by appropriate policy mechanisms. See Fields, *supra* note 95 at 244-246.

<sup>165</sup> ILO, *Decent Work*, *supra* note 6 at 7.

<sup>166</sup> Vosko, *supra* note 73 at 26.

<sup>167</sup> See Maupain, *supra* note 26 at 835-839.

<sup>168</sup> See Jean-Michel Servais, "Globalization and decent work policy: Reflections upon a new legal approach" (2004) 143: 1-2 *International Labour Review* 185 at 186; also see Sen, "Work and rights", *supra* note 95 at 125-126; also see Sen, "Human Rights", *supra* note 108 at 2925, 2927; also see Tayo Fashoyin, "Tripartite cooperation, social dialogue and national development" (2004) 143: 4 *International Labour Review* 341 at 341-342, 344; also see Sachs, *supra* note 107 at 180-181; also see Rodgers, "The Goal", *supra* note 107 at 67; also see Somavia, "Promoting the MDGs", *supra* note 156 at 30; also see Guy Standing, *Beyond the New Paternalism – Basic Security as Equality* (London & New York: Verso, 2002) at 264.

rooted in the traditional bipartite and tripartite frameworks.<sup>169</sup> Kuruvilla identifies four limitations of the social dialogue framework promoted by the ILO. First, he argues that the bipartite and tripartite social dialogue mechanisms exclude all other actors (such as civil society) in the dialogue process except the representatives of employers, employees, and the government.<sup>170</sup> Second, the collective bargaining envisaged by the ILO might not be able to influence policies at the national political level.<sup>171</sup> Third, a representative focus on social dialogue is a limiting factor because a significant number of workers (and some employers) are never represented in social dialogue mechanisms.<sup>172</sup> Finally, the implied assumption that an employment relationship is necessary for social dialogue to operate excludes workers (mostly informal workers) who do not have an explicit employment relationship.<sup>173</sup>

Although Kuruvilla identifies some limitations with the ILO's social dialogue framework, such as the limited scope of dialogue and the involvement of social partners, he fails to mention some positive aspects of the social dialogue pillar promoted by the ILO. The ILO at least formally recognizes some of the problems with the social dialogue concept and seeks to address them. In a leaflet published by the Social Dialogue Sector of the Organization,<sup>174</sup> the ILO identifies the purposes of social dialogue: consultation, negotiation, collective bargaining, employment, equality, inclusion.<sup>175</sup>

Even though consultation, negotiation, and collective bargaining remain the core of ILO conceptualization of social dialogue, the Organization also envisages equality and inclusion in the dialogue process. Thus, at least formally, the ILO recognizes dialogue to be conversation or discourse, which are wider concepts than negotiation or collective bargaining. Moreover, the 1999 Report of the Director-General<sup>176</sup> notes that “[t]he State has an important role in enabling and fostering all forms of social dialogue. It needs to

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<sup>169</sup> Sarosh Kuruvilla, “Social dialogue for decent work” in Ghai ed, *Decent Work*, supra note 82, 175 at 175-180; also see Fashoyin, *ibid* at 341, 343-345, 362; also see Hepple, *Labour Laws*, supra note 27 at 53; also see “Perspectives: Towards a policy framework for decent work” (2002) 141: 1-2 *International Labour Review* 161 at 173.

<sup>170</sup> Kuruvilla, *ibid* at 175-176, 180-183.

<sup>171</sup> *Ibid*.

<sup>172</sup> *Ibid*.

<sup>173</sup> *Ibid*; also see Cox, “Labor”, supra note 18 at 422-423.

<sup>174</sup> ILO, *InFocus Programme on Strengthening Social Dialogue*, Social Dialogue Sector (Geneva: ILO, undated).

<sup>175</sup> *Ibid*; also see Fashoyin, supra note 168 at 344, 346-347.

<sup>176</sup> ILO, *Decent Work*, supra note 6.

create an affirming environment in which the contributions of employers, workers, and other groups are solicited and valued.”<sup>177</sup> Thus, the ILO does recognize the significance of *civil society* and *other groups*<sup>178</sup> as participants in the social dialogue process in addition to governments, employers, and workers. However, at its very core the ILO remains a tripartite organization.<sup>179</sup>

Even though the ILO boasts of its tripartite composition,<sup>180</sup> tripartism is also a weakness of the Organization, especially in the context of informal workers.<sup>181</sup> Informal workers do not fit within the tripartite ILO framework because workers engaged in informal economic activities are mostly unorganized.<sup>182</sup> Because of the ILO’s (tripartite) structural limitation informal workers are not represented in ILO policy-making.<sup>183</sup> Even though the Organization is trying to improve this situation by reaching out to NGOs,<sup>184</sup> the constituents of the Organization object to ceding representation space to civil society or NGOs.<sup>185</sup> Workers’ and employers’ representatives argue that NGOs are non-representative and unaccountable organizations, and therefore, incapable of representing informal workers in the ILO.<sup>186</sup>

As a result of pressure exerted on the ILO by its constituents, the 2008 ILO Declaration categorically frames social dialogue as a tripartite affair between the representatives of governments, employers, and workers.<sup>187</sup> The ILO website further points out that a social dialogue framework is a country-specific affair and can be either informal or institutional, or a combination of both, and can be practiced at the enterprise level, regional level, or national level.<sup>188</sup> However, in all its versions, it is a process that

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<sup>177</sup> Ibid. at p 39.

<sup>178</sup> Ibid at pp.39-40.

<sup>179</sup> See ILO, “Social Dialogue”, supra note 6.

<sup>180</sup> See Morse, supra note 1 at 40-41; also see Hughes & Haworth, *International Labour Organisation*, supra note 18 at xvi, 3, 5, 21-23, 41; Van Daele, supra note 27 at 485-486.

<sup>181</sup> See Hepple, *Labour Laws*, supra note 27 at 53-54; also see Rodgers et al, *1919-2009*, supra note 18 at 17; also see Van Daele, *ibid* at 507.

<sup>182</sup> See Hepple, *ibid* at 11, 53; also see Rodgers et al, *ibid*.

<sup>183</sup> Hepple, *ibid*; also see Rodgers et al, *ibid*.

<sup>184</sup> See Rodgers et al, *ibid* at 17-18.

<sup>185</sup> *Ibid*; also see Standing, “The ILO”, supra note 18 at 373.

<sup>186</sup> Rodgers et al, *ibid*.; also see Hepple, *Labour Laws*, supra note 27 at 53-54.

<sup>187</sup> See the Preface, the Preamble, and Paragraph A (iii), Part I: Scope and Principles, of the *ILO Declaration on Social Justice*, supra note 89.

<sup>188</sup> ILO, “Social Dialogue”, supra note 6.

involves either tripartism or bipartism.<sup>189</sup> Social dialogue, seen in such a way, raises serious problems of participation and democracy amongst the stakeholders related to informal economic activities. To make social dialogue a participatory democratic process for informal workers, it must be envisaged in such a manner that allows participation beyond the tripartite structure and outside the enterprise model.<sup>190</sup> Next, I discuss a multiple (integrated) institutional framework to help achieve this purpose.

#### 4.1. Integrated Institutions in furthering social dialogue

The ILO has occasionally resorted to *ad hoc* tripartism-plus social dialogue mechanisms.<sup>191</sup> In its official publications the organization also showcases successful tripartism-plus social dialogue mechanisms practiced in its member-states. In one of the ILO publications relating to the InFocus Programme on social dialogue, L. Héthy describes the social dialogue process practiced in Hungary after its transition from communism to democracy.<sup>192</sup> The Interest Reconciliation Council (IRC), established by the last communist government, constituted the country's tripartite framework, wherein workers, employers, and the government would discuss and negotiate labour relations, drafts of labour laws, and other economic and social issues of national significance.<sup>193</sup> However, Héthy notes that after 1998 the tripartite dialogue mechanism has increasingly failed to represent the diversity of interests that exist in Hungary in the post-communist era.<sup>194</sup>

Accordingly, during this time the socialist-liberal government of the country began conducting a wide range of informal consultations outside the tripartite framework.<sup>195</sup> A wide range of participants were consulted in the informal dialogue process, which included the Council for the Elderly, the Council of Children and Young People,<sup>196</sup> a Social Council,<sup>197</sup> groups of differently-abled people, unemployed persons'

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<sup>189</sup> Ibid.

<sup>190</sup> Servais, supra note 168 at 186.

<sup>191</sup> See Vosko, supra note 73 at 24, 34-36, 38-39.

<sup>192</sup> L. Héthy, *Hungary: Social Dialogue within and outside of the framework of tripartism*, InFocus Programme on Strengthening Social Dialogue, WP. 4 (Geneva: ILO, 2000).

<sup>193</sup> Ibid at 2, 9.

<sup>194</sup> Ibid at 1, 17-18.

<sup>195</sup> Ibid at 18-20.

<sup>196</sup> Interestingly enough these Councils were set up and chaired by the Prime Minister of Hungary. See *ibid* at 20.

groups, women's organizations etc.<sup>198</sup> The tripartite-plus consultation complemented the existing tripartite dialogue mechanism.<sup>199</sup> In recent decades, the government of the country has established new institutions to provide tripartism-plus dialogue processes.<sup>200</sup>

Tripartism-plus initiatives for social dialogue together with collective action are increasingly practiced in other parts of Europe too. European trade unions are building alliances with NGOs and community organizations in furtherance of atypical workers' interests.<sup>201</sup> French trade unions collaborated with NGOs and student organizations in their campaign against the government.<sup>202</sup> Likewise, trade unions in the Netherlands, the UK, and Germany are engaging with NGOs and community organizations in their struggle for workers' interests.<sup>203</sup> Outside Europe, the tripartism-plus social dialogue mechanism is practiced in Panama, for example.<sup>204</sup>

However, the informal tripartism-plus-discussions approach drew criticism of being undemocratic and non-representative, because the entities involved in the process were not always public or democratic in nature.<sup>205</sup> While it may be true that private groups such as the NGOs and other community organizations may not be democratic in character, it is also true that some of these groups do actually represent substantial numbers of workers (mainly informal or atypical) that remain outside the tripartite (or bipartite) social dialogue process.<sup>206</sup> It is also widely observed that the trade unions, in their present dispensation, do not represent a large section of informal workers.<sup>207</sup> In the

<sup>197</sup> The Social Council is operated by the Ministry of Public Welfare. See *ibid* at 20.

<sup>198</sup> *Ibid* at 20.

<sup>199</sup> *Ibid* at 18-20.

<sup>200</sup> *Ibid* at 22-23.

<sup>201</sup> Rebecca Gumbrell-McCormick, "European trade unions and 'atypical' workers" (2011) 42: 3 *Industrial Relations Journal* 293 at 305.

<sup>202</sup> *Ibid*.

<sup>203</sup> *Ibid* at 305-307.

<sup>204</sup> Fashoyin, *supra* note 168 at 357-360.

<sup>205</sup> See generally Gumbrell-McCormick, *supra* note 201 at 293-310; also see generally Héthy, *supra* note 192; also see generally ICFTU, *Building Workers' Human Rights into the Global Trading System* (Geneva: ICFTU, 1999); also see generally Natacha David, *Worlds Apart: Women and the Global Economy* (Geneva: ICFTU, 1996).

<sup>206</sup> The Self Employed Women's Association (SEWA) in India has 1,256,944 members (2009 membership) across India. See <http://www.sewa.org/> (site visited 20 May 2012); also see The Chintan Environmental Research and Action Group, at <http://www.chintan-india.org/> (site visited 20 May 2012); also see Kagad Kach Patra Kashtakari Panchayat (KKPKP), at <http://www.wastepickerscollective.org/> (site visited 20 May 2012).

<sup>207</sup> Fashoyin, *supra* note 168 at 361-362, 365-366.

absence of a tripartism-plus social dialogue process, the interests of these informal workers are never adequately represented in policy circles.

Such non-representation in policy formulation not only goes against the democratic ethos of industrial (production) relations, it seriously and perpetually hinders development and equality of capabilities of workers engaged in the economy. Enhancement of capability for workers entails that workers are free to be (or to do) what they choose to be (or to do). Capability enhancement would therefore require that appropriate circumstances are created so that workers can exercise their choices. Thus, any mechanism proposing to enhance capabilities for informal workers (or, for that matter, for all workers) should allow participation by the workers at various levels of dialogue. Hence, it is not surprising that Hepple advocates “a wide range of methods of participation including consultation rights” for workers.<sup>208</sup> It is because of the connection between development of capabilities and social dialogue, that Sen holds *democratic participation* central to his idea of enhancement of capabilities.<sup>209</sup>

Democratic participation in the social dialogue process must be actual, rather than formal. An actual social dialogue process in the world of work needs to take account of all stakeholders involved.<sup>210</sup> What this would mean in the context of informal economic activities is that all informal workers, irrespective of their employment status or union membership, must be part of the social dialogue process. This is merely the minimum requirement for a successful social dialogue process for informal economic activities. Social dialogue for informal economic activities also needs to involve a plethora of other social actors in the dialogue process.<sup>211</sup>

Realizing that for informal workers there are serious problems of participation in social dialogue through the tripartite framework, the 1999 ILO Report calls upon the state to take a central role in facilitating social dialogue.<sup>212</sup> It is not clear from the ILO Report if the term “state” is used as synonymous to government. However, state means more

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<sup>208</sup> Bob Hepple, “The Future of Labour Law” (1995) 24: 4 Industrial Law Journal 303 at 321; also see Servais, *supra* note 168 at 188; also see Fashoyin, *ibid* at 362, 365-368.

<sup>209</sup> Amartya Sen, *Development as Freedom* (New York: Alfred A. Knoph, 1999) at 148, 152-159; Amartya Sen, *The Idea of Justice* (Cambridge: Harvard University Press, 2009) at 327, 335-337, 345-348.

<sup>210</sup> See Servais, *supra* note 168 at 189, 196.

<sup>211</sup> See *ibid* at 189-191, 202-204.

<sup>212</sup> ILO, *Decent Work*, *supra* note 6 at 39.

than the government – government is only a part of the state.<sup>213</sup> On the other hand, civil society includes more groups than simply trade unions. Based on Dréze and Sen's reflection, as I discussed in chapter 4, a democratic society would consist of the institutions of government, council of ministers, members of parliament and legislative assemblies, judiciary, legislature, opposition parties, media, political parties, law enforcement machinery, trade unions, NGOs, etc.<sup>214</sup> While some of these institutions are part of the state, others are institutions that interact with state institutions. It is important to note that these institutions of a democratic society exercise countervailing power over each other, thereby balancing the state machinery in a democratic polity. In the tripartism-plus experience in Hungary, the government takes a proactive role in identifying and incorporating a variety of representative bodies in the social dialogue framework. The focus in the Hungarian example is on representative bodies. Since informal workers are not always part of a representative body, the challenge remains as to how to integrate un-organized informal workers into the social dialogue process. I address this issue in the next section.

#### **4.2. Social Dialogue for Un-Organized Informal Workers**

As noted earlier, there are problems with social dialogue for informal economic activities if only representative bodies (such as trade unions or NGOs) are allowed to become part of the social dialogue framework. A significant number of informal workers (either because of the nature of their activities, or because of their ignorance) are not part of a group or organization. If social dialogue were to be the prerogative only of representative bodies, informal workers without representation would be excluded from such frameworks. Thus, to formulate a successful social dialogue framework, the idea of representation needs rethinking. In an ideal situation, informal workers should participate in the social dialogue process through their membership-based representative organization. No other representation mechanism could, perhaps, substitute representation through membership-based organization. However, in absence of membership-based organizations of informal workers, I propose an alternative

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<sup>213</sup> See Jean Dréze & Amartya Sen, *India Development and Participation* (New Delhi: Oxford University Press, 2002) at 20. I have discussed this aspect in chapter 4.

<sup>214</sup> *Ibid.*

mechanism for integrating informal workers into the social dialogue process. I propose this mechanism as an alternative to, but not as a substitute for, membership-based organizations of informal workers.

Even though informal workers (mostly self-employed informal workers) are outside the trade union-based representative system, they are not outside of the economy or of the society. These workers extensively take part in the socio-economic-political life of the community. As part of their regular day-to-day activities, informal workers interact with a number of different institutions in a democratic society. Some of the institutions of a democratic society with which informal workers are in regular interaction are: law enforcement officials, media, local politicians, local administration (of a municipality etc.), and NGOs. Many of these institutions could be of vital importance in reaching out to informal workers who do not have appropriate representation.

Thus, in situations of non-representation and under-representation of informal workers in the social dialogue framework, the *integrated institutions*<sup>215</sup> of the democratic society should be brought into action. Governments and legislature(s) need to involve any or all institutions in the social dialogue process which has an interface with informal workers.<sup>216</sup> In India, there have been at least two instances where university professors have organized informal workers.<sup>217</sup> Accordingly, universities or research institutions could also be thought of as social partners in the dialogue process. Law enforcement officials are sometimes the source of harassment and threat for informal workers.<sup>218</sup> However, as I will discuss in chapters 7 and 8, there is immense potential for law enforcement officials to become partners of informal workers in the social dialogue process. For this potential to be realized it might, however, require some legislative initiatives to ensure that work by informal workers is not criminalized or ethically degraded. Then there are NGOs who work with one group of informal workers or another

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<sup>215</sup> Integrated institutions mean multiple institutions that constitute a democratic society. A democratic society includes a government, and many more institutions such as political parties, opposition, media, judiciary, and NGOs. See Sen, *Development*, supra note 209 at xii-xiii; also see John Alexander, *Capabilities and Social Justice – The Political Philosophy of Amartya Sen and Martha Nussbaum* (Farnham & Burlington: Ashgate, 2008) at 457; also see *Ibid*.

<sup>216</sup> See Servais, supra note 168 at 191.

<sup>217</sup> The KKP in Pune organised waste-pickers, and the BPSSS in Kolkata organised waste-pickers.

<sup>218</sup> Almost all waste-pickers I had interviewed in Kolkata either had an unpleasant experience with Law Enforcement Officials, or were apprehensive of the role of these officials. Informal workers identify Police as responsible for many of their harassment and eviction.

in different dimensions: NGOs working with the homeless necessarily work with rickshaw-pullers or waste-pickers; NGOs working with children necessarily work with child labour in street vending; NGOs working with environmental issues interface with waste-pickers. Moreover, informal workers are participants in the political process of the democratic polity – they regularly interact with local politicians and administrators. Thus, even though informal workers may not be organized in the traditional sense, they could be effectively reached through proactive policies because these workers are not hidden from the economy or the polity.

The state needs to institute a policy, backed up by legislative guarantees, that facilitates social dialogue amongst all stakeholders engaged in informal economic activities. Such legislative guarantees should enable any institution of a democratic society to initiate and promote social dialogue, provided that the interests of the informal workers are involved. Integrated institutions of the democratic society must enjoy *democratic equality*<sup>219</sup> during the dialogue process, in the sense that each one of them is respectful of the others during the process (I explore more on this aspect in the next chapter). Integrated institutions, such as NGOs, the media, Members of Parliament, Members of Legislative Assembly, local politicians, or activists, including university professors, can exert pressure on the government of the day to engage in the dialogue process with an open mind and with a view to providing entitlements to workers. It can be a complex process that needs subtle planning and honest execution. However, if an effective social dialogue mechanism involving informal workers is to be achieved, such a framework needs to be a legally-guaranteed, broad-based one. Accordingly, labour law for informal economic activities needs to emanate from the broad-based social dialogue process involving integrated institutions capable of promoting capabilities of informal workers, something that I discuss in subsequent chapters.

What are the substantive aspects of an effective legally-guaranteed social dialogue process? In other words, what must be the subject-matter of the dialogue process? As I have pointed out earlier, social dialogue involving informal economic activities needs to take place at different levels. At the first level, dialogue should aim to find out what

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<sup>219</sup> Elizabeth S. Anderson, “What is the Point of Equality?” (1999) 109: 2 Ethics 287 at 313. I elaborate on this aspect in chapter 6.

informal workers want, which means that constituents of integrated institutions should interrogate the valuable capabilities of informal workers, i.e. what do informal workers want to do or to be? Once the valuable capabilities of informal workers are identified, the next level of dialogue needs to consider how informal workers can be enabled to achieve the identified capabilities. This level would require appropriate institutional frameworks that ensure social, economic, political, and cultural circumstances aimed at helping convert characteristics into capabilities for workers.<sup>220</sup>

In chapter 6, I will chart a labour law framework for the informal economic activity of waste-picking using the background of social dialogue and conceptualizing capabilities within the *space of participants in the system of co-operative production*.<sup>221</sup> I will use the informal economic activity of waste-picking to demonstrate the nature of a new labour law, because waste-picking is one of the most marginalized of all informal economic activities. It is also performed at the edges of legality. It is generally undertaken by the most unskilled of all workers and is mostly devoid of any choice on the part of the workers. Therefore, if a new labour law framework could be conceptualized for waste-pickers, it is possible that such a framework might work for other informal workers too.

Chapter 7 is based on my fieldwork on waste-pickers, conducted during the months of March 2011 to July 2011 in Kolkata (Calcutta) in India. Before moving on to that chapter it is necessary to determine an analytical framework with reference to which the case study will be analyzed. There are two frameworks through which my case study of waste-pickers could be analyzed within the scope of my overall study: the analytical framework of the DW Agenda and the capability approach framework. I discuss the efficacy of each of these frameworks in the following section.

## **5. Choice of Framework for the analysis of work-lives of waste-pickers in Kolkata: Decent Work Agenda or the capability approach Framework**

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<sup>220</sup> Sen, *Development*, supra note 209 at 74; also see Amartya Sen, “Capability and Well-Being” in Martha Nussbaum & Amartya Sen, eds, *The Quality of Life* (Oxford: Oxford University Press, 1993) 30 at 44; also see Jude Browne, Simon Deakin & Frank Wilkinson, “Capabilities, social rights and European market integration” in Robert Salais & Robert Villeneuve eds, *Europe and the Politics of Capabilities* (Cambridge: Cambridge University Press, 2004) at 211.

<sup>221</sup> Anderson, supra note 219 at 317-318.

The DW Agenda is set at a highly ambitious conceptual level of productive employment, rights at work, social protection, and social dialogue. Accordingly, an analysis of decent work deficit needs to determine deficit in terms of these DW pillars. The informal activity of waste-picking, on the other hand, is one of the most precarious and exploitative of all economic activities. Waste-pickers are the most vulnerable of all workers; waste-picking is a matter of subsistence for these workers. Therefore, the DW pillars, as they are articulated at the conceptual level, are a far stretch for waste-pickers. The productive nature of employment, the rights available at the workplace, or the social protection arising from their status as workers are a far cry in concrete terms for waste-pickers. Concerns at the level of informal economic activities such as waste-picking relate more to basic capabilities and resources rather than pillars associated with the DW Agenda.

As I discuss earlier in this chapter, the DW Agenda is a highly flexible agenda, capable of many interpretations. Likewise, the capability approach is also a flexible concept (as discussed in chapter 4). The objective of the DW Agenda is to promote “people’s well-being.”<sup>222</sup> DW “can pave the way for broader social and economic advancement, strengthening individuals, their families and communities.”<sup>223</sup> The Agenda seeks to further “aspirations of people in their working lives.”<sup>224</sup> The capability approach, on the other hand, provides a sophisticated understanding of individual well-being and agency.<sup>225</sup> According to Sen, individual development and well-being could be measured in terms of actual freedom that an individual has to choose the kind of life she wants to lead.<sup>226</sup> In this sense of the individual development, which permeates social, economic, and individual advancement (which is also the objective of the DW Agenda), the DW pillars need to promote conditions in which workers can choose the kind of life they want to lead. Since the DW Agenda seeks to further aspirations of people in their working lives, the Agenda too furthers the same choice-based normative goal that underlies the capability approach. Therefore, the pillars of the DW Agenda could be seen as the

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<sup>222</sup> See ILO, *Decent work agenda – Promoting Decent work for all*, available at <http://www.ilo.org/global/about-the-ilo/decent-work-agenda/lang--en/index.htm> (site visited 11 August 2012).

<sup>223</sup> Ibid.

<sup>224</sup> Ibid.

<sup>225</sup> Sen, *Development*, supra note 209 at 74-75.

<sup>226</sup> Ibid at 18, 74-75.

sources of conversion factors,<sup>227</sup> which help convert individual characteristics into capabilities of workers.

However, despite the compatibility of the DW Agenda and the capability approach, the major difference between the two concepts lies in their respective scope or coverage. While the normative goal of the DW Agenda is promotion of aspirations of people in their *working lives*, the capability approach seeks to promote capabilities of individuals beyond their working lives. In promoting aspirations of people, the DW Agenda aims to secure the four pillars in their working lives. The capability approach, on the other hand, takes account of all factors (resources, environment, culture, individual physical features, social conditions, political structure) in promoting individual capabilities. In this comparative backdrop of the two concepts it is useful to take stock of the analytical and measurement indices developed under the two concepts in order to ascertain the appropriate framework for the analysis of working conditions and living standards of waste-pickers in India. I begin with the discussion of the DW indicators.

The ILO's DW measurement indicators are divided into groups of main indicators, additional indicators, economic and social context indicators, and legal framework indicators.<sup>228</sup> The list<sup>229</sup> is also open to future indicators to be developed by the ILO.<sup>230</sup> The ILO official list closely resembles the list of indicators developed by Anker et. al.<sup>231</sup> Accordingly, the ILO DW index is principally based on rates, ratios, and available quantitative data.<sup>232</sup> However, the ILO claims that indicators measuring social dialogue are based on qualitative data and method.<sup>233</sup> But one fails to understand how

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<sup>227</sup> See Amartya Sen, *Commodities and Capabilities* (Amsterdam & New York: North Holland, 1985) at 13; Ingrid Robeyns, "The Capability Approach: a theoretical survey" (2005) 6: 1 *Journal of Human Development* 93 at 99; also see Sen, *Development*, *ibid* at 74.

<sup>228</sup> See "Revised Office proposal for the measurement of decent work based on guidance received at the TME on the Measurement of Decent Work" (to be read in conjunction with the Discussion Paper and the detailed comments made by experts as reflected in the Chairperson's report), available at [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/meetingdocument/wcms\\_115402.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/meetingdocument/wcms_115402.pdf) (site visited 19 November 2011).

<sup>229</sup> *Ibid*. Some of the indicators in the ILO list are: employment-to-population ratio, unemployment rate, unemployment insurance, low pay rate, statutory minimum wage, child labour, occupational segregation by sex, anti-discrimination law based on sex of worker, occupational injury rate, union density rate etc.

<sup>230</sup> *Ibid*.

<sup>231</sup> See Richard Anker et al, "Measuring decent work with statistical indicators" (2003) 142: 2 *International Labour Review* 147 at 151-152.

<sup>232</sup> *Ibid* at 154-168.

<sup>233</sup> See ILO, "Measurement of Decent Work", Discussion paper for the Tripartite Meeting of Experts on the Measurement of Decent Work, 8-10 September 2008, TMEMDW/2008 at Paragraph 12 p 4 (Geneva: ILO,

indicators such as union density rate, enterprises belonging to employer organization, collective bargaining coverage rate, number of strikes and lockouts, or the rate of days not worked etc.,<sup>234</sup> which are all measurement of social dialogue, could qualify to be qualitative indicators! Such emphasis on quantitative indicators also characterizes the DW measurement indicators developed by other scholars.<sup>235</sup>

Thus, the ILO's DW measurement indicators suffer from serious shortcomings so far as measuring aspirations and deprivations of informal workers are concerned. The indicators are primarily based on quantitative data that are officially available. Quantitative measurement of existing data excludes informal workers from its scope because informal workers are not documented in most jurisdictions (discussed in earlier chapters). Moreover, quantitative method forbids a DW Agenda-based analysis of work-life situation of workers engaged in informal economic activities, as discussed presently. The DW Agenda proposes to analyze (measure) the extent of security at work and workplace. Such measurement/analysis is to be conducted on the basis of available quantitative data, as envisaged by the ILO. Measuring DW only on the basis of quantitative data misses the subtle range of insecurities that creep into everyday work-life experiences of workers. DW measurements are also biased towards formal work relations characterized by employment contracts. Therefore, because of methodological limitations and preconceived biases (towards employment relationship-based work), DW measurement tools would fail to answer questions relevant to informal workers, such as what conditions necessitated a waste-picker (informal worker) to resort to his present work, or what are the problems associated with work-site access for waste-pickers. The quantitative method is designed to answer questions like: how many waste-pickers are there in a country, or how many government schemes are applicable to waste-pickers?

However, the Chairperson's Report on the Tripartite Meeting of Experts on the Measurement of Decent Work in 2008 specifies that the ILO DW index needs to be read

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2008), available at [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/meetingdocument/wcms\\_100335.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/meetingdocument/wcms_100335.pdf) (site visited 19 November 2011).

<sup>234</sup> See "Revised Office proposal", supra note 228 at 3.

<sup>235</sup> Florence Bonnet, Jose B. Figueiredo & Guy Standing, "A family of decent work indexes" (2003) 142: 2 *International Labour Review* 213; Guy Standing, "From People's Security Surveys to a Decent Work Index" (2002) 141: 4 *International Labour Review* 441.

along with the Discussion Paper prepared for the Tripartite Meeting.<sup>236</sup> The Discussion Paper *inter alia* provides that apart from work and workplace related indicators, the DW Agenda must be concerned with income, medical care, nutrition, housing, child welfare, education, recreation, culture, and overall development-related indicators.<sup>237</sup> These indicators, along with other strictly work-related indicators (discussed above), shift the focus of the DW Agenda from a work-centred strategic concept to a developmental policy mechanism.

With this shift from a strictly work related concept to a development paradigm, the DW Agenda moves closer to the capability approach. According to the ILO, labour productivity, inflation, education, and income inequality are all part of the DW indicators.<sup>238</sup> These indicators would reflect wage increases, capability promotion, enterprise development, and economic growth of a society.<sup>239</sup> The abovementioned indicators could very well be part of the capability approach if those promote individual capabilities. In fact, the United Nations Development Programme's (UNDP) Human Development Index, which is based on the capability approach, evaluates country-level human development in terms of some of the indicators, such as education and income pointed out by the ILO.<sup>240</sup>

Many of the criticism levelled against the different indicators seeking to measure DW could also be leveled against the UNDP's Human Development Indicators. The Human Development Index is primarily based on four indicators: *life expectancy at birth*, *mean years of schooling*, *expected years of schooling*, and *gross national income per capita*.<sup>241</sup> Thus, the Human Development Index too is based on quantitative indicators for the purpose of country-level comparison of human development.<sup>242</sup> Even though the

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<sup>236</sup> ILO, Tripartite Meeting of Experts on the Measurement of Decent Work, 8-10 September 2008 (Geneva: ILO), at p 28 (Appendix 1), available at [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/meetingdocument/wcms\\_099764.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/meetingdocument/wcms_099764.pdf) (site visited 19 November 2011). Also see ILO, "Measurement of Decent Work", supra note 233.

<sup>237</sup> ILO, "Measurement of Decent Work", *ibid* at 9-10.

<sup>238</sup> *Ibid* at 10.

<sup>239</sup> *Ibid*. Also see generally Iftikhar Ahmed, "Decent work and human development" (2003) 142: 2 International Labour Review 263.

<sup>240</sup> See UNDP, "Human Development Index", available at <http://hdr.undp.org/en/statistics/hdi/> (site visited 11 August 2012).

<sup>241</sup> *Ibid*; also see Mark McGillivray & Howard White, "Measuring Development? The UNDP's Human Development Index" (1993) 5: 2 Journal of International Development 183 at 183.

<sup>242</sup> Commentators who criticise the Human Development Index as incomplete also offer quantitative

indicators constituting the Human Development Index have undergone substantial evolution since its birth, much of the principal indicators remain unchanged.<sup>243</sup> However, the purpose of the Human Development Index is to compare countries on the basis of development that is not limited to economic or income measures only.<sup>244</sup> As shorthand to such comparison the UNDP employs quantitative indicators, where choice of indicators is sometimes constrained by the availability of data across countries.<sup>245</sup>

Since the purpose of the Human Development Index is comparison between countries, the constitutive indicators need to be quantitative because of data availability and better comparison. Likewise, for a country-level comparison of the DW Agenda, it might be useful to devise quantitative indicators to measure DW. However, quantitative indicators are inadequate to measure work-life deprivations of informal workers. Accordingly, for a micro-level evaluation of capability deprivation in waste-pickers' work-lives in India, existing quantitative indicators developed both under the DW Agenda and the capability approach discussed above are inadequate.<sup>246</sup>

However, it would be a mistake to conflate ideas with indicators.<sup>247</sup> Even though existing indicators are inadequate for a micro-level analysis of waste-picking, the ideas – the capability approach and the DW Agenda – could very well provide the evaluative basis of waste-pickers' work-lives. By work-life I mean the intertwined nature of informal workers' work and their family lives and the related situation of physical

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indicators for a more comprehensive country-level analysis of human development. See Gustav Ranis, Frances Stewart & Emma Samman, "Human Development: Beyond the Human Development Index" (2006) 7: 3 *Journal of Human Development* 323 at 333-342; also see Linda Low & T C Aw "The Human Development Index Revisited" (1997) *Singapore Management Review* 1 at 1; also see generally Farhad Noorbakhsh, "The Human Development Index: Some Technical Issues and Alternative Indices" (1998) 10 *Journal of International Development* 589; also see Bojana Radovanovic, "Human Development Index as a Measure of Human Development" (2011) *FilozofijaiDrustvo* 193 at 201-202.

<sup>243</sup> See Low & Aw, *ibid* at 2, 5-6; Radovanovic, *ibid* at 199-200; For a current list of Human Development Indicators, see UNDP, "International Human Development Indicators", available at <http://hdrstats.undp.org/en/indicators/default.html> (site visited 11 August).

<sup>244</sup> See Ranis, Stewart & Samman, *supra* note 242 at 324; also see generally Radovanovic, *ibid*.

<sup>245</sup> See Ranis, Stewart & Samman, *ibid* at 324, 328-330, 333-342; also see Radovanovic, *ibid* at 205.

<sup>246</sup> A note is in order here. The Human Development Index does not envisage evaluating informal economic activities, which is my concern in this study. Therefore, it would be wrong to assume that the Human Development Indicators could offer indicators for the analysis of the informal economic activity of waste-picking. On the other hand, DW indicators are devised *inter alia* for the purpose of the analysis of informal economic activities. However, as I argue, while the DW indicators might be able to compare decency of work amongst countries, such indicators are inadequate for a micro-level analysis of work-lives of informal workers.

<sup>247</sup> See generally Ranis, Stewart & Samman, *supra* note 242; also see generally Radovanovic, *supra* note 242.

proximity of their work and their slums. For informal workers, work-life situation needs to be analyzed in order to get a clear idea of their deprivations.<sup>248</sup> The everyday balance between work and family lives constitute the overall experience of informal workers. It is difficult to neatly conceive of working lives of informal workers in distinction to their family lives. There is also a merger between their worksites and their homes; informal workers such as waste-pickers effectively use their homes in furtherance of their work.<sup>249</sup> Noting the convergence of informal workers' work and their living,<sup>250</sup> Kalyan Sanyal and Rajesh Bhattacharya observe:

The urban slums are exemplary products of *homesteading* by the urban informal population. Slums are more than poor people's settlements – each slum literally is a production hub by itself. With close to a one billion-strong slum population in 2001, slums worldwide are emerging as poor people's Manchesters and Chicagos. The convergence of the home and the workshop takes place at the level of entire 'townships' which is what the mega-slums already are in urban metropolises. The unstoppable horizontal spread of Third World metropolises is fuelled by the explosive growth of slums. The horizontal sprawl of the slums reflects the demand for 'fungible' space – so essential to survival of the informal producers in the slums – that can function both as the site of production of commodities and reproduction of life. [citation omitted]<sup>251</sup>

Likewise, for the informal activity of waste-picking, work experience and life experience could not be distinguished in a categorical manner.<sup>252</sup> Their work and their

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<sup>248</sup> Elizabeth Hill, *Worker Identity, Agency and Economic Development – Women's empowerment in the Indian informal economy* (London & New York: Routledge, 2010) at 3-5.

<sup>249</sup> See Bhat, supra note 8 at 47-58; also see Poornima Chikarmane & Lakshmi Narayan, *Rising from the Waste – Organising Wastepickers in India, Thailand and the Philippines* (Bangkok: Committee for Asian Women, 2009) at 13, 17, 26.

<sup>250</sup> See Kalyan Sanyal & Rajesh Bhattacharya, "Beyond the Factory: Globalization, Informalization of Production and the Changing Locations of Labour" in Paul Bowles & John Harriss eds, *Globalization and Labour in China and India – Impacts and Responses* (New York: Palgrave Macmillan, 2010) 151 at 160-163.

<sup>251</sup> Ibid at 162-163. For an account of the significance of slum for waste-pickers, especially as a storage and sorting place, see Bhat, supra note 8 at 52; 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 99-100, 138-139.

<sup>252</sup> This is something that I had observed during my fieldwork in Kolkata, India, during March to July 2011. While I will document my fieldwork in chapter 7, this is a good opportunity to note the work-life relation of waste-pickers. Also see generally Martin Medina, "Waste Pickers Cooperatives in Developing Countries" (Paper prepared for WIEGO/Cornell/SEWA Conference on Membership-Based Organizations of the Poor, Ahmedabad, India, January 2005) at 1-36, available at <http://wiego.org/publications/waste-picker-cooperatives-developing-countries> (site visited 18 May 2012); also see generally Marijk Huysman, "Waste picking as a survival strategy for women in Indian cities" (1994) 6: 2 Environment and

lives are weaved in a seamless web.<sup>253</sup> Working conditions and living situations overlap each other – they work in close proximity to their slums.<sup>254</sup> They have to balance their family responsibilities with their work obligations simultaneously.<sup>255</sup> They work from home while managing family responsibilities; and they care for their family even while working outside home.<sup>256</sup> Considering the juxtaposition of work experiences and life experiences of waste-pickers, the capability approach provides for a suitable framework for a capability-based development analysis. Instead of a narrower work-based analysis envisaged by the DW Agenda, it would be far more useful to analyze capability deprivation of these waste-pickers. The decent work deficit is principally an analysis of work-related aspects, whereas capability deficiency is a larger concept encompassing any aspect of a person's life that is considered valuable by the person. Even though the present study is principally concerned with work and workers, the nature of the informal work of waste-picking makes it necessary to go beyond the limited notion of work and take work-life as the term of reference. The capability framework helps in the identification of functionings attained by waste-pickers. Functionings go on to point out

Urbanization 155.

<sup>253</sup> Huysman, *ibid* at 159, 169.

<sup>254</sup> David C. Wilson, Costas Velis & Chris Cheeseman, "Role of informal sector recycling in waste management in developing countries" (2006) 30 *Habitat International* 797 at 803; also see Michael Yhdego, "Scavenging solid wastes in Dar es Salaam, Tanzania" (1991) 9 *Waste Management and Research*, 259 at 263; also see Daniel T. Sicular, "Pockets of Peasants in Indonesian Cities: The Case of Scavengers" (1991) 19: 2/3 *World Development*, 137 at 143, 145, 153; also see Poornima Chikarmane, Medha Deshpande & Lakshmi Narayan, "Untitled" at 13, 17, 27, available at <http://ilo-mirror.library.cornell.edu/public/english/region/asro/newdelhi/download/puneabst.pdf> (site visited 20 May 2012).

<sup>255</sup> See Bhat, *supra* note 8 at 47-58; also see Chikarmane & Narayan, *Rising from the Waste*, *supra* note 249 at 32; also see Huysman, *supra* note 252 at 157, 159, 161, 163, 165-166, 168, 170; also see Sicular, *ibid* at 147, 153; also see Chikarmane, Deshpande & Narayan, *ibid* at 16.

<sup>256</sup> Ela Bhat provides a fascinating account of waste-pickers' work-life experiences:

A rag picker's day begins at the crack of dawn. She picks up her large thela and sets off on her daily beat, her quick, trained eyes scouring the roads and sidewalks for marketable waste. She bends to pick it up with her right hand and drops it in the thela hanging over her left shoulder. She walks, she sees, she bends, she picks, she throws in her bag and walks on. She is home by nine o' clock in the morning, just as the morning rush begins. She quickly cooks lunch, feeds the family, and returns to the streets once again. At midday, she spreads the collection on the floor, sorts the various items into separate bags, and delivers the haul to a dealer. The dealer gives her cash—the price for each of the various categories she collects is different. ... Back home, she lifts her thela and is off on her beat once again. She is home before dark. On the way home, she buys groceries for the evening meal from the cash she earned that day—flour, rice, salt, onions, and a few spoonfuls of oil. She cooks the supper, feeds her family the evening meal, and if she is not too tired, she will sort the waste collected in the afternoon. If there is some water left over in the bucket, she will take a bath and then go to sleep. See Bhat, *ibid* at 47-48.

the capability deprivation of the waste-pickers, which in turn helps in identifying resources that are required for the promotion of capabilities of such workers.

Functioning deficiencies and capability deprivations of waste-pickers (or informal workers in general) result from the absence of resources (and thereby, conversion factors) that go beyond the four pillars identified by the DW Agenda. For example, lack of *basic education* and *cultural mindset* (of not showing any particular urge to send children to school, even if such schooling is accessible) substantially limits the choice of a worker to decide the kind of work she wants to do (or lead the kind of life she prefers). Under such circumstances, a capability (deprivation) analysis would be helpful in identifying the capability inhibiting factors (resources, such as availability of primary education, or cultural awareness initiative) that are not necessarily limited to right to association, safety at work, or unemployment insurance etc. The capability framework helps in moving beyond the limited notion of work and workplace and helps conceptualize work in the larger context of work-lives.

In view of some of the myriad forms of unfreedoms encountered by informal workers it is necessary to undertake a qualitative method-based analysis of their work-lives so that their lived experiences can form the basis of such analysis. Even though it is possible to develop a qualitative method-based analysis of DW for informal economic activities, it is more useful to employ the capability framework in such analysis for the reasons discussed above. Qualitative method is perfectly suited for a choice-based development analysis, which is the crux of the capability approach.<sup>257</sup> There are two manners in which capability deprivation of waste-pickers could be analyzed: tracing deprivation of capabilities by analyzing achieved functionings and directly identifying deprivation of capabilities. The relation between capabilities and functionings can sometimes be confusing. Capability means freedom to choose, while functionings signify actual achievements of individuals.

Functionings could be valuable resources available to an individual to exercise their capabilities. Functionings attained at one level can act as a conversion factor at

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<sup>257</sup> For a discussion on the usefulness of qualitative methods in poverty and capability development analysis of informal workers in India, see Jan Breman, *The Making and Unmaking of an Industrial Working Class – Sliding Down the Labour Hierarchy in Ahmedabad, India* (New Delhi: Oxford University Press, 2004) at 271-278.

another level. For example, education is an extremely valuable functioning, important by itself (i.e., intrinsic freedom). Education, on the other hand, is also an immensely important conversion factor (i.e., instrumental freedom) for the attainment of other functionings. In the context of the present analysis, education, a functioning, is also a resource which expands capabilities of workers by enabling them to decide if they want to work as an office clerk or peon, or they would prefer to work as a waste-picker (both of these professional attainments are also functionings).

Thus, there are two levels at which development of waste-pickers in terms of freedom could be examined. First, by analyzing the achieved functionings, waste-pickers' capabilities could be traced back.<sup>258</sup> This method is easier because achieved functionings could actually be observed by a researcher, which could then be linked to possible capability sets available to waste-pickers. Second, a more difficult approach, capabilities of waste-pickers could be directly analyzed through probing questions about their choices in their work-lives.<sup>259</sup> The problem with the second approach is that there is no tangible evidence for a researcher to observe. A researcher would have to totally depend on the version expressed by research participants. Such interpretive-dependence might not be a problem for other kinds of research, but for capability analysis it would be a problem because the researcher needs to know the set of choices available to her participants. In a direct analysis of capability deprivation, a researcher would have to depend on the participant's understanding of alternative capability sets from which the participant has chosen the present functioning set.<sup>260</sup>

Most of the empirical research conducted within the capability framework has analyzed achieved functionings as a proxy to capability achievement.<sup>261</sup> To a great extent, this is due to the complications associated with direct analysis of available capability – practicality and data availability are reasons why most researchers choose to look into achieved functionings in order to identify available capabilities.<sup>262</sup> In an analysis of one of the most precarious forms of informal economic activity (waste-picking) in a

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<sup>258</sup> Ruhi Saith, "Capabilities: the Concept and its Operationalization" (2001) Working Paper Number 66, QEH Working Paper Series – QEHWPS66, University of Oxford, 1 at 11-12 available at <http://www3.qeh.ox.ac.uk/pdf/qehwp/qehwps66.pdf> (site visited 11 June 2012).

<sup>259</sup> Ibid.

<sup>260</sup> Ibid at 12-13.

<sup>261</sup> Ibid at 10, 12, 19-20.

<sup>262</sup> Ibid at 12.

developing country context, the difference between the two approaches (i.e., functioning analysis and direct capability analysis) is hardly a matter of concern. Waste-pickers in India suffer from educational deprivation, nutritional deprivation, health deprivation, basic functionings identified by all capability scholars.<sup>263</sup> It is improbable (if not impossible) to think that if waste-pickers had any *real choice* in their lives they would voluntarily choose to deprive themselves of these functionings.<sup>264</sup>

Accordingly, in determining capability deficiency in the context of the present study (of waste-pickers), it will be useful to uncover achieved functionings of the waste-pickers in Kolkata, India. Even though a functioning analysis is a sufficient pointer towards capability deprivation of the participant waste-pickers in Kolkata, I devised some *why* questions to see if they had any choice over their work-lives. For example, some of the representative questions that I ask during the interview process with waste-pickers are:

5. Why are you in the waste-picking business?
6. Why did you decide to migrate to Kolkata (if the interviewee was not born and brought up in that locality)?
7. Was it your decision to migrate from your original place? Or, was it because of marriage or any other reason?
8. Can you afford not to work?
9. Would you better do any other work if you could choose? What would that be?

Even though some scholars think that probing freedom to choose or *refined functionings* might not be a meaningful exercise in the context of developing countries,<sup>265</sup> I undertook such an exercise for the limited purpose of seeing if the waste-pickers had made *any choice* in their work-lives, howsoever miniscule in nature, from amongst the narrow range of capability sets available to them.

Even though an analysis of refined functionings might not be an extremely important exercise in the context of waste-pickers in Kolkata, I am of the opinion that an analysis of refined functionings is a useful one in the context of the present study. The purpose of the case study of waste-pickers in Kolkata, India, is not simply to identify

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<sup>263</sup> Ibid at 13-22.

<sup>264</sup> Ibid at 13.

<sup>265</sup> Ibid at 28.

present capability deprivation of these workers. A far more important purpose is to ascertain future valuable capabilities and functionings in the work-lives of the waste-pickers as identified by them. Accordingly, the guiding questionnaire for the qualitative interviews probes refined functionings using a two-pronged logic. First, a waste-picker's exercise of choice, howsoever limited in nature, is suggestive of some amount of capability available to a waste-picker.<sup>266</sup> Second, it is only when the waste-pickers have already exercised choice in their work-lives that they would be able to identify future valuable capabilities and functionings. This future orientation, which is more prescriptive, is an important part of the study's scope.

## 6. Conclusion

In this chapter, I discuss the shift in the ILO approach from a specific labour standards-based system to a principle-based framework. I briefly mention the reasons that propelled the ILO to shift its focus from an instrument-based system to a principle-based system without discarding its standard-setting function. Recognizing that needs and necessities of labour vary globally, first with the 1998 Declaration, and then through its 1999 DW Agenda, the ILO shifted from a uniform system to a flexible system of operation. Both its 1998 Declaration and its DW Agenda are devised in such a manner that they allow enough scope to address the concerns of formal as well as informal workers. The DW Agenda is a flexible framework that eschews uniformity. While such lack of uniformity is problematic in determining the accountability of a domestic jurisdiction internationally, the flexible pillars of the DW Agenda could be successfully put to use in order to devise a labour law framework that is sensitive to typical domestic conditions. While the pillars of the DW Agenda are flexible enough to allow domestic jurisdictions to decide the nature and extent of protection that could be afforded to workers, the social dialogue pillar of the Agenda works as a safety-valve against precarious treatment of workers. The ILO envisages a tripartite social dialogue framework. However, in the context of informal workers, domestic jurisdictions need to

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<sup>266</sup> However surprising it might sound for capability studies, the majority of waste-pickers who were interviewed did exercise some choice in their work-lives. A significant number of the 75 waste-pickers interviewed choose to be waste-pickers rather than domestic worker, rickshaw-puller or construction worker.

devise a tripartite-plus social dialogue framework. The majority of informal workers are not part of a representative organization. However, NGOs and a plurality of democratic institutions interact with informal workers at different levels. In order to install a successful framework for the improvement of informal workers, it is incumbent on domestic jurisdictions to include all these diverse bodies (stakeholders) in an institutionalized social dialogue framework. In this chapter, I have also compared the DW framework with the capability approach in order to select an analytical framework for the analysis of my case study of informal workers in Kolkata, India (chapter 7). Having compared the two frameworks, I propose to analyze my case study on the basis of the capability approach framework because the capability approach provides an encompassing framework which can be used to analyze the work-life conditions of informal waste-pickers in India.

In chapter 4, I discuss the nuances of the capability approach. The analytical reference point of the capability approach is human development in terms of freedom. According to the capability approach, several institutions of a democratic society should aim at creating such conditions in which social, economic, environmental, and personal factors can help convert (social, economic, environmental, and personal) characteristics into individual capabilities. Promotion of capabilities is an ongoing process, which requires continuous and effective evaluation of public policies, and democratic participation. In the context of informal workers, the ILO envisages participation and involvement of stakeholders through its social dialogue strategy. However, the ILO promoted social dialogue strategy is primarily conceptualized within a narrow tripartite framework. I contend that in order to effectively integrate informal workers in the social dialogue process such process needs to transcend the tripartite framework. In the next chapter, I offer a theoretical framework through which labour law for informal economic activities could be conceptualized. I invoke the capability approach in order to develop such a framework. Even though I use the capability approach – which as I have argued, extends beyond the scope of work – in invoking the capability approach to conceptualize labour law I shall be concerned with only those capabilities that are valuable for informal workers in their working lives. The social dialogue strategy through the involvement of integrated institutions attains centre stage in the labour law framework that I propose. I

supplement the capability approach and the social dialogue strategy with other theoretical conceptualizations in order to develop a labour law framework for informal workers.

## Chapter 6

### A Capability Approach to Labour Law

#### 1. Introduction

In chapter 4, I discuss the human development theory known as the capability approach offered by Amartya Sen. The capability approach emerges as a non-dogmatic approach, which does not dictate a definite goal as an objective of development. The capability approach is also a non-hierarchical theoretical framework in so far as it does not rank specific rights (such as civil-political and socio-economic rights). The capability approach envisages a theoretical framework that promotes a dignified life for individuals in the sense that it enables individuals both to decide what a dignified and meaningful life would mean to them and to pursue such a life. The capability approach advocates the promotion of social, economic, physical, cultural, and environmental factors that can help individuals convert characteristics into capabilities. Democratic dialogue through public participation is central to the capability approach since democratic dialogue provides the mechanism to decide upon the desirable capabilities for a society and determine the necessary factors for the promotion of such capabilities. The International Labour Organization (ILO) adopts a strategy of democratic dialogue in order to improve working conditions and living standards of informal workers. In Chapter 5, I discuss how the ILO strategy of social dialogue might promote decent work for informal workers. I argue that if the social dialogue strategy of the ILO is to be effective for informal workers, it needs to integrate multiple institutions in the sense Dréze and Sen conceptualizes, in the dialogue process (discussed in Chapter 4). Dréze and Sen's concept of integrated institutions is, accordingly, central for a democratically developed framework for the enhancement of capabilities for informal workers.

Developing on my discussions in chapters 4 and 5, in this chapter, I undertake the task of formulating a theoretical approach to labour law to address the problems of informal work and workers. My purpose is to devise an approach to labour law that can improve conditions of work and living standards of informal workers. As I discuss in earlier chapters, traditionally labour law is based on the juridical concept of employment

relationship and one of the central normative goal of labour law is striking a balance in bargaining power between employers and employees. In this chapter, I advocate a new normative goal, which labour law should pursue in the context of informal economic activities. I also advocate for a new juridical basis of labour law that is attuned to informal economic activities. If labour law needs to be sensitive to informal economic activities, its normative focus needs to shift from *balancing bargaining power* to something else that is not based on *a priori* assumption of the existence of two entities – employers and employees. Labour law needs to focus somewhere else in order to build a theoretical basis that is attentive to informal economic activities. In this respect the capability approach can provide valuable insights into developing a theoretical basis for labour law.

In imagining labour law for informal economic activities, I invoke the capability approach developed by Amartya Sen and Martha Nussbaum. The capability approach, with its associated concepts, can provide a rich theoretical basis in formulating labour law for informal workers. In this chapter, I chart a capability approach-based theoretical conception to argue for a renewed labour law framework for informal economic activities. My conceptual initiative draws upon the existing theoretical positions that take the capability approach as their point of departure. Building on the works of Judy Fudge, Elizabeth Anderson, Amartya Sen, and Jean Dréze, I will supplement the capability approach with the concepts of *democratic equality* and *integrated institutions* to develop a capability approach-based labour law. Recently, labour law scholars have shown interest in the capability approach in reconceptualizing labour law and I build on their attempts to use the capability approach in order to reconceptualize labour law.<sup>1</sup>

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<sup>1</sup> Fudge has specifically titled her article “... Reconceptualizing Labour Law.” See Judy Fudge, “Labour as a ‘Fictive Commodity’: Radically Reconceptualizing Labour Law” in Guy Davidov and Brian Langille eds, *The Idea of Labour Law* (New York: Oxford University Press, 2011) 120.

Other scholars who employed the capability approach are: Jude Browne, Simon Deakin, Frank Wilkinson, “Capabilities, Social Rights and European Market Integration” in Robert Salais & Robert Villeneuve eds, *Europe and the Politics of Capabilities* (New York: Cambridge University Press, 2004) 205; Simon Deakin, “The Contribution of Labour Law to Economic and Human Development” in Langille & Davidov, *The Idea of Labour Law*, *ibid*, 156; Brian A Langille, “Core Labour Rights – The True Story (Reply to Alston)” (2005) 16: 3 *European Journal of International Law* 409; Judy Fudge, “The New Discourse of Labor Rights” (2007) 29 *Comparative Labor Law and Policy Journal* 29; Brian Langille, “Labour Law’s Theory of Justice” in Langille & Davidov, *The Idea of Labour Law*, *ibid*, 101; Kevin Kolben, “A Development Approach to Trade and Labor Regimes” (2010) 45: 2 *Wake Forest Law Review* 355; Adelle Blackett, “Situated Reflections on International Labour, Capabilities, and Decent Work: The

This chapter is divided in six main sections apart from the introduction and the conclusion. In section 2 of this chapter, I discuss the traditional basis of labour law that developed in the common law countries of which India is one. I discuss how far the traditional basis of labour law applies to informal workers. As I discuss in earlier chapters, the heterogeneous informal activities do not always conform to an employment relationship model. Because of this heterogeneous nature of informal economic activities, labour law that seeks to strike a balance of bargaining power between employers and employees remains irrelevant for informal economic activities. In section 3, I briefly review the literature that reconceptualizes labour law using the capability approach. The capability approach has lately received attention from labour law scholars who employ it to chart a new normative basis of labour law. While these scholars provide a direction in which labour law can be steered, they have focussed on developed industrial economies and not on informal economic activities in developing countries. There are, however, social scientists who are interested in a capability analysis of informal economic activities. In section 4 of the chapter, I review some of the literature that analyze informal economic activities from the perspective of the capability approach. Examining specific categories of informal economic activities these scholars show that by making small interventions in the lives of the most marginalized population their capabilities could be substantially enhanced. I draw on the insights from these two streams of literature to discuss a capability approach to labour law for informal workers.

In my attempt to chart a capability approach-based concept of labour law for informal economic activities, in section 5, I argue that the normative goal of labour law should be the enhancement and equality of capabilities of workers. Based on the idea of democratic equality offered by Elizabeth Anderson, in section 6, I argue that the enhancement and equal distribution of capabilities amongst informal workers is grounded on the idea that these workers are equal participants in a cooperative production process.<sup>2</sup> In section 7 of the chapter, I analyze how the concept of integrated institutions might help develop labour law for informal workers. I argue that in order to develop a

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Case of Centre Maraicher Eugene Guinois” (2007) *Revue Quebecoise de Droit International* 223; Adelle Blackett, “Emancipation in the Idea of Labour Law” in Langille & Davidov, *The Idea of Labour Law*, *ibid*, 420.

<sup>2</sup> Elizabeth S. Anderson, “What is the Point of Equality?” (1999) 109: 2 *Ethics* 287 at 317-318, 321-322.

democratically grounded labour law framework that engages informal workers themselves in the development of the law, multiple institutions of a democratic society need to be integrated in the law-making process. In this context I discuss how norms for informal economic activities emerge out of different institutions such as family, kinship, caste, and neighbourhood. I end this chapter with a brief conclusion.

## 2. Labour Law and Informal Economic Activities

Traditionally, the normative goal of labour law has been the protection of workers<sup>3</sup> by equalizing their bargaining power with that of employers<sup>4</sup> and the juridical basis of labour law has been seen as the employment relationship or more specifically, the employment contract.<sup>5</sup> However, scholars increasingly regard the traditional model of labour law, which seeks to strike a balance of power<sup>6</sup> between employers and employees, as inadequate to deal with modern social, economic, and political realities. In fact, Bob Hepple has asked “Have we reached the ‘end’ of labour law?”<sup>7</sup> As Hepple observes, labour law that is specifically concerned with dependent workers necessarily excludes the independent and self-employed workforce from its purview.<sup>8</sup> This orientation was, however, not perceived to undermine labour law because of the predominant nature of the

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<sup>3</sup> Hugo Sinzheimer, *The development of labour law and the task of legal theory (Die Fortentwicklung des Arbeitsrechts und die Aufgabe der Rechtslehre)*, 20 *Soziale Praxis*, 1237ff (1910-11), as cited in Bob Hepple, “Introduction” in Bob Hepple ed, *The Making of Labour Law in Europe – A Comparative Study of Nine Countries Up To 1945* (London: Mansell, 1986) 1 at 8-9; also see Ruth Dukes, “Hugo Sinzheimer and the Constitutional Function of Labour Law” in Langille & Davidov, *The Idea of Labour Law*, supra note 1, 57; also see Thilo Ramm, “Epilogue: The New Ordering of Labour Law 1918-45” in Hepple ed, *A Comparative Study of Nine Countries*, supra note 3, 277 at 278.

<sup>4</sup> Otto Kahn-Freund, *Labour and the Law*, 2<sup>nd</sup>ed (London: Stevens & Sons, 1972) at 1, 4-5, 8-9, 11-15; Guy Davidov, “The (changing?) idea of labour law” (2007) 146: 3-4 *International Labour Review* 311 at 311, 312, 314-315; also see Manfred Weiss, “Re-Inventing Labour Law?” in Langille & Davidov, *The Idea of Labour Law*, *ibid*, 43 at 44; also see Hepple, *ibid* at 32; also see Harry Arthurs, “Labour Law After Labour” in Langille & Davidov, *The Idea of Labour Law*, *ibid*, 13 at 17-18; also see Dukes, *ibid* at 60, 63.

<sup>5</sup> Otto Kahn-Freund, *Labour and the Law*, 2<sup>nd</sup>ed (London: Stevens & Sons, 1977) at 4, 6; Paul Davies & Mark Freedland, *Labour Law: Text and Materials* (London: Weidenfeld and Nicolson, 1984) at 1-2; also see Arthurs, *ibid* at 18; also see Judy Fudge, Eric Tucker & Leah Vosko, *The Legal Concepts of Employment: Marginalizing Workers* (Ottawa, Ontario: Law Commission of Canada, 2002) at 1-4, 8-12; also see Hepple, “Introduction”, supra note 3 at 11; also see Simon Deakin & Gillian S. Morris, *Labour Law*, 4<sup>th</sup>ed (Portland: Hart Publishing, 2005) at 1, 4; Sinzheimer, *The development of labour law*, supra note 3; also see Weiss, “Re-Inventing”, *ibid* at 44-46.

<sup>6</sup> Anne Trebilcock, “Using Development Approaches To Address The Challenge Of The Informal Economy For Labour Law” in Guy Davidov & Brian Langille eds, *Boundaries And Frontiers Of Labour Law* (Oxford: Hart Publishing, 2006) 63 at 63, 66; also see Davidov, “The (changing?) idea” supra note 4 at 312, 314-315.

<sup>7</sup> Bob Hepple, “The Future of Labour Law” (1995) 24: 4 *Industrial Law Journal* 303 at 303.

<sup>8</sup> Hepple, “Introduction”, supra note 3 at 11.

employer-employee relationship in developed Western societies.<sup>9</sup> In the last two decades, however, the changing nature of work (and employment relationships) and worker protection has challenged the traditional scope of labour law. Labour law scholars are increasingly engaged in the search of new labour law for new realities.<sup>10</sup>

In the standard employment relationship-based model it is assumed that a worker is employed in a stable employment relationship throughout his life. However, the traditional model of the male breadwinner, working throughout his life for one or two employers in a definite workplace and earning security for his family,<sup>11</sup> is increasingly giving way to non-standard work, the feminization of the workforce,<sup>12</sup> insecurity at work

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<sup>9</sup> See Adrian Goldin, “Global Conceptualizations and Local Constructions of the Idea of Labour Law” in Langille & Davidov, *The Idea of Labour Law*, supra note 1, 69 at 75-76. Goldin notes that even though atypical and informal workers always existed alongside formal subordinated employees, because of the predominant nature of dependent employment labour law has historically ignored atypical workers. Ibid.

<sup>10</sup> Recently 29 scholars from around the globe published their essays in a collected volume called *The Idea of Labour Law*, in their quest to find new ideas of labour law. See generally Langille & Davidov, *The Idea of Labour Law*, ibid; also see generally Hepple, “Future of Labour Law”, supra note 7; Bob Hepple, *Labour laws and global trade* (Oxford: Hart Publishing, 2005); Alain Supiot et al, *Beyond Employment Changes in Work and the Future of Labour Law in Europe* (New York: Oxford University Press, 2001); Richard Mitchell ed, *Redefining Labour Law – New Perspectives on the Future of Teaching and Research*, University of Melbourne Law School, Occasional Monograph Series No. 3 (Melbourne: Centre for Employment and Labour Relations Law, 1995); Joanne Conaghan, Richard Michael Fischl & Karl Klare eds, *Labour Law in an Era of Globalization – Transformative Practices & Possibilities* (Oxford & New York: Oxford University Press, 2002); Catherine Barnard, Simon Deakin & Gillian Morris eds, *The Future of Labour Law – Liber Amicorum Sir Bob Hepple QC* (Portland, Oregon: Hart Publishing, 2004); Katherine V. W. Stone, *From Widgets to Digits – Employment Regulation for the Changing Workplace* (New York: Cambridge University Press, 2004); Hugh Collins, “Justifications and techniques of Legal Regulation of the Employment Relation” in Hugh Collins, M. Davies & Roger Rideout eds, *Legal Regulation of the Employment Relation* (London: Kluwer Law International, 2003) 3; Brian Langille, “Labour Law’s Back Pages” in Davidov & Langille eds, *Boundaries And Frontiers*, supra note 6, 13; Alan Hyde, “What is Labour Law” in Davidov & Langille eds, *Boundaries And Frontiers*, ibid, 37; Christopher Arup et al eds, *Labour Law and Labour Market Regulation: Essays on the Construction, Constitution and Regulation of Labour Markets* (Sydney: Federation Press, 2006); Horacio Spector, “Philosophical Foundations of Labor Law” (2006) 33 Florida State University Law Review 1119; Davidov, “The (changing?) idea” supra note 4; Ruth Dukes, “Constitutionalizing Employment Relations: Sinzheimer, Kahn-Freund, and the Role of Labour Law” (2008) 35 Journal of Law and Society 341.

<sup>11</sup> Weiss, “Re-Inventing”, supra note 4 at 45-47; also see Alan Hyde, “The Idea of the Idea of Labour Law: A Parable” in Langille & Davidov, *The Idea of Labour Law*, ibid, 88 at 88; also see Tzehainesh Tekle, “Labour law and worker protection in the South: An evolving tension between models and reality” in Tzehainesh Tekle ed, *Labour Law And Worker Protection In Developing Countries* (Oxford and Portland, Oregon: Hart; Geneva: ILO, 2010) 3 at 3-4; also see Supiot et al, *Beyond Employment*, ibid at 24-25, 52.

<sup>12</sup> I use the term feminization to suggest an exponential increase of women workforce and degradation of conditions in previously male dominated work, in the work used by Lourdes Beneria. See Lourdes Beneria, *Changing Employment Patterns and the Informalization of Jobs: General Trends and Gender Dimensions* (Geneva: ILO, 2001) at 1. Also see Richard Anker, *Gender and Jobs – Sex segregation of occupations in the world* (Geneva: ILO, 1998) at 3, 7, 329-336, 357-359, 367-369, 411-415, for an analysis of the large increase of participation of women in the workforce around the world.

and unemployment.<sup>13</sup> Because of these challenges scholars are reconceptualizing labour law.<sup>14</sup> What has been absent in the reconceptualization,<sup>15</sup> and generally from the labour law narrative, is the perspective of developing countries on labour protection.<sup>16</sup> It is only recently that the protection of workers in developing countries has received attention.<sup>17</sup> Such attention is inevitable because globalization has induced integration of domestic markets with the larger world market. Workers engaged in outsourced and sub-contracted activities, informal wage earners and self-employed workers in developing countries are now part of the larger world market and are vulnerable because of the nature of their work and the absence of any protection or security in their work.<sup>18</sup> The absence of legal protection for informal economic activities has prompted Peruvian economist Hernando de Soto to observe that law and legal institutions have lost social relevance in the sphere of informal economic activities.<sup>19</sup>

Such lack of protection can be attributed to a great extent to the mismatch between labour law regimes and social, economic, and political realities in developing countries.<sup>20</sup> Labour law in the global South has either been transplanted from Europe, or

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<sup>13</sup> Weiss, “Re-Inventing”, supra note 4 at 45-46, 48-49; also see Tekle, “Labour law and worker protection”, supra note 11 at 4-5; also see Hyde, “The Idea of the Idea”, supra note 11 at 92-93; Supiot et al, *Beyond Employment*, supra note 10.

<sup>14</sup> See generally supra note 1 and supra note 10 (list of scholars working on reconceptualization of labour law). In particular Blackett, “Emancipation”, supra note 1; Browne, Deakin & Wilkinson, “European Market Integration”, supra note 1; Fudge, “Labour as a ‘Fictive Commodity’”, supra note 1; Langille, “Core Labour Rights”, supra note 1; Fudge, “The New Discourse”, supra note 1; Langille, “Labour Law's Theory”, supra note 1, 101; Hyde, “The Idea of the Idea”, *ibid* at 88.

<sup>15</sup> Scholars who are active in the reconceptualization project of labour law are from developed countries. Their academic interests and careers are concerned more with the developed country problems and issues. See *ibid*, for the list and works of scholars who are working on conceptualizing labour law.

<sup>16</sup> Tekle, “Labour law and worker protection”, supra note 11 at 8.

<sup>17</sup> Tekle ed, *Developing Countries*, supra note 11; Nicola Smit & Elmarie Fourie, “Extending Protection to Atypical Workers, Including Workers in the Informal Economy, in Developing Countries” (2010) 26: 1 *International Journal of Comparative Labor Law & Industrial Relations* 43; Rene Ofreneo, *Informal Sector: Labour Laws And Industrial Relations, Interdepartmental Project On The Urban Informal Sector – Philippines*, Assessment Report Series No. 6 (Manila: ILO, 1994).

<sup>18</sup> Tekle, “Labour law and worker protection”, supra note 11 at 9, 13-17, 20-28, 32-36, 40-42; also see Kamala Sankaran, “Informal Employment and the Challenges for Labour Law” in Langille & Davidov, *The Idea of Labour Law*, supra note 1 at 223.

<sup>19</sup> Hernando de Soto, *The Other Path – The Invisible Revolution In The Third World* (New York: Harper & Row, 1989) at 11-12, 231-233.

<sup>20</sup> Tekle, “Labour law and worker protection”, supra note 11 at 3-4, 9, 12-13; also see Goldin, “Global Conceptualizations”, supra note 9 at 81; also see Deakin, “The Contribution of Labour Law”, supra note 1 at 168; also see Shelley Marshall, (undated) “Main Findings Concerning the Role of Labour Law in Promoting Decent Work” in *Promoting Decent Work: The Role of Labour Law* (in file with author).

has been deeply influenced by European labour law.<sup>21</sup> This is true for South Asia,<sup>22</sup> Africa,<sup>23</sup> and, Latin America.<sup>24</sup> Moreover, labour laws in these jurisdictions have influenced each other.<sup>25</sup>

Labour laws in South Asia (Indian subcontinent, including India, Pakistan, Bangladesh, and Sri Lanka) have distinct British roots that derive from the law of master and servant.<sup>26</sup> Because of this influence, the labour laws of this region are predominantly based on the employer-employee model in the context of industry.<sup>27</sup> African labour laws were also shaped by European colonizers and International Labour Organization (ILO) standards.<sup>28</sup> The labour laws of Latin America are also based on the Spanish inspection model, which itself was influenced by the French model of inspection.<sup>29</sup> Because of

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<sup>21</sup> Tekle, *ibid* at 9-11.

<sup>22</sup> *Ibid* at 17; also see Kamala Sankaran, “Labour laws in South Asia – The need for an inclusive approach” in Tekle ed, *Developing Countries*, *supra* note 11, 225.

<sup>23</sup> Tekle, “Labour law and worker protection”, *ibid* at 17-18; also see Colin Fenwick, Evance Kalula & Ingrid Landau, “Labour Law – A southern African perspective” in Tekle ed, *Developing Countries*, *supra* note 11, 175.

<sup>24</sup> Tekle, “Labour law and worker protection”, *ibid* at 18-19; also see Graciela Bensusan, “Labour Law in Latin America – The gap between norms and reality” in Tekle ed, *Developing Countries*, *supra* note 11, 135.

<sup>25</sup> Tekle, “Labour law and worker protection”, *ibid* at 19; also see Fenwick, Kalula & Landau, “African perspective”, *supra* note 23 at 185.

<sup>26</sup> Sankaran, “South Asia”, *supra* note 22 at 225-226; See generally Michael Anderson, “India 1858-1930 – The illusion of free labour” in Douglas Hay & Paul Craven eds, *Masters, Servants, and Magistrates in Britain and the Empire, 1562-1955* (Chapel Hill & London: The University of North Carolina Press, 2004) 422, wherein Anderson describes how the British Master and Servant law establishes itself in India, and found expression in Indian laws and judicial decisions regulating indentured labour for different industrial and plantation ventures in the country and other parts of the British empire. Also see generally Prabhu P. Mohapatra, “Assam and the West Indies, 1860-1920 – Immobilizing Plantation Labour” in Hay & Craven, *ibid*, 455, where Mohapatra documents the plight of the workers employed in plantations in West Indies and the Assam state in India. He shows that even though separated by thousands of kilometres in distance, labour laws in both of these regions (West Indies and Assam) were shaped by the master and servant laws characterized by compulsory nature of employment contract enforced by penal sanctions. Also see Sankaran, *ibid* at 226.

<sup>27</sup> Sankaran, “South Asia”, *ibid* at 229-235.

<sup>28</sup> Fenwick, Kalula & Landau, “African perspective”, *supra* note 23 at 175, 178-180, 183-184; see Martin Chanock, “South Africa, 1841-1924 – Race, Contract, and Coercion” in Hay & Craven, *supra* note 26, 338, for a discussion on how the master and servant laws were used as an instrument in South Africa to bind labour to an employer, and to control and discipline such labour. Also see Richard Rathbone, “West Africa, 1874-1948 – Employment Legislation in a Nonsettler Peasant Economy” in Hay & Craven, *supra* note 26, 481, where the author notes that the purpose of the colonial master and servant law was “to erode slavery by compelling “masters” to forego ideas of “ownership” of labor in favor of contract.” Employers “could not use the courts to recall “deserters” without proof of contract.” *Ibid.* at 492. See David M. Anderson, “Kenya, 1895-1939 – Registration and Rough Justice” in Hay & Craven, *supra* note 26, 498, for a discussion on how the master and servant law was promulgated in Kenya and other parts of East Africa after they were abolished in England to “protect the contractual interests of the employer”, so that the employers could control the workers and punish their desertion. *Ibid.* at 500-501.

<sup>29</sup> Bensusan, “Latin America”, *supra* note 24 at 149.

labour laws' fundamental assumption of employment relationships in industrial settings in the European context and consequent influence of such labour law, atypical informal workers are excluded from the protection of labour laws in Asia, Africa and Latin America.<sup>30</sup>

Informal workers constitute the majority of workers around the globe<sup>31</sup> – in some of the countries in the South, such as India, atypical workers constitute more than 90% of the workforce.<sup>32</sup> An ILO report in 2002, *Women and Men in the Informal Economy: A Statistical Picture*, notes that informal employment constitutes 93% of total employment in India, 62% of total employment in Mexico, and 34% of total employment in South Africa.<sup>33</sup> Informal employment, excluding agricultural employment, constitutes 48 per cent of total employment in North Africa; 72 per cent in sub-Saharan Africa; 51 per cent in Latin America; 65 per cent in Asia.<sup>34</sup> The report also observes that atypical work, such as self-employment, part-time work, and temporary work constitutes 30% of total work in 15 European countries, and 25% of total work in the United States.<sup>35</sup> Self-employment constitutes a significant proportion of atypical or informal work; other categories of informal work are informal wage employment (in developing countries) and non-standard wage employment (in developed countries).<sup>36</sup>

Labour law, which is based on the juridical concept of the employment relationship, fails to address the concerns of these informal workers who constitute the majority of workers around the globe. Since labour law has traditionally relied on the Fordist model of mass production as a frame of reference, it is not applicable to informal work arrangements (self-employment or wage work on a small scale).<sup>37</sup> Moreover,

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<sup>30</sup> Sankaran, "South Asia", supra note 22 at 229-235; also see Fenwick, Kalula & Landau, "African perspective", supra note 23 at 176-177, 198-205; also see Bensusan, *ibid* at 142-146.

<sup>31</sup> See generally ILO, *Women and Men in the Informal Economy: A statistical picture* (Geneva: ILO, 2002).

<sup>32</sup> NCEUS, *Report on Definitional and Statistical Issues Relating to Informal Economy*, November 2008 (New Delhi: NCEUS, 2008) at 44.

<sup>33</sup> ILO, *Women and Men*, supra note 31 at 7.

<sup>34</sup> The report also noted that "[i]f data were available for additional countries in Southern Asia, the regional average for Asia would likely be much higher." *Ibid*.

<sup>35</sup> The report, however, makes it clear that all atypical workers in European countries and the United States are not necessarily informally employed, but very few of them receives work or employment-related benefits. *Ibid*.

<sup>36</sup> *Ibid* at 7-8.

<sup>37</sup> Tekle, "Labour law and worker protection", supra note 11 at 3, 9, 17; also see Rachid Filali Meknassi, "The effectiveness of labour law and decent work aspirations in the developing countries – A framework for analysis" in Tekle ed, *Developing Countries*, supra note 11, 51 at 54-57, 59-63, 65-66; Sankaran, "South

because of ineffective administration of labour laws most of the informal workers remain outside the scope and protection of labour laws.<sup>38</sup> Mindful of these realities, Hepple asks:<sup>39</sup>

What is the use of labour law if it is at best a law for an elite of workers in the industrialized states, while alongside this there is not only widespread poverty and powerlessness in the developing countries but also relative poverty and inequality in the developed countries?

Against this backdrop, what is required is a reformulation of labour laws that is attuned to the needs of informal work and workers so that conditions of work and living standards of workers engaged in informal work can be improved. In the next section, I will look at some of the attempts at reformulation of labour law that invoke the capability approach.

### **3. Capability Approach in Conceptualizing Labour Law**

In this section, I discuss how labour law scholars invoke the capability approach in order to offer a normative goal of labour law, which can help conceptualize labour law outside its traditional frame of reference. Being a human development approach, the capability approach is free from the narrow employment relationship-based conceptualization of labour law. Since the capability approach is concerned with an individual's opportunity aspect of freedom (in addition to an individual's agency), it is seen as offering a normative goal that can mediate the different frameworks of labour and social law as varied as the corporate codes of conduct and the ILO standards. From a capability approach point of view the purpose of labour law and social rights could be seen as the promotion of freedom of workers. Since the capability approach is non-paternalistic both procedural rights and substantive guarantees could be conceptualized in terms of capabilities. Moreover, since the capability approach offers a basis of social

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Asia", supra note 22 at 229-235; Smit & Fourie, "Atypical Workers", supra note 17; see generally Ofreneo, *Informal Sector*, supra note 17.

<sup>38</sup> See Tekle, "Labour law and worker protection", *ibid* at 5-8, 12-17, 32-36; Bensusan, "Latin America", supra note 24 at 139, 147-161; Fenwick, Kalula & Landau, "African perspective", supra note 23 at 212-213; Sankaran, "South Asia", *ibid* at 229-235, 249-252; Smit & Fourie, *ibid*; Ofreneo, *ibid*.

<sup>39</sup> See Bob Hepple, *Labour Law, Inequality and Global Trade*, Sinzheimer Lecture 2002 (Amsterdam: Hugo Sinzheimer Instituut, 2002) at 6-7; also see Hepple, "Introduction", supra note 3 at 11.

justice, which is non-dogmatic, the approach is equally attractive in both a market and a non-market set up.

Hepple argues that in the modern globalized era the central purpose of labour law should be to promote equality of capabilities for workers.<sup>40</sup> He notes that equality of capabilities can successfully negotiate the many emerging strands of labour law,<sup>41</sup> such as the European Community Social and Employment Charter, multinational corporations' codes of conduct, empowerment of local stakeholders, and ILO promulgated international labour law.<sup>42</sup>

Simon Deakin, Jude Browne,<sup>43</sup> and Frank Wilkinson<sup>44</sup> invoke the capability approach to argue that social rights have a market enabling role.<sup>45</sup> Defending the provisions on social rights in the Charter of Fundamental Rights of the European Union as market supportive, Deakin and Browne rebut the proposition of T.H. Marshall and F.A. Hayek that social rights have a market-distorting role.<sup>46</sup> Deakin, Browne, and Wilkinson note that social rights and labour laws can provide social and economic guarantees that could create conditions leading to the enhancement of an individual's capability, thereby enabling that individual to exercise her choice.<sup>47</sup> They identify two categories of social rights: one, "claims to resources" such as unemployment payments and medical insurance; and two, "*procedural* or institutionalized interaction" such as provisions regarding organization and collective bargaining.<sup>48</sup> Seen in this manner, they argue, social rights provide for financial and social conversion factors<sup>49</sup> in the process of "institutionalising capabilities"<sup>50</sup> that "determine the translation of impersonal and

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<sup>40</sup> See Hepple, *Inequality and Global Trade*, *ibid* at 7, 9-11, 14, 23.

<sup>41</sup> See *ibid* at 23.

<sup>42</sup> See *ibid* at 23-25.

<sup>43</sup> Simon Deakin & Jude Browne, "Social Rights and Market Order: Adapting the CA" in Tamara K Hervey & Jeff Kenner eds, *Economic and Social Rights under the EU Charter of Fundamental Rights – A Legal Perspective* (Oxford and Portland, Oregon: Hart, 2003) at 27.

<sup>44</sup> Simon Deakin & Frank Wilkinson, *The Law of the Labour Market – Industrialization, Employment, and Legal Evolution* (Oxford: Oxford University Press, 2005).

<sup>45</sup> See *ibid* at 283-284, 291.

<sup>46</sup> Deakin & Browne, "Adapting the CA", *supra* note 43 at 27-32, 37-42; *also see* Browne, Deakin & Wilkinson, "European Market Integration", *supra* note 1 at 220.

<sup>47</sup> Deakin & Browne, "Adapting the CA", *ibid* at 33-35; *also see* Browne, Deakin & Wilkinson, "European Market Integration", *ibid* at 208; *also see* Deakin & Wilkinson, *Law of the Labour Market*, *supra* note 44 at 290-292.

<sup>48</sup> Deakin & Browne, "Adapting the CA", *ibid* at 39.

<sup>49</sup> Browne, Deakin & Wilkinson, "European Market Integration", *supra* note 1 at 211.

<sup>50</sup> *Ibid* at 210.

transferable resources, such as human and physical resources, into functionings and capabilities.”<sup>51</sup> Conversion factors are factors that help convert personal, social, physical, environmental characteristics into capabilities.<sup>52</sup> Thus, social rights and labour standards provide institutional foundations for individual capabilities.<sup>53</sup> According to Deakin, Browne, and Wilkinson, the normative goal of social rights and labour standards is enhancement and equality of capability sets.<sup>54</sup> Their principal aim is to synchronize social rights and existing labour laws<sup>55</sup> with the logic of market freedom.<sup>56</sup>

Robert Salais, in a volume dedicated to the role of the capability approach in European Union (EU) social policy, observes that in the EU’s social and employment policies, focus needs to shift from inequality of resources to inequality of capabilities.<sup>57</sup> To Salais, the capability approach provides a basis of social justice<sup>58</sup> that is grounded on an “ethics of objectivity”.<sup>59</sup> He asserts that laws and policies should provide institutional guarantees that enable individuals to maximize their individual capabilities depending on their respective personal endowments and their choices.<sup>60</sup> Kevin Kolben also observes that “labor regulation can and should play an important role in achieving development through increasing workers’ capabilities.” Kolben’s overall project looks into trade and labour linkages in order to argue that the purpose of such linkages must be the actual development of workers.<sup>61</sup>

Thus, Deakin, Browne, and Wilkinson agree with Salais that the normative goal of social policies and labour rights in the EU context should be enhancement of capabilities of individuals, which provides an objective basis for evaluation of individual development. Both of these perspectives are concerned with the larger agenda of the integration of EU market and of asserting the role of social rights in that context. The

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<sup>51</sup> Deakin & Browne, “Adapting the CA”, supra note 43 at 38.

<sup>52</sup> Browne, Deakin & Wilkinson, “European Market Integration”, supra note 1 at 209-210.

<sup>53</sup> Deakin & Wilkinson, *Law of the Labour Market*, supra note 44 at 290-291.

<sup>54</sup> Deakin & Browne, “Adapting the CA”, supra note 43 at 39; also see Browne, Deakin & Wilkinson, “European Market Integration”, supra note 1 at 212.

<sup>55</sup> Deakin & Wilkinson, *Law of the Labour Market*, supra note 44 at 294-297.

<sup>56</sup> Deakin & Browne, “Adapting the CA”, supra note 43 at 42-43; also see Browne, Deakin & Wilkinson, “European Market Integration”, supra note 1 at 211, 219.

<sup>57</sup> Robert Salais, “Incorporating the CA into social and employment policies” in Salais & Villeneuve eds, supra note 1, 287.

<sup>58</sup> Ibid at 286.

<sup>59</sup> Ibid at 292.

<sup>60</sup> Ibid at 288, 291.

<sup>61</sup> Kolben, supra note 1 at 355-356, 371, 388.

purpose of these authors in invoking the capability approach is to show that existing social rights and labour standards are compatible with the neo-liberal formulation of the market, which is characterized by unrestricted freedom of contract subject to only the logic of market demand and supply.<sup>62</sup> Moreover, the use of the capability approach in the EU social rights project is limited to the sphere of EU *social and employment policies*.<sup>63</sup> The social rights project is not concerned with employment, social policy, and work scenarios outside Europe, especially not in the developing countries. It is concerned with justifying existing social rights and labour standards in the EU and the United Kingdom as market enabling policies.<sup>64</sup> The scholarship of Deakin, Browne, and Wilkinson, and Salais, is also limited to the study of labour laws based on employment relations; such laws imagine workers as employees and therefore exclude self-employment, triangular, and multilateral employment relationship from their purview.<sup>65</sup> Thus, the implications of the capability approach for social rights and labour laws in developing countries, where there are large numbers of self-employed workers, disguised workers, and other informal workers, remain outside their analysis.

While adopting the capability approach, Browne, Deakin, and Wilkinson choose to adopt an instrumental view of freedom. Freedom is instrumental when it is used in furtherance of some other purpose.<sup>66</sup> These authors perceive social right enabled freedom as instrumental in promoting market participation and thus, as being compatible with the market. The capability framework, however, does not promote freedom only in its instrumental sense. As I discuss earlier (in chapter 4), the capability approach values

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<sup>62</sup> See generally Deakin & Browne, "Adapting the CA", supra note 43, 27.

<sup>63</sup> See generally Robert Salais & Robert Villeneuve, "Introduction: Europe and the politics of capabilities" in Salais & Villeneuve eds, supra note 1, 1; also see generally Salais, "CA into social and employment policies", supra note 57, 283.

<sup>64</sup> Deakin & Wilkinson, *Law of the Labour Market*, supra note 44 at 294-353.

<sup>65</sup> See Deakin & Wilkinson, *ibid* at 292-339, wherein the authors chart the evolution of labour law and employment relationships in the UK. The narration makes it clear that even after modification of the nature of work in the UK, compelled by the phenomenon of outsourcing and sub-contracting, the principal requirement for the application of labour laws is the ascertainment of the employer-employee relationship (or the attribution of such relationship by the courts).

<sup>66</sup> Amartya Sen, *Development as Freedom* (New York: Alfred A. Knopf, 1999) at 10, 17-18, 35-40; Amartya Sen, *Inequality Reexamined* (New York: Russell Sage & Cambridge, Massachusetts: Harvard University Press, 1992) at 41; John M. Alexander, "Capabilities, human rights and moral pluralism" (2004) 8: 4 *International Journal of Human Rights* 451 at 455.

freedom foremost in its intrinsic sense.<sup>67</sup> Freedom in its intrinsic value is itself treated as a social good, significant for a person's overall development.<sup>68</sup>

Benedetta Giovanola explains how the capability approach promotes intrinsic freedom. Giovanola delineates an anthropological account of human richness, which she claims to be implicit in the capability approach.<sup>69</sup> She argues that, from an anthropological perspective, the concept of human essence moves beyond the concepts of individual well-being and agency to chart a “‘universal’ feature of human essence” that exceeds the limited concept of individual freedom.<sup>70</sup> Thus, there is nothing in the capability approach *per se* that calls for justifying social justice or capability in terms of its market enabling role. The danger of ceding moral ground to the market<sup>71</sup> could be avoided by a claim to the philosophical underpinnings of the capability approach that is based on the concept of intrinsic freedom of human lives as charted by Aristotle and Karl Marx, among others.<sup>72</sup>

While Browne, Deakin, and Wilkinson reconceptualize social rights as constitutive of claims to resources and institutional conversion factors, Brian Langille invokes the capability approach to provide a hierarchical conceptualization of core labour rights and non-core substantive standards.<sup>73</sup> According to Langille, Sen's account provides for a concept of freedom that prioritizes core labour rights, which are envisaged in the 1998 Declaration of Fundamental Principles and Rights at Work.<sup>74</sup> Langille argues that, by prioritizing these core rights, Sen's account of freedom proposes “to unleash the power of individuals themselves to pursue their own freedom.”<sup>75</sup>

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<sup>67</sup> Sen, *Inequality*, *ibid* at 41. Also see Sen, *Development*, *ibid* at xii, 5, 18, 35-37; Alexander, *ibid*.

<sup>68</sup> Sen, *Inequality*, *ibid*. Also see Sen, *Development*, *ibid* at 18, 35-37; Alexander, *ibid*.

<sup>69</sup> See generally Benedetta Giovanola, “Personhood and Human Richness: Good and Well-Being in the Capability Approach and Beyond” (2005) LXIII: 2 *Review of Social Economy* 249.

<sup>70</sup> *Ibid* at 262.

<sup>71</sup> Fudge, “Labour as a ‘Fictive Commodity’”, *supra* note 1 at 128; also see Fudge, “The New Discourse”, *supra* note 1 at 65.

<sup>72</sup> Sen, *Development*, *supra* note 66 at 7, 24-25, 29, 73, 75.

<sup>73</sup> See generally Langille, “Core Labour Rights”, *supra* note 1.

<sup>74</sup> *Ibid* at 433-434. The 1998 Declaration of Fundamental Principles and Rights at Work envisages right to association and collective bargaining, elimination of forced labour, abolition of child labour, and prohibition of discrimination at work as fundamental principles.

<sup>75</sup> Langille, *ibid* at 433-434.

Langille maintains that there is no inherent tension between core rights and other substantive concerns; rather, there is a positive relationship between the two.<sup>76</sup> He further notes that removing barriers to self-help so that individuals can pursue their own freedom is the concern of labour rights.<sup>77</sup> According to Langille, core rights, which are procedural in nature are market enabling.<sup>78</sup> In his account, once workers' core rights are ensured they can themselves attain the substantive standards by using their freedom. For this reason, he thinks that prioritization of core rights is conceptually coherent, normatively appealing, and pragmatically useful,<sup>79</sup> and is supported by Sen's conceptualization of freedom.<sup>80</sup>

Langille asserts that the goal of labour rights is human freedom, which is freedom to lead the life one has reason to value. However, by prioritizing core rights over substantive standards, Langille misses the centrality of Sen's approach. Sen's idea of freedom is based not only on negative civil, political, or procedural rights, but it also gives equal and adequate weight to social and substantive rights.<sup>81</sup> Judy Fudge points out that, even though Langille dismisses the comparison between civil and social rights, his distinction between procedural and substantive rights has the same effect.<sup>82</sup>

Sen's idea of freedom is non-dogmatic<sup>83</sup> and context-specific. Without predetermining the priority of civil-political or procedural rights over social-economic and substantive rights, Sen argues that promotion of the freedom to choose (capabilities) requires different conditions under different circumstances. For a starving population, freedom of expression holds little value; likewise, in a prosperous totalitarian society, people have little freedom in absence of freedom of expression. For the latter society civil rights is a precondition to freedom, but for the former economic rights are essential for real freedom.

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<sup>76</sup> Ibid at 435.

<sup>77</sup> Ibid at 433-434.

<sup>78</sup> Ibid at 429-430.

<sup>79</sup> Ibid at 423-424, 427-428.

<sup>80</sup> Ibid at 432-434.

<sup>81</sup> See generally Amartya Sen, *Hunger and Entitlements* (Helsinki: World Institute for Development Economics Research, 1987); Sen, *Development*, supra note 66 at 31-32, 36-40, 51-53, 123, 147-148, 152-155.

<sup>82</sup> Fudge, "The New Discourse", supra note 1 at 60-61.

<sup>83</sup> Browne, Deakin & Wilkinson, "European Market Integration", supra note 1 at 205, 212.

According to Sen, in every society the content of freedom (functionings, and corresponding capabilities) is to be determined by participation and deliberation.<sup>84</sup> To make people effectively participate in determining the nature and extent of their freedom, a multiplicity of factors need to interact to shape individual, social, and environmental characteristics into individual capabilities.<sup>85</sup> An *a priori* hierarchization of such factors is uncalled for and might fail to remove “unfreedoms”, which is Sen’s objective.<sup>86</sup> Thus, Sen’s is a complex idea of freedom,<sup>87</sup> which Langille oversimplifies to the extent of rendering it misleading.

Fudge notes that Langille’s view of fundamental labour rights is based on a thin conception of the capability approach, whereas Brown, Deakin, and Wilkinson’s conception of social rights is based on a much thicker conception of the capability approach, because they are attentive to social rights in addition to civil and political rights.<sup>88</sup> She further observes that Langille’s version of fundamental labour rights is individualistic in nature.<sup>89</sup> Langille discusses freedom of association and collective bargaining in terms of an individual right rather than a collective right,<sup>90</sup> which might pose problems for the institutions of collective bargaining and organization.<sup>91</sup>

Fudge commends the capability approach as providing a moral justification for the legal form and normative content of labour and social rights in a market framework.<sup>92</sup> In agreement with Browne, Deakin, and Wilkinson, she argues that *capabilities*, as normative basis of labour and social rights, provide the much needed support for labour rights<sup>93</sup> in order to “re-institutionalize the employment relationship”<sup>94</sup> in “developed non-socialist countries”.<sup>95</sup> Cautious of the limitations of the capability approach, Fudge notes that it would be wrong to assume that Sen’s approach can provide a ready-made theory of

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<sup>84</sup> Sen, *Development*, supra note 66 at xii-xiii, 31, 78-79, 110; also see Amartya Sen, *The Idea of Justice* (Cambridge, Massachusetts: The Belknap Press of Harvard University Press, 2009) at 88, 91, 326-328, 346-347, 350-351.

<sup>85</sup> Sen, *Development*, ibid at 3-4, 10, 35-41, 43-53, 72-86, 109-110.

<sup>86</sup> Ibid at xii, 3-4, 10, 35-41, 43-53, 72-86, 109-110.

<sup>87</sup> Fudge, “The New Discourse”, supra note 1 at 61.

<sup>88</sup> Ibid at 58, 64; also see Kolben, supra note 1.

<sup>89</sup> Ibid at 62.

<sup>90</sup> Ibid at 62.

<sup>91</sup> Ibid at 62.

<sup>92</sup> Ibid at 63, 66.

<sup>93</sup> Ibid at 31-32, 57-58; also see Fudge, “Labour as a ‘Fictive Commodity’”, supra note 1 at 128-129.

<sup>94</sup> Fudge, “The New Discourse”, ibid at 31.

<sup>95</sup> Ibid at 31.

social justice for labour and social rights.<sup>96</sup> It is only by supplementing the capability framework with “a theory of social choice, deliberative mechanisms, and a social theory about power” that we can devise a theory of social justice for workers.<sup>97</sup> Accordingly, Fudge supplements Sen’s capability approach with philosopher Elizabeth Anderson’s theory of *democratic equality* to provide a normative goal of law governing the labour market.<sup>98</sup> According to Fudge, the normative goal of law governing the labour market should be democratic equality of capabilities in the labour market.<sup>99</sup> Importantly, Fudge identifies the significance of the capability approach for reconceptualizing labour law for not only paid workers, but also for unpaid workers.<sup>100</sup>

While Fudge provides us with a nuanced version of the use of the capability approach in labour law, her primary focus remains re-institutionalization of employment relationships in the context of developed non-socialist countries.<sup>101</sup> Fudge contributes to the debate about reconceptualization of labour law in a significant way. By invoking Anderson’s insight, she uses the capability approach to argue for labour law that can govern workers outside the employment relationship model, which is a significant step towards reconceptualization of labour law for informal workers.

Thus, from the literature review on the use of the capability approach in labour law reconceptualization, it is clear that the debate about reconceptualization of labour law has remained confined to issues in the developed world and is overwhelmingly concerned with the employment relationship model. Although the literature surveyed provides glimpses into the use of the capability approach in the absence of the employment relationship model, such arguments remain underdeveloped. Informal economic activities in developing countries pose particular problems of their own, which cannot be appreciated and addressed by new proposals of labour law if they are not contextual and not set specifically against the backdrop of such problems. In the next section of this chapter, I look into the literature that uses the capability approach in the context of informal economic activities in developing countries.

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<sup>96</sup> Ibid at 65.

<sup>97</sup> Ibid at 65.

<sup>98</sup> Fudge, “Labour as a ‘Fictive Commodity’”, supra note 1 at 129, 132-135.

<sup>99</sup> Ibid at 132-135.

<sup>100</sup> Ibid at 134-135.

<sup>101</sup> Fudge, “The New Discourse”, supra note 1 at 31.

#### 4. Capability Approach and Informal Economic Activities

A capability approach-based analysis of working conditions and living standards of informal workers has received the most comprehensive treatment at the hands of Elizabeth Hill.<sup>102</sup> In her book *Worker Identity, Agency and Economic Development*, Hill analyzes the relevance of the capability approach as a theoretical justification for the multi-dimensional facilitative program (developed by the trade union Self Employed Women's Association, or SEWA<sup>103</sup>) for improving the overall conditions of work and life for the informal women workers in India.<sup>104</sup> She observes that the capability approach provides a nuanced framework for the evaluation of deprivation and development of informal workers when compared to the human capital approach.<sup>105</sup> To Hill, the essence of Sen's approach lies in his conceptualization of conversion factors.<sup>106</sup>

Rather than celebrating the mere presence of resources, what the emphasis on conversion factors in Sen's theory does is show how resources can become useful in the lives of informal workers.<sup>107</sup> Hill notes that the capability approach, by distinguishing between resources and capabilities, gives us the opportunity to analyze the reasons for and forms of marginalization, vulnerability, poverty, exclusion, and underdevelopment of informal workers.<sup>108</sup> The capability approach is a tool to analyze "all sources of human constraint and non-freedom."<sup>109</sup> Hill shows that, by providing for institutional recognition, respect, work security, worker solidarity, childcare and healthcare, establishment of alternative economic institutions such as cooperatives and banking services, vocational training, information exchange, legal and social support services, lobbying, and direct action (agitation), SEWA enhances the capabilities and functionings

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<sup>102</sup> Elizabeth Hill, *Worker Identity, Agency and Economic Development – Women's empowerment in the Indian informal economy* (London and New York: Routledge, 2010); also see Elizabeth Hill, "Women in the Indian Informal Economy: Collective Strategies for Work Life Improvement and Development" (2001) 15: 3 *Work, Employment & Society* 443.

<sup>103</sup> SEWA is the abbreviated form of the trade union Self Employed Women's Association.

<sup>104</sup> See generally Hill, *Worker Identity*, supra note 102.

<sup>105</sup> *Ibid* at 29, 35.

<sup>106</sup> *Ibid* at 29.

<sup>107</sup> *Ibid* at 29, 32, 34.

<sup>108</sup> *Ibid* at 35.

<sup>109</sup> *Ibid* at 35.

of its members who are informal women workers.<sup>110</sup> SEWA's provisions help convert individual, social, economic, and political characteristics (resources) to capabilities of informal women workers.<sup>111</sup>

Hill is, however, also critical of the capability approach. She argues that even though the capability approach provides a space to think about constraints and non-freedom that hinders an individual's capabilities and functionings, it is not concerned with "why or how" socio-economic and political institutional conversion factors impinge on labour.<sup>112</sup> She is also critical of Sen's delineation of the concept of *agency*:<sup>113</sup> "Sen has not included the most fundamental issue, which is the internally determined capacity of a person to *be free to exercise* freedom and choice, that is, their agency."<sup>114</sup> She argues that Sen provides an inadequate account of agency in the sense that, instead of looking into the reasons for the absence of agency and how it could be inculcated in individuals, he assumes that each individual possesses agency to convert resources into capabilities.<sup>115</sup> She also notes that Nussbaum's account of capabilities (and her list of desired capabilities) provides a better approach to analyze agency in marginal women informal workers as an outcome of self-respect and self-esteem, which emanates from the process of affiliation to and reciprocity within an organization.<sup>116</sup> Hill concludes that social relations of recognition and respect have both intrinsic and instrumental value that is necessary for the creation of agency as a personal characteristic.<sup>117</sup> Agency, in turn, is a pre-requisite for economic development and capability enhancement.<sup>118</sup>

Hill provides a very useful study of informal women workers in India within the theoretical framework of the capability approach. However, there are some problems

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<sup>110</sup> Ibid at 46-47, 73-95; also see Hill, "Indian Informal Economy", supra note 102 at 450-462.

<sup>111</sup> Hill, *Worker Identity*, supra note 102 at 96-114.

<sup>112</sup> Ibid at 35. Hill resorts to Marxist account of labour in the informal economy to address the questions of "why or how?" She develops a Marxist account of social reproduction of labour and relations of power in the informal economy to analyze why socio-economic and political institutional conversion factors hinder labour's productivity, capability and functionings. Ibid at 36-45.

<sup>113</sup> Ibid at 126-131.

<sup>114</sup> Ibid at 128.

<sup>115</sup> Ibid at 126-130.

<sup>116</sup> Ibid at 130-131. The list of capabilities offered by Nussbaum includes *capability of affiliation*, and *capability to exercise political and material control over one's environment*. See Martha Nussbaum, *Women and Human Development – The Capabilities Approach* (Cambridge: Cambridge University Press, 2000) at 79-80.

<sup>117</sup> Hill, *Worker Identity*, ibid at 131.

<sup>118</sup> Ibid at 131-132.

with Hill's understanding of the capability approach. Sen has categorically observed<sup>119</sup> and others have noted<sup>120</sup> that the capability approach does not provide a complete theory of justice. It would therefore, be wrong to assume that the capability approach will provide a complete theory of social justice including perspectives on power relations in society, and subtle socio-economic and political influences that are responsible for perpetual deprivation of marginalized people (i.e. the "why or how" questions, in Hill's terms).<sup>121</sup> Hence, Sen's theoretical framework needs to be supplemented by other theoretical frameworks to answer "why or how" questions, as Hill herself does by using the Marxist approach.<sup>122</sup> Moreover, Hill's critique of Sen's theorizing of *agency* sinks into quicksand. Agency in Sen's theory refers to individual preference and initiative,<sup>123</sup> which are the result of family values, education, socialization, environment, culture, physical capacity, and a range of other factors. These factors are resources as well as *conversion factors* (for other resources). Thus, agency as a functioning (and a capability for other functionings) is created or enhanced by means of different conversion factors. Hill has herself argued that agency amongst informal women workers in India is created through social relations of recognition and respect.<sup>124</sup> While Sen might have given less attention to theorizing agency, there is enough space in the capability approach (both Sen's and Nussbaum's versions) to account for agency in marginal workers.

Sabina Alkire shows how the capability approach could be used to analyze the multidimensional capability improvement of marginalized people in Pakistan.<sup>125</sup> Alkire discusses three case studies of Oxfam-funded small-scale projects in Pakistan and analyzes how these "local participatory activities"<sup>126</sup> have been able to enhance multiple

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<sup>119</sup> Amartya Sen, "The place of capability in a theory of justice" in Harry Brighouse & Ingrid Robeyns eds, *Measuring Justice Primary Goods and Capabilities* (Cambridge: Cambridge University Press, 2010) 239 at 242-243, 249-250.

<sup>120</sup> Fudge, "The New Discourse", supra note 1 at 62; also see Elizabeth Anderson, "Justifying the capabilities approach to justice" in Brighouse & Robeyns eds, supra note ----, 81 at 81-84.

<sup>121</sup> Fudge, *ibid* at 62.

<sup>122</sup> Ingrid Rubeyns notes that different results will be obtained by supplementing Sen's capability approach with a diverse range of theoretical frameworks. See Ingrid Robeyns, "Sen's Capability Approach and Gender Inequality: Selecting Relevant Capabilities" (2003) 9: 2-3 *Feminist Economics* 61 at 67.

<sup>123</sup> Sen, *Development*, supra note 66 at xi, 18-19.

<sup>124</sup> Hill, *Worker Identity*, supra note 102 at 131.

<sup>125</sup> Sabina Alkire, *Valuing Freedoms – Sen's CA and Poverty Reduction* (New York: Oxford University Press, 2002).

<sup>126</sup> *Ibid* at 205.

capabilities of the project participants.<sup>127</sup> Local participatory activities discussed by Alkire are goat rearing, rose cultivation, and literacy enhancement.<sup>128</sup> While goat rearing and rose cultivation are directly linked to income generation, the literacy project is aimed at empowering women participants.<sup>129</sup>

Based on the outcome of these projects, Alkire notes that “[e]mpowerment indicated their [participants’] awareness of what they themselves could do and be.”<sup>130</sup> This observation resonates very closely with what Hill describes as the process of building agency in marginalized people.<sup>131</sup> Improvement of capabilities through the three projects has been made possible because of initial access to resources such as money, participation, mobilization, and social organization,<sup>132</sup> which acted as conversion factors in improving the overall capability sets of the participants.

Alkire’s study is important in reflecting about the improvement of working conditions and living standards of informal workers. Her operational definition of capability provides us with a plan, which can be used in an institutionalization program that targets improvement of working conditions and living standards of informal workers. Her identification of the basic functionings (such as money, participation) required for long-term capability improvement in marginalized and deprived communities in Pakistan is also a significant indicator of what needs to be done in order to improve conditions of informal workers in developing countries.

Pointing out the necessity of reconceptualizing labour law for informal economic activities in developing countries,<sup>133</sup> Anne Trebilcock offers three development approaches for reconceptualizing labour law. She does not, however, provide details about any one of these alternative frameworks. Her limited purpose is only to indicate how different development-related theoretical frameworks might be useful in meeting the challenge of crafting good legislation that can administer labour beyond the formal sector.<sup>134</sup> Identifying that the problems with informal economic activities are the

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<sup>127</sup> See generally *ibid* at 233-296.

<sup>128</sup> *Ibid* at 233-296.

<sup>129</sup> *Ibid* at 233-296.

<sup>130</sup> *Ibid* at 266.

<sup>131</sup> Hill, *Worker Identity*, *supra* note 102 at 131-132.

<sup>132</sup> Alkire, *Valuing Freedoms*, *supra* note 125 at 235-236.

<sup>133</sup> Trebilcock, “Using Development Approaches”, *supra* note 6 at 63-64, 66-67.

<sup>134</sup> *Ibid* at 68-69, 86.

precariousness and insecurity of workers,<sup>135</sup> she offers – the sustainable livelihoods approach, the human capability perspective, and the empowerment approach – as possible ways for thinking about labour law that are capable of addressing the problems associated with informal economic activities.<sup>136</sup>

According to Trebilcock, the sustainable livelihoods approach is concerned with providing or improving livelihoods assets, such as skills, knowledge, health, infrastructure, natural resources (e.g. water, biodiversity), savings, credit, social assets (e.g. networks, associations) for the target population.<sup>137</sup> Since this approach builds on “people’s strengths, promote[s] links between policies and institutions that operate at the macro and the micro levels, encourages broad partnering from the public and private sectors and aims at long-term sustainability”, it can provide a theoretical basis for labour law for informal economic activities.<sup>138</sup>

Trebilcock further notes that since the human capability perspective theorizes the relevance of *human capabilities* as an intrinsic factor in people’s well-being and freedom and as an instrumental factor influencing social change and economic production, it can also be a possible candidate for theorizing labour law for informal economic activities.<sup>139</sup> Finally, her enthusiasm for the empowerment approach seems to have arisen from the fact that while the sustainable livelihood approach and the human capability approach takes the individual as their point of analysis, the empowerment approach (the World Bank’s approach) takes the collective as its analytical basis.<sup>140</sup> The empowerment approach argues that an effective institution (e.g. the institution of *law*) needs to combine the elements of empowerment – information, inclusion/participation, accountability, and local organizational capacity – that will enable people to move out of poverty.<sup>141</sup>

Amongst the alternative development frameworks suggested by Trebilcock, the sustainable livelihoods approach argues for provision of resources to encounter deprivations of vulnerable and marginalized sections of the population.<sup>142</sup> Such a

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<sup>135</sup> Ibid at 67.

<sup>136</sup> Ibid at 76-86.

<sup>137</sup> Ibid at 76-77.

<sup>138</sup> Ibid at 77.

<sup>139</sup> Ibid at 79-81.

<sup>140</sup> Ibid at 81-83.

<sup>141</sup> Ibid at 81.

<sup>142</sup> Ibid at 77.

theoretical framework resonates well with the Rawlsian and Dworkinian concepts of *primary goods* and *resources*<sup>143</sup> (discussed in chapter 4). However, by not concentrating on the outcome of using such resources, the sustainable livelihoods approach attracts the same criticism that resources alone cannot guarantee development; what is important is looking into the consequences of using such resources.<sup>144</sup> The World Bank's empowerment approach, on the other hand, provides for collective empowerment in addition to provision for resources and opportunity (or capability).<sup>145</sup> However, what is problematic in the World Bank approach is that empowerment has to happen according to the Bank's terms and conditions.<sup>146</sup> Trebilcock identifies serious limitations of the collective empowerment proposal of the Bank.<sup>147</sup> The third approach suggested by Trebilcock is the consequentialist approach of capabilities, which looks into the role of resources in enhancing the capability and functionings of individuals.<sup>148</sup> Even though Trebilcock notes that the individual (not collective) is the reference point for the capability approach,<sup>149</sup> Ingrid Robeyns points out that such individualism is only a commitment to ethical individualism.<sup>150</sup> Ethical individualism means that the analytical unit for the capability approach is the individual and not collective.<sup>151</sup> Thus, the evaluation of an individual's capabilities is not subsumed into the evaluation of a group's capability to which an individual might belong.<sup>152</sup> In the context of the capability approach, ethical individualism means that even though for evaluative purposes individual capabilities are analyzed, such individual capabilities may be influenced by (or dependent on) collective initiatives (of groups/associations).<sup>153</sup> There is, therefore,

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<sup>143</sup> See John Rawls, *A Theory of Justice* (Cambridge: Harvard University Press, 1971) at 62, 92, 93-95, 395-396, 399-404; also see Ronald Dworkin, "What is Equality? Part 2: Equality of Resources" (1981) 10: 4 *Philosophy and Public Affairs* 283 at 289.

<sup>144</sup> Sen, *Development*, supra note 66 at 58-76.

<sup>145</sup> Trebilcock, "Using Development Approaches", supra note 6 at 81.

<sup>146</sup> Ibid at 82-84.

<sup>147</sup> Ibid at 82-84.

<sup>148</sup> Ibid at 78-81. I discussed this aspect of the capability approach in detail in chapter 4.

<sup>149</sup> Ibid at 81.

<sup>150</sup> Robeyns, "Sen's Capability Approach", supra note 122 at 65. Ingrid Robeyns, "The Capability Approach: a theoretical survey" (2005) 6: 1 *Journal of Human Development* 93 at 107-109.

<sup>151</sup> Robeyns, "Sen's Capability Approach", *ibid*; also see Robeyns, "theoretical survey", *ibid*.

<sup>152</sup> Robeyns, "Sen's Capability Approach", *ibid*; also see Robeyns, "theoretical survey", *ibid*.

<sup>153</sup> Robeyns, "theoretical survey", *ibid* at 109-110.

nothing in the capability approach that hinders collective effort or association by individuals in furtherance of their capabilities.<sup>154</sup>

Taking Trebilcock's proposal forward, I now conceptualize labour law for informal economic activities based on the capability approach. Deakin and Wilkinson, in their reconceptualization project, note: "the capability concept can be understood as an answer, or perhaps the beginning of an answer, ...."<sup>155</sup> It is in this spirit that I attempt to take the "beginning of an answer"<sup>156</sup> forward by arguing for a labour law conceptualization that is attentive to the requirements of informal workers principally in the global South.

In line with Sen, Browne, Deakin, Wilkinson, and Hepple, I begin the following section by arguing that the normative goal of new labour law must be enhancement and equality of capability of all workers. I then discuss the basis of the claim to equality of capability. Following Fudge, I draw on Elizabeth Anderson's theory of *democratic equality* to argue for the basis of distribution of capabilities. I finally draw on Sen and Dréze's formulation of integrated institutions to argue for a framework that can formulate the new labour law in informal economic activity settings.

## 5. Claim to a New Normative Goal of Labour Law

After the post-World War II era, one of labour law's goals has been to address the power imbalance between employers and employees<sup>157</sup> by providing minimum labour standards, provident funds, medical benefits, the right to contract, and the right to participate in trade unions and collective bargaining. While these guarantees are primarily viewed as disjunctive standalone rights, the capability approach offers a lens of looking at labour rights in a goal-based consequentialist manner<sup>158</sup> from a human development

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<sup>154</sup> Peter Evans, "Collective Capabilities, Culture, and Amartya Sen's Development as Freedom" (2002) 37: 2 *Studies in Comparative International Development* 54; Sen, "Capability in a theory of justice", supra note 119 at 249-250.

<sup>155</sup> Deakin & Wilkinson, *Law of the Labour Market*, supra note 44 at 348.

<sup>156</sup> Ibid.

<sup>157</sup> Kahn-Freund, *Labour and the Law*, supra note 4 at 1, 4-5, 8-9, 11-15; also see Trebilcock, "Using Development Approaches", supra note 6 at 66. Also see Davidov, "The (changing?) idea" supra note 4 at 312, 314-315.

<sup>158</sup> See John Alexander, *Capabilities and Social Justice – The Political Philosophy of Amartya Sen and Martha Nussbaum* (Farnham & Burlington: Ashgate, 2008) at 17-21 (discussed in chapter 4).

perspective. Browne, Deakin, and Wilkinson suggest that instead of viewing labour rights merely as resources available to workers, such rights could be viewed as conversion factors in the process of “institutionalizing capabilities” whereby resources are converted to capabilities.<sup>159</sup> Labour rights, in this sense, provide institutional foundations for enhancement of capabilities.<sup>160</sup> Thus, labour rights could also be understood as providing for social conditions for capabilities or freedom.

Sen has argued that institutional guarantees by themselves are not sufficient conditions for social justice.<sup>161</sup> What is needed is constant evaluation of institutional guarantees to examine their effects on targeted populations.<sup>162</sup> Therefore, even if labour rights are viewed as institutional foundations for conversion of resources to capabilities, such rights need to justify themselves on a consequentialist examination. Labour rights, as they exist today, fail to address the concerns of the large number of informal workers across the globe who continue to remain outside the purview of labour law.<sup>163</sup> Thus, from a consequentialist analysis, the institutional foundations of labour law in its present form fail to justify its relevance for the majority of workers worldwide.

Moreover, labour rights, as they exist today, constitute a given list of entitlements (resources or options) that are available to workers. However, the problem with this given list of options, which are reasonably fixed (such as maternity benefits, provident fund), is that workers cannot have access to other social conditions of freedom that might be necessary for their human development in terms of capabilities related to their work. In this backdrop, the capability approach offers the advantage of looking at all social conditions of freedom that are necessary for capability enhancement of workers, even if some of such social conditions did not attain the status of labour rights. Thus, on a rights-based labour law conceptualization the content of labour law becomes more or less fixed.

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<sup>159</sup> Browne, Deakin & Wilkinson, “European Market Integration”, supra note 1 at 210-211; also see Deakin & Browne, “Adapting the CA”, supra note 43 at 38.

<sup>160</sup> Deakin & Wilkinson, *Law of the Labour Market*, supra note 44 at 290-291.

<sup>161</sup> Sen, *Idea of Justice*, supra note 84 at 81-86.

<sup>162</sup> *Ibid.*

<sup>163</sup> See chapter 3. Also see Tekle, “Labour law and worker protection”, supra note 11 at 3-5, 8-9, 12-28, 32-36; It is in this context that scholars have proposed viewing labour law as ‘the law of labour market regulation’, or ‘the law based on the labour force membership status’ to do away with the employment-specific dispensation of labour law. See Richard Mitchell & Christopher Arup, “Labour Law and Labour Market Regulation” in Arup et al eds, *Labour Law*, supra note 10, 3 at 3; Supiot et al, *Beyond Employment*, supra note 10 at 52, 54-55; Fudge, “Labour as a ‘Fictive Commodity’”, supra note 1, 120-136.

This fixed and determinate content of labour rights is an obstacle for new and innovative labour guarantees (or social conditions of freedom), which might be necessary for informal workers. The capability approach, by taking account of a range of factors necessary for human development of workers (not necessarily limited to labour rights) can also overcome the fixed and rigid terrain of a rights-based approach. Thus, there are valid reasons for pursuing the capability approach as a normative goal of labour law. However, one must be careful not to embrace all social conditions of freedom as part of a labour law conceptualization. For example, the capability approach might require that informal workers have access to housing and education, but it does not follow that these extremely valuable capabilities necessary for informal workers should be assimilated into labour law. For informal workers, conceptualization of labour law should be context specific.

According to Sen, expansion (enhancement) of freedom or capability,<sup>164</sup> and equality in the space of capability,<sup>165</sup> should be the aim of public policy. This conceptualization of freedom allows labour law to be re-framed in terms of its ability to enhance “freedom” of workers.<sup>166</sup> According to Hepple,<sup>167</sup> Browne, Deakin, and Wilkinson, the normative goal of labour law should be enhancement and equality of capability sets.<sup>168</sup>

The advantage of envisioning enhancement and equality of capability as a normative goal of labour law for informal economic activities is that, in such a scenario, labour law could be freed from its dependence on an employer-employee relationship. Enhancement and equality of capabilities of workers are independent of the employment relationship model of labour law that operates at the workplace. The normative goal of enhancement and equality of capabilities of workers could be formulated irrespective of

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<sup>164</sup> Sen, *Development*, supra note 66 at 4; also see Sen, *Idea of Justice*, supra note 84 at 232, 298.

<sup>165</sup> Amartya Sen, “Equality of What?” The Tanner Lecture on Human Values, delivered at Stanford University, May 22, 1979 in *The Tanner Lectures On Human Values, Vol. I* (Salt Lake City: University of Utah Press/Cambridge, London, Melbourne and Sydney: Cambridge University Press, 1980) at 217-218; also Browne, Deakin & Wilkinson, “European Market Integration”, supra note 1 at 209, 211-212; Sen, *Idea of Justice*, ibid at 298. However, it must be noted that Sen is quite aware of the dangers of mooted for absolute *equality of capability*, because such claim to equality might conflict with other important equality claims. See Sen, *Idea of Justice*, ibid at 232, 295-298.

<sup>166</sup> Browne, Deakin & Wilkinson, “European Market Integration”, ibid at 208-209, 213.

<sup>167</sup> See Hepple, *Inequality and Global Trade*, supra note 39 at 7, 9-11, 23.

<sup>168</sup> Deakin & Browne, “Adapting the CA”, supra note 43 at 39; also see Browne, Deakin & Wilkinson, “European Market Integration”, supra note 1 at 212.

the nature of work, employment relationship, or place of work. Such a normative goal is therefore valid for both formal as well as informal workers.

While Sen's idea of freedom is apt for reconceptualizing labour law, I want to add further clarifications to his idea of freedom in conceiving labour law for informal economic activities. The normative goal of freedom in terms of capabilities has to be both content-independent as well as permit-independent.<sup>169</sup> Freedom is content-independent when an individual is assured of appropriate circumstances wherein she can (subject, of course, to the exercise of her *agency*) achieve whatever she chooses to achieve, rather than choosing from a given list of options that society might offer.<sup>170</sup> For example, a society might offer an individual a choice between options A and B. Whatever choice an individual prefers under these circumstances, her freedom is content-dependent. In the alternative, if an individual chooses option Z (i.e. neither options A nor B) and social arrangements could ensure the achievement of such option, an individual has content-independent freedom. In this sense a rights-based approach to labour law could only enable an individual (a worker) to realize a content-dependent freedom, but a capability approach-based conceptualization can take into account any factor (i.e., where options are not limited) necessary for individual development in addition to entitlements that have attained the status of rights. Freedom is permit-independent when such freedom is enjoyed on an equal basis without an individual having to negotiate with the power or domination of others.<sup>171</sup> For example, when an individual has freedom to choose, but such freedom can only be exercised as a favour through sycophancy or other kinds of negotiation, such freedom becomes permit-dependent.<sup>172</sup>

Freedom in this content-independent and permit-independent sense has two dimensions: individual agency and social arrangements. Sen calls for the evaluation of institutional arrangements on the basis of their ability to promote freedom.<sup>173</sup>

Accordingly, a normative reconceptualization of labour law has to be premised on its ability to promote individual and social development in terms of *freedom*. What follows

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<sup>169</sup> Philip Petit, "Freedom in the Spirit of Sen" in Christopher W Morris ed, *Amartya Sen* (New York: Cambridge University Press, 2010) 91 at 97-98.

<sup>170</sup> *Ibid* at 97-98.

<sup>171</sup> *Ibid* at 98-100.

<sup>172</sup> *Ibid*.

<sup>173</sup> *Ibid* at 103.

from the reconceptualization of the normative basis of labour law is the shift in its analytical focus from mere existence of goods, provisions, and resources (including individual and collective rights), or institutional foundations, to the role of such goods, provisions, and resources in ensuing *real freedom* of workers.<sup>174</sup>

What this would mean for labour law is that instead of focusing on goods and resources (or factors<sup>175</sup>) such as rights to association, collective bargaining, unemployment insurance, maternity benefits, pensions, etc., one needs to look to what extent such factors have been able to promote improved freedom in terms of actual choice for workers. For example, the right to association would be meaningless if the structure of the political economy makes it impossible for workers to organize. Informal workers, such as domestic workers or waste-pickers, tend to work on their own and not with other workers. Very seldom do they come in contact with each other to exchange views or cooperate in furtherance of some common purpose. These workers are mostly uneducated; they are unaware of any rights associated with work or citizenship. Under these circumstances, if the structural and social constraints to the right to association are not removed, mere availability of the factor right to association cannot promote freedom of these workers in terms of capabilities.

Similarly, the mere availability of the factor workplace bargaining rights would only be a formal notional guarantee for workers (principally informal workers) who do not have a workplace, or who are uneducated and so cannot appreciate the issues for which they need to bargain. Unemployment insurance is another factor that may have little value if there is no provision for skill development or education for workers. The mere availability of resources or goods, thus, is not sufficient for promoting capabilities of workers. A definite kind of good or resource (such as right to association) could provide social conditions in which certain categories of workers could enhance their capabilities; but the same resource might not be able to promote capabilities for some other categories of workers. Therefore, in thinking about legislative guarantees for informal workers, the typical socio-economic-cultural-political situations in which

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<sup>174</sup> Browne, Deakin & Wilkinson, "European Market Integration", supra note 1 at 209-213; Sen, *Development*, supra note 66 at 3, 36; Sabina Alkire, "Why the Capability Approach?" (2005) 6: 1 *Journal of Human development* 115 at 121.

<sup>175</sup> I will use the phrases *goods and resources* and *factors* interchangeably.

informal economic activities are performed need to be understood appropriately. Factors hindering capability development of such workers need to be identified. It is only from an appropriate understanding of these factors that legislative guarantees can be made, which could promote capabilities of informal workers by removing the obstacles to the development of such workers' capabilities.

The proposal of a normative goal of labour law that is based on a claim to equality (of capability) in the context of work needs to specify the basis of such a claim. The problem with the capability approach is that while it envisages the opportunity aspect of freedom<sup>176</sup> it is not concerned with the process aspect of freedom.<sup>177</sup> Sen acknowledges that the capability approach does not provide a complete theory of justice.<sup>178</sup> Sen's approach is not concerned with the distributive aspects of freedom (i.e. how to determine distribution).<sup>179</sup> He does not deal with the basis of claims to entitlements or equality of capabilities.<sup>180</sup> To make the capability approach operational as a theory of social justice it needs to be supplemented by a theory of distribution. In the following section of the chapter, I examine the basis of the normative claim to equality of capability of workers on the basis of a theory of distribution.

Anderson has theorized a worker-centric idea of equality that takes the capability approach as its reference point. Fudge has invoked Anderson's concept of *democratic equality* to supplement Sen's approach.<sup>181</sup> Following Fudge, I adopt Anderson's concept of democratic equality to supplement Sen's approach. I will be using Anderson's conceptualization of democratic equality to argue for equality amongst participants in the cooperative production process as a starting point for the distribution of capabilities.<sup>182</sup> Fudge envisages democratic equality as the normative goal of labour law.<sup>183</sup> I will argue, instead, that the concept of democratic equality can act as a basis of "a claim to a

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<sup>176</sup> Sen, *Idea of Justice*, supra note 84 at 232, 295.

<sup>177</sup> Ibid at 296.

<sup>178</sup> Sen, "Capability in a theory of justice", supra note 119 at 242-243, 249-250; also see ibid at 232-233.

<sup>179</sup> Sen, "Capability in a theory of justice", ibid at 248-249.

<sup>180</sup> Ibid at 248; also see Anderson, "Justifying the capabilities approach to justice", supra note 120 at 81-83.

<sup>181</sup> Fudge, "Labour as a 'Fictive Commodity'", supra note 1 at 132-136.

<sup>182</sup> This aspect has received specific treatment from Anderson, who conceptualizes equality amongst workers in the globalized production system. See Anderson, "What is the Point of Equality?", supra note 2 at 321.

<sup>183</sup> Fudge, "Labour as a 'Fictive Commodity'", supra note 1 at 129, 132-133.

capability set”<sup>184</sup> for workers engaged in a cooperative production process. My premise is that because workers are equal democratic participants in production process they can lay their claim to equality and enhancement of capabilities. Thus, I use the concept of democratic equality as *a premise* of equality in a production process, rather than as a normative goal of labour law.

## **6. What is the basis of the Normative Claim (to enhancement and equality of capability)?**

A theory of social justice needs to have certain components. First, it needs to have a metric, which characterizes the type of good that is the subject of the demands of justice.<sup>185</sup> Second, there has to be a rule, which specifies the basis of distribution of the metric.<sup>186</sup> I adopt a social justice approach to labour law. The metric I adopt is that of the capabilities metric, which is an objective metric (rather than the subjective metric of happiness or desire fulfilment). I propose that distribution of the metric be based on the principle of democratic equality.

Fudge observes that Anderson’s political concept of equality can be a good supplement to Sen’s capability approach in conceptualizing labour law.<sup>187</sup> Anderson justifies the claim to equality of capabilities on the basis of what she terms *democratic equality*.<sup>188</sup> Her concept of democratic equality proposes recognition of persons as equals in a society in the matters of democratic participation and collective self-determination.<sup>189</sup> Her idea of democratic equality “guarantees all law-abiding citizens equal and effective access to the social conditions of their freedom at all times.”<sup>190</sup> She elaborates on the richness of her conception of democratic equality:

Democracy is here understood as collective self-determination by means of open discussion among equals, in accordance with rules acceptable to all. To stand as an equal before others in discussion means that one is entitled to participate, that others recognize an obligation to listen

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<sup>184</sup> Anderson, “Justifying the capabilities approach to justice”, supra note 120 at 83.

<sup>185</sup> Ibid. at 81-82.

<sup>186</sup> Ibid.

<sup>187</sup> Fudge, “Labour as a ‘Fictive Commodity’”, supra note 1 at 132-133.

<sup>188</sup> Anderson, “What is the Point of Equality?”, supra note 2 at 316-321.

<sup>189</sup> Ibid at 313.

<sup>190</sup> Ibid. at 289.

respectfully and respond to one's arguments, that no one need bow and scrape before others or represent themselves as inferior to others as a condition of having their claim heard. [footnote omitted]<sup>191</sup>

Anderson's idea of democratic equality can be traced back to Rawls' conceptualization of democratic equality.<sup>192</sup> According to Rawls, moral personality is the basis of democratic equality.<sup>193</sup> Rawls notes:

[P]rinciple of (equal) participation ... requires that all citizens are to have an equal right to take part in, and to determine the outcome of, the constitutional process that establishes the laws with which they are to comply.<sup>194</sup>

However, unlike Anderson's conceptualization, Rawls' conceptualization of equal citizenship is available only in the original position<sup>195</sup> (and later transferred to constitutional rule-making) when, behind the veil of ignorance, equal citizens decide the basic structure of society.<sup>196</sup> It is in this sense that Rawls' democratic equality is a starting-gate theory.

According to Anderson, on the other hand, democratic equality is a relational theory of equality.<sup>197</sup> It calls for the removal of socially created relations of oppression, violence, marginalization, domination, exploitation, and cultural imperialism.<sup>198</sup> Even though the theory of democratic equality acknowledges the important role played by distribution of goods and resources in abolishing the social relations of oppression, it is far from advocating distribution of goods and resources as the principal mechanism of ensuring democratic equality.<sup>199</sup> The theory synthesizes the requirement of equal

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<sup>191</sup> Ibid. at 313.

<sup>192</sup> Rawls, *Theory of Justice*, supra note 143 at 66.

<sup>193</sup> Ibid at 75, 504f.

<sup>194</sup> Ibid at 221-222.

<sup>195</sup> Rawls describes original position as a hypothetical position of initial equality in which autonomous people enjoying equal status decide "the principles of justice for the basic structure of society." In this hypothetical situation of equality participants are unaware of their class positions, social status, economic capacities, physical and mental strength, and even their conception of good. See *ibid* at 11-12, 17-19.

<sup>196</sup> Ibid at 96-97, 221-222.

<sup>197</sup> Anderson, "What is the Point of Equality?", supra note 2 at 313-314.

<sup>198</sup> Ibid. at 313, 315.

<sup>199</sup> Ibid. at 288-289, 313-314.

recognition and equal distribution by asserting that the pattern of distribution might be a precondition to equal recognition.<sup>200</sup>

In line with Sen, Anderson claims that the *raison d'être* of the creation of the state is to secure citizens' freedom in it; the promotion of freedom is the purpose of the state.<sup>201</sup> Anderson observes that democratic equality is based on the fundamental principle of equal respect for others, which is the determinant of social conditions of freedom.<sup>202</sup> According to this concept, a *free life* is one in which relationships are based on equality.<sup>203</sup> Anderson claims that while democratic equality allows individuals to enter into contractual relationships on an equal basis, it prohibits individuals from voluntarily giving up their freedom in pursuance of such contracts.<sup>204</sup> Thus, she asserts that democratic equality provides for the basis of lifetime equality rather than a starting-gate equality ensured by equality of fortune or resources.<sup>205</sup>

Anderson's conception of equality is non-paternalistic.<sup>206</sup> It does not propose to guide people's behaviour.<sup>207</sup> The concept envisages equality in the creation of opportunities without directing people to use their opportunities in a particular way.<sup>208</sup> The concept of freedom and equality is based, not on an individual's subjective interests, but on the obligations of other citizens in the society and the state.<sup>209</sup> The purpose of democratic equality is to remove the social basis of inequality in order to achieve effective citizenship.<sup>210</sup> Accordingly, institutional arrangements should promote the social basis of equality so that everyone can exercise effective citizenship rights, instead of attempting to provide equality of fortune or resources.<sup>211</sup>

According to Anderson, the appropriate objective metrics for democratic equality are capabilities.<sup>212</sup> She identifies three spaces of capabilities: capabilities as human

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<sup>200</sup> Ibid. at 313-314.

<sup>201</sup> Ibid at 289.

<sup>202</sup> Ibid. at 315.

<sup>203</sup> Ibid. at 314-315.

<sup>204</sup> Ibid. at 319.

<sup>205</sup> Ibid. at 319.

<sup>206</sup> Ibid. at 288-319.

<sup>207</sup> Ibid. at 288-289.

<sup>208</sup> Ibid. at 288-289.

<sup>209</sup> Ibid. at 319.

<sup>210</sup> Ibid. at 288, 291.

<sup>211</sup> Ibid. at 308-309.

<sup>212</sup> See Anderson, "Justifying the capabilities approach to justice", supra note 120 at 81-82.

beings, capabilities as democratic citizens, and capabilities as participants in cooperative production.<sup>213</sup> Amongst the three spheres that she mentions, she theorizes the equality of capabilities in the sphere of democratic citizenship. Although Anderson does not provide a list of capabilities, she argues that for effective equal democratic citizenship there need to be some minimum capabilities that people must have, such as health, nutrition, and education.<sup>214</sup>

Anderson maintains that “[d]emocratic equality thus aims for equality across a wide range of capabilities. But it does not support comprehensive equality in the space of capabilities.”<sup>215</sup> Democratic equality aims to achieve equality of those capabilities that are necessary in order to perform as an equal citizen in the polity.<sup>216</sup> The claim of equality of capabilities is dependent on the obligation of equal respect of individuals towards each other in a democratic society, rather than on the inferiority of some.<sup>217</sup> What follows from Anderson’s model of democratic equality (within the metric of capabilities) is that the selection of specific capabilities would depend on the purpose for which the metric of capabilities is claimed. Thus, if the purpose of the claim of the capability metric is *respect as human beings*, the specific capabilities might be different (even though some specific capabilities would be overlapping) than is necessary for equal democratic citizenship.

This flexibility is something that Sen values in his approach and Anderson maintains in her theory. Commending Anderson for her conceptualization of capabilities in the context of democratic equality, Sen notes that Anderson’s conceptualization provides for “greater flexibility and with much more room for accommodating different demands of distributional reasoning”.<sup>218</sup> Sen leaves his capability approach open-ended, so that it can be supplemented by different distributive patterns. Sen’s own conceptualization of capabilities concedes a great deal of ground to democratic participation and deliberation.<sup>219</sup>

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<sup>213</sup> Anderson, “What is the Point of Equality?”, supra note 2 at 317-318.

<sup>214</sup> Anderson, “Justifying the capabilities approach to justice”, supra note 120 at 83-84.

<sup>215</sup> Anderson, “What is the Point of Equality?”, supra note 2 at 317.

<sup>216</sup> Ibid. at 317.

<sup>217</sup> Ibid. at 289.

<sup>218</sup> Sen, “Capability in a theory of justice”, supra note 119 at 249.

<sup>219</sup> Sen, *Development*, supra note 66 at 148, 152-159; Sen, *Idea of Justice*, supra note 84 at 327, 335-337, 345-348. I have elaborated on this aspect of Sen's theory in chapter 4.

In his *Idea of Justice*,<sup>220</sup> Sen provides a “comparative” approach<sup>221</sup> to justice as distinct from a transcendental theory of justice.<sup>222</sup> Transcendental theories of justice provide for *ideal social arrangements* in furtherance of a just society.<sup>223</sup> Sen’s comparative idea of justice, on the other hand, proposes the ranking of alternative social arrangements on a scale of “more just” to “less just”.<sup>224</sup> Sen is not concerned with the *ideal* just society. He is concerned with removing injustices<sup>225</sup> (or removing *unfreedoms*<sup>226</sup>) from society. Public discussion and democratic deliberation are central to Sen’s comparative idea of justice. It is through democratic deliberation that the ordering of alternative social arrangements is to be executed.<sup>227</sup> As a prerequisite to ranking alternative social arrangements, public discussion and democratic deliberation is preeminent in determining functionings that are important for society and deciding the capabilities necessary for such functionings. From this dual perspective, democratic deliberation is central in Sen’s theory.

Anderson’s version of democratic equality is also based on the principle of equality of citizens to participate in national democratic processes. One of the three spheres of democratic equality proposed by Anderson is the *equality as participants in the system of cooperative production*.<sup>228</sup> In following Anderson, I advocate for the rule of (recognition of workers and) distribution of capabilities determined by democratic equality within the sphere of the system of cooperative production. Such equality in the system of cooperative production would mean equality between workers and employers, and amongst workers themselves. Hugo Sinzheimer visualized labour law as promoting such “vertical” equality between workers and employers, and “horizontal” equality amongst workers in employment relationships.<sup>229</sup> The premise of democratic equality as a beginning point might help us realize such a vision of labour law.

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<sup>220</sup> Sen, *Idea of Justice*, supra note 84.

<sup>221</sup> Sen, “Capability in a theory of justice”, supra note 119 at 243-245.

<sup>222</sup> Ibid at 243-246.

<sup>223</sup> Ibid at 243-245.

<sup>224</sup> Ibid at 244.

<sup>225</sup> Ibid at 244.

<sup>226</sup> Sen, *Development*, supra note 66 at xii, 3-4.

<sup>227</sup> Ibid at 153-155; Sen, *Idea of Justice*, supra note 84 at 17, 97, 102, 106-107.

<sup>228</sup> Anderson Ibid. at 317-318.

<sup>229</sup> See Hepple, *Inequality and Global Trade*, supra note 39 at 3.

The idea of democratic equality is central in conceptualizing labour law for informal economic activities. Anderson's democratic equality mandates that all participants in the democratic process must enjoy actual (in distinction to formal) equality. Every participant in a democratic deliberative process is duty-bound to respect and recognize the value of contributions made by all other participants in the democratic process. Democratic equality's ultimate aim is "collective self-determination".<sup>230</sup> In the context of labour law for informal economic activities, democratic equality and consequently collective self-determination, would mean two things: first, informal workers are equal participants in the democratic deliberation process; and, second, informal workers as responsible agents of the democratic process have the right to self-determination. At a concrete level, these two ideas signify that legal policy-making needs to take into account perspectives from informal workers themselves.

As I have pointed out earlier, legal policy-making needs to ascertain factors hindering capability development of informal workers. It is essential, for both Sen's capability perspective and Anderson's democratic equality formulation, that informal workers themselves identify what they want to do or what they want to become in their lives. Accordingly, they would be the best judges of the capabilities required for the attainment of goals in their lives. It follows that informal workers can not only identify the factors inhibiting their capability enhancement, but they can also propose mechanisms through which the capability inhibiting factors could be removed. Thus, consideration of the reflections of informal workers themselves needs to inform labour law for informal economic activities.

Anderson acknowledges that her political conceptualization of the capability approach does not provide a comprehensive theory of justice.<sup>231</sup> She observes that her theory of democratic equality only specifies the role and extent of equality in a theory of justice for democratic societies.<sup>232</sup> To convert her theory of democratic equality to a full theory of justice, she suggests that her theory needs to be supplemented by addressing issues of taxation and issues involving people who are inherently incapable of standing

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<sup>230</sup> Anderson, "What is the Point of Equality?", *supra* note 2 at 313.

<sup>231</sup> *Ibid.* at 84.

<sup>232</sup> *Ibid.*

equally and exercising agency.<sup>233</sup> However, it is my contention that Anderson's theory, even though it is incomplete in some respects, provides a strong substantive basis for reconceptualization of labour law.

The capability approach provides for a novel insight in the reconceptualization project of labour law so far as the role of institutions are concerned. In the next section, I discuss the concept and role of integrated institutions (as conceptualized by capability theorists) in the reconceptualization of labour law.

## 7. Integrated Institutions and Labour Law

So far, I have argued that the normative goal of labour law should be capability enhancement and equality of positive freedom for informal workers. I have also argued that the claim to enhancement of real freedom and equality of capabilities should be based on the idea of democratic equality of workers as participants in the cooperative production system. In this section of the chapter, I analyze the role of institutions in operationalizing the approach to labour law that I argue for.

Sen and Dréze chart the need to take an integrated look at the multiple institutions in furtherance of freedom in terms of capabilities.<sup>234</sup> In Sen's *Idea of Justice* the concept of integrated institutions enjoys centre stage.<sup>235</sup> Sen argues that institutions by themselves cannot be manifestations of justice.<sup>236</sup> While analyzing the necessity and efficacy of institutions we need to look at the characteristics of the institutions and analyze how such characteristics facilitate individual capabilities.<sup>237</sup>

Sen is against an *institutionally fundamentalist* view of justice.<sup>238</sup> An institutionally fundamentalist view of justice is concerned only with the establishment of just institutions – it does not concern itself with the actual performance of the established institutions. Integrated institutions are important in Sen's idea from a three-pronged perspective: first, as a practically realizable concept of institutions, which is attuned to

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<sup>233</sup> Ibid.

<sup>234</sup> Jean Dréze & Amartya Sen, *India Development and Participation* (New Delhi: Oxford University Press, 2002) at 20-25.

<sup>235</sup> Sen, *Idea of Justice*, supra note 84 at 75-86.

<sup>236</sup> Ibid at 82.

<sup>237</sup> Ibid at 82-86.

<sup>238</sup> Ibid.

the complexities of modern society (in distinction to that of an idealized society with assumed behavioural patterns);<sup>239</sup> second, as a multiple-institutions concept, wherein institutions exercise countervailing power over each other to balance the overall power equilibrium of society;<sup>240</sup> and, third, constant evaluation of results delivered by institutions and in turn, institutional changes made as a consequence of such evaluation.<sup>241</sup>

Sen's reason for proposing the concept of integrated institutions, public participation, and a comparative approach to justice (rather than a transcendental theory of justice) is his belief that a transcendental theory of justice is not able to address justice issues posed by diverse social problems in different societies.<sup>242</sup> People of a given society may not agree on any one view of (transcendental) justice and its corresponding institutions. There may be different views of justice prevailing in a society. An idea of justice, therefore, needs to choose from among the different conceptions of justice that are appropriate to specific societies. Likewise, there need not be predetermined institutions only capable of facilitating justice. Institutions have to justify their existence by the results they deliver. If predetermined institutions fail to achieve their intended results, they have to be replaced by newer institutions.

Democracy is central in Sen's idea of integrated institutions.<sup>243</sup> The essence of Sen's idea of democracy lies in actual participation and democratic dialogue of people in establishing and evaluating multiple institutions that further justice.<sup>244</sup> Sen argues that the institutions of media, political parties, government, opposition, judiciary, legislature, and NGOs can exercise countervailing power over one another in generating social discourse based on the democratic deliberation process.<sup>245</sup>

While Sen's concept of institutions suggests that he thinks of institutions as organized bodies, Rawls conceptualizes institutions as "practices and rules that structure

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<sup>239</sup> Ibid at 79-81.

<sup>240</sup> Ibid at 81-82.

<sup>241</sup> Ibid at 82-86.

<sup>242</sup> Ibid at ix-x, 7, 9-11, 15-16, 18, 20-21, 25-27, 90, 100; Sen, "Capability in a theory of justice", supra note 119 at 243-246.

<sup>243</sup> Sen, *Idea of Justice*, ibid at 91, 324-327, 388-415; Sen, *Development*, supra note 66 at 148-159; also see Dréze & Sen, supra note 234 at 20-25, 347-352.

<sup>244</sup> Sen, *Idea of Justice*, ibid at 327, 335-337, 345-346, 388-415; also see Sen, *Development*, ibid at 153-159.

<sup>245</sup> Sen, *Development*, ibid at xii-xiii; Dréze & Sen, supra note 234 at 20.

relationships and interactions among agents.”<sup>246</sup> It is in both these senses of institutions that the concept of integrated institutions is extremely important for reconceptualization of labour law, especially for informal workers.

The present labour law dispensation emphasizes contracts between employers and employees. For a new conceptualization of labour law that is sensitive to the problems of informal workers, the role of social institutions such as families, kinship relationships, work-related organizations, legal system, and property rights need to be taken into account. However, while rules and practices generated by these institutions are important for labour law for informal workers, all of these institutions cannot be subsumed into labour law. It is also important to engage multiple institutions such as NGOs, political parties, media, and government in the making of a reconceptualized labour law. Collective capabilities emanating from collective organizations<sup>247</sup> would be an important institution in conceptualizing the new labour law. The institution of collective organization needs to be integrated with the overall functional role of multiple institutions.

What follows from Sen and Dréze’s conceptualization of institutions is that we need to establish and evaluate institutions with an eye to the objective that is to be attained. If attainment of any objective requires multiple institutions, we have to establish those institutions. If attainment of an objective requires changes in the character of some institutions, we need to make those changes. Institutions need not be seen as inviolable and fixed entities – they must be viewed as instruments that need constant adjustments.

What this implies for labour law regulating informal work is that the purpose of such multiple institutions is enhancement of capabilities of informal workers. Institutions are instruments that need to create conditions wherein workers can convert their personal characteristics into capabilities with the help of institutionally created social conversion factors. Institutions can justify their existence only by the creation of appropriate conditions that facilitate capabilities of workers. To create such enabling conditions for the workers engaged in informal economic activities, more than one institution is required. Therefore, in addition to conceptualizing labour law in terms of claims to

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<sup>246</sup> Thomas Pogge, *John Rawls* (New York: Oxford University press, 2007) at 28; also see Sen, *Idea of Justice*, supra note 84 at 78.

<sup>247</sup> Evans, supra note 154.

resources and institutional (social) conversion factors, it is necessary to recognize the role of integrated institutions in the making of labour law, especially with reference to informal work. Efficacy of labour law for informal workers would depend on these integrated institutions to a large extent.

Barbara Harriss-White notes that the informal labour market is embedded in social institutions such as caste, language, ethnicity, religion, and gender.<sup>248</sup> Much of the exploitation of informal workers is, therefore, attributable to these social institutions.<sup>249</sup> However, these social institutions also structure worker's entitlements,<sup>250</sup> such as providing help in time of need and making specific allocations for particular occasions.<sup>251</sup> For example, worker's rights at work and their social and physical security are informally mediated through institutions of gang-masters (at work), grocers or food retailers, and local mafia.<sup>252</sup> NGOs and new civil society organizations are increasingly providing social security, and social provisioning of health and education (as I discuss in chapter 3).<sup>253</sup> Informal work is regulated by non-state local regulatory mechanisms devised by social institutions.<sup>254</sup> Some of these institutions need not necessarily have democratic underpinnings.<sup>255</sup> Harriss-White observes that the social institutions regulating India's informal economy express both identity and class.<sup>256</sup>

Charting the depth of regulation of informal businesses by social institutions, Harriss-White notes:

Age/generation, gender, caste, ethnicity, religion and place constitute regulative forces all of which play a role in – and disguise, delay, but do not halt – class formation. Ethnicity and caste, for instance, persistently structure recruitment and occupation. Caste and ethnicity lie behind the guild-like business associations – which are obstacles to the mobility of capital and labour and which were also confidently predicted to disappear with modern market forces. These small units of accountability and of

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<sup>248</sup> Barbara Harriss-White, "Work and Wellbeing in Informal Economies: The Regulative Roles of Institutions of Identity and the State" (2010) 38: 2 *World Development* 170 at 172.

<sup>249</sup> *Ibid* at 172-174.

<sup>250</sup> *Ibid* at 173.

<sup>251</sup> *Ibid* at 173-174; also see Barbara Harriss-White, "Globalization, The Financial Crisis and Petty Production in India's Socially Regulated Informal Economy" (2010) 1: 1 *Global Labour Journal* 152 at 153.

<sup>252</sup> Harriss-White, "Work and Wellbeing", *supra* note 248 at 174.

<sup>253</sup> *Ibid* at 176-177.

<sup>254</sup> *Ibid* at 176, 178; also see Harriss-White, "Globalization", *supra* note 251 at 156-157, 162-163.

<sup>255</sup> Harriss-White, "Work and Wellbeing", *supra* note 248 at 176-177.

<sup>256</sup> Harriss-White, "Globalization", *supra* note 251 at 152.

collective action may police entry, organize apprenticeships, calibrate weights and measures, regulate derived markets (labour, porters, transport), adjudicate disputes, guarantee livelihoods, respond to individual or collective misfortune and accumulate the funds necessary to represent the interests of market actors, shape the way policy is implemented and collectively evade tax. [Footnotes omitted]<sup>257</sup>

She also notes that despite the extensive social regulation of informal economic activities, the interests of labour are often overlooked.<sup>258</sup>

While Harriss-White observes social regulation with respect to South Asia (India, in particular) and Africa, the World Bank report *Informality: Exit and Exclusion*<sup>259</sup> notes a regulatory preference for local institutions based on trust and reciprocity rather than on state institutions in informal economic activities in Latin America and the Caribbean.<sup>260</sup> Local institutions are capable of being tailored as a response to market failure, thereby providing better safeguards in time of need.<sup>261</sup> Informal safety nets based on relations of trust and reciprocity, such as memberships in community, religious and neighbourhood organizations provide better insurance against adverse shocks to informal workers and their families.<sup>262</sup>

Likewise, Hernando de Soto documents that instead of complying with state laws, informal entrepreneurs (and workers) comply with the laws and practices they themselves have developed,<sup>263</sup> some of which are “illegal”.<sup>264</sup> De Soto notes that not all informal economic activities are totally informal – they are generally partly formal and partly informal.<sup>265</sup> Informal entrepreneurs (and workers) regulate their informal activities to their advantage by maneuvering their localized practices and institutions. What this practice reveals is that law regulating informal economic activities in general and labour law regulating such activities in particular, need to be sensitive to actual local-level social situations and to engage local social institutions.

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<sup>257</sup> Ibid at 156-157.

<sup>258</sup> Ibid at 157, 162-163.

<sup>259</sup> See generally Guillermo E. Perry et al eds, *Informality: Exit and Exclusion* (Washington DC: The World Bank, 2007).

<sup>260</sup> Ibid at 24-25.

<sup>261</sup> Ibid at 24-25.

<sup>262</sup> Ibid at 24-25, 190-191.

<sup>263</sup> de Soto, supra note 19 at 151-172.

<sup>264</sup> Ibid at 131-172.

<sup>265</sup> Ibid.

Sen's concept of integrated institutions is vital in this context. What it means for labour law to take an institutionally integrated approach is to take note of the social and political institutions that are in operation in informal economic activities. Institutions adversely and beneficially effecting informal workers need to be distinguished. In the next stage, social and political institutions that promote informal workers' capabilities need to be made part of the labour law dispensation.

It is useful here to consider how integrated institutions could be involved in reconceptualizing labour law for informal economic activities. As I have argued earlier in this chapter, the normative goal of labour law must be enhancement of informal workers' capabilities. In this process, it is necessary to ascertain what the valuable capabilities are for specific groups of informal workers (i.e. workers engaged in similar activities and sharing identical or similar socio-economic-political conditions). In the process of identifying valuable capabilities, the theory of democratic equality mandates that informal workers are engaged to identify valuable capabilities for themselves. However, in the process of identification of valuable capabilities, informal workers might suffer from what Sen calls adaptive preference.<sup>266</sup> Adaptive preference results from lack of education, health, nutrition, awareness, and a plethora of other factors that are responsible for the perpetual marginalization of informal workers. In this respect, the role of integrated institutions is extremely important. Integrated institutions ranging from political parties and media to NGOs, by getting involved in the democratic (social) dialogue process, have the capacity to ward off the danger of adaptive preference by contributing to the process of determining and institutionalizing valuable capabilities. Additionally, once desirable capabilities are identified by informal workers, integrated institutions can help determine factors (resources and social conditions) necessary for the promotion of the desirable capabilities.

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<sup>266</sup> Amartya Sen defines adaptive preference thus:

Our desires and pleasure-taking abilities adjust to circumstances, especially to make life bearable in adverse situations. ... [F]or example, the usual underdogs in stratified societies, perennially oppressed minorities in intolerant communities, traditionally precarious sharecroppers living in a world of uncertainty, routinely overworked sweatshop employees in exploitative economic arrangements, hopelessly subdued housewives in severely sexist cultures. The deprived people tend to come to terms with their deprivation because of the sheer necessity of survival, and they may, as a result, lack the courage to demand any radical change, and may even adjust their desires and expectations to what they unambitiously see as feasible. [footnote omitted]. See Sen, *Development*, supra note 66 at 62-63.

Moreover, integrated institutions can also contribute to the representation of informal workers. Informal workers can organize themselves only under specific political-economic and socio-cultural contingencies, as I have documented in chapter 3. However, the majority of informal workers are non-unionized. In the absence of trade unions (or other organizations), it is difficult for informal workers to participate in a representative democratic deliberation process. Integrated institutions may also become important by giving voice to informal workers in the democratic deliberation process. Institutions such as the media, political parties, local Members of Parliament, opposition party leaders, and NGOs can ensure participation of informal workers in policy-making in the absence of unions for informal workers. Thus, during the process of ascertaining the capability deprivation of informal workers and envisaging appropriate institutional frameworks for the promotion of capabilities of informal workers, integrated institutions of a democratic society can attain immense significance. It is through the participation of integrated institutions along with informal workers in the legal policy-making process that labour law for informal economic activities could take a definite shape. Once informal workers (with the assistance of integrated institutions) decide on the conditions that are necessary for their capability enhancement, their decision (arrived at through social dialogue) needs to be institutionalized through law, thereby integrating democratic law-making in production relations, which Otto Kahn-Freund noted as lacking in labour law.<sup>267</sup>

However, what is theoretically possible might be difficult to implement. The biggest challenge for labour law in adopting an institutionally integrated approach to the effective administration of informal economic activities is to find the right balance of institutions that enhance workers' capabilities. This approach will require an appropriate understanding of the way informal economic activities function and identify the effective

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<sup>267</sup> Kahn -Freund notes: The central problem how to adjust managerial power and the co-ordinated power of labour and management appears to the legal mind as a problem of the relation between the collective agreement and the contract of employment, made between the individual worker with his employer. In fact the worker does not participate in the making of the rules which govern his work, any more than the citizen, as a citizen, participates in the making of the laws he has to obey. Nor does "democracy" mean that those who have to obey rules have an active share in making them, and this is true of political as well as of "industrial" democracy. In both spheres—the political and the industrial—democracy means that those who obey the rules have a right (and a moral duty) to select those who represent them in making the rules. See Kahn-Freund, *Labour and the Law*, supra note 4 at 14-15.

institutions; it will also need to restrict the role of adversarial institutions. One of the principal purposes of this balancing act is to strike a balance of power that underlies informal economic activities. I am proposing a more comprehensive conceptualization of labour law that is attentive to the problems of informal workers.

What follows from Sen's idea of comparative justice and integrated institutions is that labour law needs to take account of specific informal activities (instead of providing a transcendental formula) to address the deprivation of capabilities of the workers engaged in these activities. To do this, labour law needs to recognize the multiple institutions that interact amongst themselves in promoting workers' capabilities. Thus, the normative goal of a reconceptualized labour law focused on enhancement of capabilities needs to be supplemented by a mechanism that takes integrated institutions into account.

However, in order to make labour law compatible to informal economic activities the juridical notion of employment relationship needs to be transcended. As I discuss in chapter 2, the employment relationship is not a universal phenomenon for informal economic activities. Accordingly, in order to address the diverse range of self-employed and wage-employed informal workers labour law must be based on the concept of *work* rather than *employment relationship*.<sup>268</sup> If the conceptual basis of labour law is work, then the idea can integrate both formal and informal workers into it.

## 8. Conclusion

In this chapter, I chart a regulatory logic for the improvement of living standards and service conditions of informal workers. I have sought to advocate a normative goal of regulation. I also propose a framework compatible with my regulatory proposal. Based on Sen's theorization, I argue that capability development and equality of capabilities should be the normative goal for regulation of informal workers. I propose that Anderson's idea of democratic equality should become the distributive basis of capabilities. I have also argued (based on Sen's proposition) that formulation and administration of a regulatory regime involving informal workers need to engage integrated institutions of a democratic

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<sup>268</sup> Judy Fudge, "Blurring Legal Boundaries" in Judy Fudge, Shae McCrystal & Kamala Sankaran eds, *Challenging the Legal Boundaries of Work Regulation* (Oxford & Portland, Oregon: Hart Publishing, 2012) 1; also see Supiot et al, *Beyond Employment*, supra note 10.

society. This chapter offers a theoretical basis in furtherance of a labour law framework for informal economic activities with a view to improving the conditions of informal workers. Its contribution lies in its systematic presentation of a capability approach-based comprehensive conceptualization of labour law for informal economic activities.

Operationalizing the proposed theoretical model of labour law might differ from one category of informal economic activity to another in view of the heterogeneity of informal economic activities. Given the wide variety of informal economic activities, it is necessary to analyze concrete implications of the theoretical approach for specific informal economic activities. In the following chapters of my dissertation, I look at how the proposed theoretical framework of labour law (for informal economic activities) might work in the concrete context of the specific informal waste-picking activity in India. In the following chapter (chapter 7), based on my fieldwork in Kolkata, India, I seek to ascertain working conditions and living standards of waste-pickers in Kolkata. Employing semi-structured interviewing and participant observation methods, I discuss an interpretive account (i.e. research participant's account) of waste-pickers' experiences. Based on waste-pickers' own account of their working conditions and living standards, my purpose is to determine the desirable capabilities that waste-pickers deem valuable for themselves. Using these reflections from the waste-pickers themselves, in chapter 8, I draw a concrete account of a labour law framework for the informal economic activity of waste-picking in India. I test my theoretical framework of labour law with reference to specific informal economic activity in a specific democratic society.

## Chapter 7

### A Study on Capability Deprivations of Waste-Pickers in Kolkata, India

*If I were educated I would have got a job at Bangur [Government Hospital]. Since I could not sign my name, I could not get the job at Bangur. Would I have ever done this [waste-picking]? I would have been an Aaya [midwife / hospital personnel assisting patients – but not trained nurse] at Bangur. Since I knew [traditional] first aid stuff doctors and nurses would love me. But my thumb impression was not sufficient for the government service.*

– Kangali Roy<sup>1</sup> (Woman waste-picker of sixty six years in Golfgreen area, Kolkata, India)

#### 1. Introduction

Kangali Roy's is not an isolated experience. She is one of the thousands of waste-pickers crowding the garbage dumps in and around the city of Kolkata in order to earn a living. Her inability to sign her name forced her to make a constrained choice of becoming a waste-picker. However, the sixty-six year old fragile Kangali has also found a special niche as a waste-picker. In order to avoid competition from much younger and able bodied waste-pickers, Kangali works at night. She goes to work at around 11 pm at night and comes back home with her collect at about 3 am in the morning; she sleeps from 3 to 7 am and then carries on with her daily routine (which includes a weekly or bi-weekly visit to the *intermediary* to sell her collect).

Kangali came to Kolkata when she got married, about 45 years ago. After her husband's accidental death, when her son refused to look after her she began to work as a waste-picker. It was her daughter who took care of Kangali and Kangali is delighted to acknowledge that: "my daughter is my everything." Kangali lives in a slum with her daughter and her grandchildren at the edges of what is one of the posh localities in Kolkata. Shanty slums are scattered all around the city of Kolkata and coexist with

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<sup>1</sup> Interview conducted on 30 April 2011 at Golfgreen area, Kolkata, India. I have used pseudonyms for all my waste-picker and intermediary (middlemen and middle-women) informants throughout this chapter, and in other chapters. I have also mentioned 'areas' of my interviews instead of exact locations (of waste-pickers). However, I have used real names for my organizer, elected representative, and government official informants, except when I have been advised not to use their names.

residential and office buildings.<sup>2</sup> Kangali lives in a small bamboo-thatched shanty beside a skyrising residential complex.

Most of the migrant workers (inter-state migrants, as well as undocumented international migrants) in Kolkata live in these slums scattered around the city. To contextualize the informal economic activity of waste-picking and understand the work-lives<sup>3</sup> of the waste-pickers in Kolkata, it is necessary to reflect on the socio-economic-political profile of the city.

As Kangali Roy's story suggests, this chapter is based on my case study in Kolkata. In chapter 6, I offer a capability approach-based theoretical conceptualization of labour law. In order to see how such labour law might take shape in the specific context of definite informal economic activity, I analyze the informal activity of waste-picking in Kolkata. In this chapter, my purpose is to understand the working conditions and living standards of informal waste-pickers with a view to identify their existing capabilities (or the lack of it) and ascertain their future desirable capabilities. I use my case study to identify factors, which might be able to promote desirable capabilities of waste-pickers in Kolkata. In the next chapter, I propose institutionalization of these identified factors through a social dialogue process in order to develop a labour law framework for the concrete situation of waste-pickers in Kolkata, India.

This chapter is divided into five main sections excluding the introduction and the conclusion. In the following section (section 2) of the chapter I chart a socio-economic-political profile of the city of Kolkata. After delineating a brief profile of the city of Kolkata, I look into the left wing politics in the state of West Bengal and the city of Kolkata and note how such left wing politics has influenced rural and urban development in the state (section 3). In the backdrop of the long Left Front governance in the state, I describe the institutional protections afforded to informal workers in West Bengal in section 4. In section 5, I discuss the methodology employed (and its limitations) for the case study of informal waste-pickers in Kolkata. In section 6, based on my fieldwork in Kolkata, I analyze the working conditions and living standards of waste-pickers in Kolkata, with specific emphasis on their capability deprivations. My discussion in this

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<sup>2</sup> Ananya Roy, *City Requiem, Calcutta – Gender and the Politics of Poverty* (Minneapolis & London: University of Minnesota Press, 2003) at 35-40, 48-49.

<sup>3</sup> I have elaborated my use of the term work-life in chapter 5.

section is based on the reflections of the waste-pickers interviewed: I draw the different subheadings for this section of the chapter on the basis of my research participants' identification of desirable factors necessary for their capability-enhancement.

## 2. A Profile of the City of Kolkata

Kolkata, the British India capital until 1911, is today the seventh biggest city (in area and population) of India and the capital of the state of West Bengal (WB), with an area of 1480 square kilometers (of which 185 sq. km. is within the Kolkata Municipal Corporation area) and a population of 4,486,679<sup>4</sup> (2011 census).<sup>5</sup> The population density is 24,252 per sq. km. with 899 females per 1000 males (2011 census).<sup>6</sup> Poverty and precariousness in Kolkata is well documented, both in research literature<sup>7</sup> as well as in popular literature.<sup>8</sup> Because of rapid urbanization and migration Kolkata has developed haphazardly from early days resulting in large number of slums and squatter settlements with extremely inefficient civic amenities.<sup>9</sup> Urban growth in WB is characterized by “poor development of employment generating activities”<sup>10</sup> – a significantly large number of families in Kolkata do not have regular jobs.<sup>11</sup> The majority of these families live in abject poverty in slums, squatter settlements, and are homeless (living on streets and railway platforms).<sup>12</sup> Kolkata's poorest eke out their living by working in informal economic activities, including waste-picking.<sup>13</sup>

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<sup>4</sup> Government of India, “Statement 1, Ranking of Districts by Population size in 2001 and 2011”, Provisional Population Totals for West Bengal, *Census of India 2011*, Ministry of Home Affairs, Government of India, available at [http://www.censusindia.gov.in/2011-prov-results/prov\\_data\\_products\\_wb.html](http://www.censusindia.gov.in/2011-prov-results/prov_data_products_wb.html) (site visited 3 February 2012).

<sup>5</sup> Kolkata Municipal Corporation (KMC), *Basic Statistics of Kolkata*, available at <https://www.kmcgov.in/KMCPortal/jsp/KolkataStatistics.jsp> (site visited 10 December 2011).

<sup>6</sup> Government of India, “Area, Population, Decennial Growth Rate and Density for 2001 and 2011 at a glance for West Bengal and the Districts”, Provisional Population Totals for West Bengal, *Census of India 2011*, supra note 4.

<sup>7</sup> See generally Geoffrey Moorhouse, *Calcutta: The City Revealed* (New York: Penguin Books, 1984).

<sup>8</sup> See Dominique Lapierre, *The City of Joy* (New York: Warner Books, 1986).

<sup>9</sup> See Ashis Sarkar, *Urban System, Urban Growth and Urbanisation in the 20<sup>th</sup> Century West Bengal* (Delhi: New Academic Publishers, 1998) at 15-16, 85-88, 131-134.

<sup>10</sup> *Ibid* at 130.

<sup>11</sup> See Pranab Bardhan, “Poverty and Employment Characteristics of Urban Households in West Bengal” (1987) 22: 35 *Economic and Political Weekly*, 1496.

<sup>12</sup> Atul Kohli, *Democracy and Discontent – India's Growing Crisis of Governability* (Cambridge: Cambridge University Press, 1990) at 123.

<sup>13</sup> Roy, *City Requiem*, supra note 2 at 12, 80-84, 88, 94-97; also see Ishita Mukhopadhyay, “Calcutta's Informal Sector: Changing Pattern of Labour Use” (1998) 33: 47/48 *Economic and Political Weekly* 3075

The birthplace of Indian nationalism and the independence movement, scholars also identify Bengal (which included the present day Bangladesh and WB state in India until 1947) as the centre of Indian renaissance.<sup>14</sup> Consistent with such identification, social status in Bengal and in Kolkata (being at the centre of such renaissance) was dependent on education, learning, professional excellence, and culture, rather than on birth or wealth.<sup>15</sup> Hence caste (which is determined by birth) never became central in WB's political discourse.<sup>16</sup>

The combination of urbanism and radicalism, influenced largely by European intellectual thought, gave WB its left ideological orientation in politics.<sup>17</sup> Bengal's radicalism and nationalism threatened the British, so much so that they deployed partition as a strategy to divide Bengal in 1905.<sup>18</sup> Even though the partition plan of 1905 was not executed,<sup>19</sup> Bengal was finally partitioned in 1947 when India became independent.<sup>20</sup> The partition of 1947 saw *en masse* migration of the Hindu population from East-Pakistan (today's Bangladesh) to WB and Muslim population from WB to East-Pakistan.<sup>21</sup> The cross-flow of migration may have resulted in the largest migration into Kolkata; however, this was not the last time people migrated to WB and Kolkata in great numbers. Kolkata was always and still is, a city of migrants.<sup>22</sup> Migrants mostly constitute the underclass of

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at 3078-3080.

<sup>14</sup> See Partha Chatterjee, *The Present History of West Bengal – Essays in Political Criticism* (Delhi: Oxford University Press, 1997) at 14-25; also see Atul Kohli, *Democracy and Development in India* (New Delhi: Oxford University Press, 2009) at 333-335; also see Kheya Bag, "Red Bengal's Rise and Fall" (2011) 70 *New Left Review* 69 at 71.

<sup>15</sup> Chatterjee, *ibid* at 24; also see Kohli, *Democracy and Development*, *ibid* at 322-323, 333-334, 350.

<sup>16</sup> Chatterjee, *ibid* at 21-24, 69-71; also see Kohli, *Democracy and Development*, *ibid* at 316, 319, 323-324, 344-346; also see Rina Agarwala, *From Work to Welfare: Informal Worker's Organizations and the State in India* (PhD Thesis, Faculty of Princeton University, 2006) [unpublished] at 113, 118-119.

<sup>17</sup> Chatterjee, *ibid* at 14-23; also see Kohli, *Democracy and Development*, *ibid* at 336-337, 341-343; also see Kohli, *Democracy and Discontent*, *supra* note 12 at 269-272.

<sup>18</sup> Chatterjee, *ibid* at 27-28. British Administrators perceived united Bengal as a threatening power; and hence wanted to split and weaken that power so that opponents of the British rule *pulls in different ways*. *Ibid*.

<sup>19</sup> Chatterjee, *ibid* at 28-29; Kohli, *Democracy and Development*, *supra* note 14 at 337.

<sup>20</sup> Chatterjee, *ibid* at 37-43.

<sup>21</sup> Ranabir Samaddar, *The Marginal Nation – Transborder Migration from Bangladesh to West Bengal* (New Delhi: Sage, 1999) at 29-30; Chatterjee, *ibid* at 43-45, 186-187; also see Pranati Datta, "Push-Pull Factors of Undocumented Migration from Bangladesh to West Bengal: A Perception Study" (2004) 9: 2 *The Qualitative Report* 335 at 336-339.

<sup>22</sup> Samaddar, *ibid* at 17-18, 29-30; Kohli, *Democracy and Discontent*, *supra* note 12 at 124; Chatterjee, *ibid* at 187; also see Nitai Kundu, "The Case of Kolkata, India", at 2, 4, available at [http://www.ucl.ac.uk/dpu-projects/Global\\_Report/pdfs/Kolkata.pdf](http://www.ucl.ac.uk/dpu-projects/Global_Report/pdfs/Kolkata.pdf) (site visited 11 June 2012); also see Sarkar, *Urban System*, *supra* note 9 at 16, 131-134; also see Roy, *City Requiem*, *supra* note 2 at 29-30, 34, 55, 57; also see Arjan de

the city of Kolkata, engaging in low-paid and insecure activities such as rickshaw-pulling, waste-picking, laboring in brick-kilns, street vending, domestic work, tailoring, umbrella-repairing, and prostitution.<sup>23</sup> Migrants are important in the city's and the state's politics in so far as Bengali migrants (those migrated from today's Bangladesh) living in slums have been identified as traditional vote banks for the left parties.<sup>24</sup>

Kolkata is one of the most politically active cities in India.<sup>25</sup> From 1977 the state of WB has experienced a democratically elected Left Front government led by the Communist Party of India (Marxist) (CPM) for 34 consecutive years that ended in 2011.<sup>26</sup> However, post-independence, because of the state's overall left orientation, and its ideological and strategic distance from the dominant political class of India (the Union Government), the state (of WB) has been systematically marginalized from investment for development purposes, especially in the last few decades.<sup>27</sup> It is not surprising, therefore, that the capital of the state (Kolkata) has earned the title of *neglected city*.<sup>28</sup> However, neglect cannot alone explain the comparative industrial stagnation and unemployment in WB.<sup>29</sup> Partha Chatterjee sums up modern day Kolkata thus:

Property developers and speculators have turned the centre of the city into a high-rise slum for the affluent, while small savings, provident fund loans and co-operative housing societies are quietly changing the squalid chaos of the refugee colonies into havens of middle-class respectability. The poor, whose labour and enterprise provide the lifeblood for all productive activities and services in the city, are being rapidly banished to a still more distant periphery from where they commute daily to earn their livelihood in factories, trading centres, on the pavements and in the sweatshops of the 'informal sector'. It is this sector that sustains the economic life of a metropolis which has seen virtually no industrial growth in two decades.<sup>30</sup>

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Haan, "Calcutta's labour migrants: Encounters with modernity" (2003) 37 *Contributions to Indian Sociology*, 189 at 192-196; also see generally Geetanjali Gangoli, "Sex Work, Poverty and Migration in Eastern India" in Sadhna Arya & Anupama Roy eds, *Poverty, Gender and Migration* (New Delhi, Thousand Oaks & London: Sage Publications, 2006) 214; also see Shutapa Paul, "East Bengal in West Bengal", *India Today* (24 January 2011).

<sup>23</sup> Samaddar, *ibid* at 25-26, 30, 36-39, 141-145.

<sup>24</sup> Kohli, *Democracy and Discontent*, *supra* note 12 at 140-141.

<sup>25</sup> *Ibid.* at 183.

<sup>26</sup> See generally Bag, *supra* note 14 at 69.

<sup>27</sup> See Sarkar, *Urban System*, *supra* note 9 at 12; also see Chatterjee, *supra* note 14 at 25, 30; See generally Bag, *ibid* at 72, 81, 83.

<sup>28</sup> Kohli, *Democracy and Discontent*, *supra* note 12 at 123.

<sup>29</sup> See Agarwala, *supra* note 16 at 113-139; also see Roy, *City Requiem*, *supra* note 2 at 89-94.

<sup>30</sup> Chatterjee, *supra* note 14 at 191-192.

I use Chatterjee's observation as a jump off point for the discussion of left wing politics in the state of West Bengal and contextualize informal workers in the backdrop of such politics.

### 3. Left-Wing Politics and Urban Informal Workers in Kolkata

Even though informal workers in the state of WB do receive some legislative and executive protections from the state, Rina Agarwala has shown that benefits received by informal workers in WB are less than those received by informal workers in some other Indian states such as Tamil Nadu<sup>31</sup> and the benefits in WB are not consistent across different informal economic activities.<sup>32</sup> Agarwala argued that the relative apathy of the CPM-led government of WB in providing benefits for informal workers in the state results from the fact that the CPM's operational principle of *democratic centralism*<sup>33</sup> coupled with its disinterest in neo-liberal market policies make it difficult for worker's unions to exert pressures on the government for populist policies.<sup>34</sup> Democratic centralism entails decision-making at the highest level of the Party (CPM) leadership,<sup>35</sup> rather than at the grassroots level. Agarwala argued that such top-down approach has not worked well for the grassroots demands of informal workers in the state.<sup>36</sup>

WB is an exceptional state in Indian politics.<sup>37</sup> Compared to many states in India, WB has been governed well by the Left Front.<sup>38</sup> Communist parties leading the Left

<sup>31</sup> Agarwala, supra note 16 at 80-112, 113-139.

<sup>32</sup> Ibid at 113.

<sup>33</sup> Democratic Centralism (DC) is the operational policy of the CPM that led the government of WB for 34 years from 1977 to 2011. While DC encourages democratic dialogue process within the Party structure, it is ultimately the decision of the Party top brass that is to be binding on the entire Party structure. Kohli argues that CPM's operational policy became the government's operational policy because of the long and entrenched nature of the CPM led rule in the state of WB. See Kohli, *Democracy and Development*, supra note 14 at 320, 366, 370-371; also see Kohli, *Democracy and Discontent*, supra note 12 at 137-138; also see Prakash Karat, "On Democratic Centralism" (2010) XXVI: 1 The Marxist 3; also see *Party Constitution*, Article XIII, available at <http://www.cpim.org/content/party-constitution#Principles%20of%20Democratic%20Centralism> (site visited 12 June 2012).

<sup>34</sup> Agarwala, supra note 16 at 113, 120-121.

<sup>35</sup> For an understanding of the tight knit organizational framework of the CPM see Atul Kohli, *The State and Poverty in India – The Politics of Reform* (Cambridge: Cambridge University Press, 1987) at 96-108.

<sup>36</sup> Agarwala, supra note 16 at 113, 120-121.

<sup>37</sup> Kohli, *Democracy and Discontent*, supra note 12 at 267; Kohli, *Democracy and Development*, supra note 14 at 315, 361.

<sup>38</sup> Kohli, *Democracy and Discontent*, ibid at 267-268, 294.

Front were in reality *social democratic* in nature.<sup>39</sup> Despite radicalism and nationalism characterizing the politics in Bengal since the early decades of the twentieth century,<sup>40</sup> it was not until 1967 that the state had any form of a left government.<sup>41</sup> The Indian National Congress Party (Congress-I) that gained popularity during the Indian independence movement, governed India continuously for about four decades after the country's independence.<sup>42</sup> However, the Congress-I never gained much popularity and did not establish a good foothold in WB.<sup>43</sup> Primarily a Party led by upper caste Hindus, lower caste Hindus and Muslims in WB were never attracted to the Congress-I.<sup>44</sup> Congress-I also did not receive much support from the upper-caste Hindus in WB, who were drawn towards radical political ideals.<sup>45</sup> Congress-I ruled WB from 1947 (the independence year) to 1967.<sup>46</sup> In 1967 an alliance of fourteen left parties, known as the United Front (UF), defeated the Congress-I Party in WB.<sup>47</sup>

Radicalism characterized the UF rule in WB for the first few years after 1967, so much so that the police were instructed not to interfere in worker's unlawful and violent agitations against employers.<sup>48</sup> After a period of political turmoil in the state,<sup>49</sup> Congress-I returned to power in WB through a violence-marred and rigged state-legislative election in 1972.<sup>50</sup> From 1972 to 1977 the Congress-I government ruled the state with an iron fist

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<sup>39</sup> Ibid at 267.

<sup>40</sup> Kohli, *Democracy and Development*, supra note 14 at 315-316, 351.

<sup>41</sup> Chatterjee, supra note 14 at 14-23.

<sup>42</sup> Agarwala, supra note 16 at 117; Kohli, *Democracy and Development*, supra note 14 at 356.

<sup>43</sup> Kohli, *Democracy and Development*, ibid at 315, 339-341, 355-359; Kohli, *Democracy and Discontent*, supra note 12 at 273; Agarwala, ibid at 117; Kheya Bag notes why Congress fell out of favour in pre-independence Bengal:

In 1937, at the urging of the millionaire magnet G. D. Birla, then based in Calcutta, the Congress High Command under Nehru, taking orders from [Mohandas] Gandhi, forbade the provincial Congress to form a joint ministry with the pro-peasant, predominantly Muslim Krishak Praja Party [KPP] in the Bengal Legislature. This sectarian decision, foreshadowing the Hindu chauvinism of its later years, sidelined Congress over the next decade, forcing the KPP into a coalition with the Muslim League, a landlord organization in Bengal, thereby helping to popularize the League and turn the KPP from socio-economic to communal issues. Any rapprochement between the Bengali Congress and the peasant movement was ruled out when Gandhi mounted a putsch against Subhas Bose, who had been democratically elected President of Congress in 1939, and had him expelled from the party in best authoritarian fashion. Bag, supra note 14 at 71-72.

<sup>44</sup> Kohli, *Democracy and Development*, ibid at 361-362; Agarwala, ibid.

<sup>45</sup> Kohli, *Democracy and Development*, ibid at 350, 355; Agarwala, ibid at 117-119.

<sup>46</sup> Agarwala, ibid at 119.

<sup>47</sup> Kohli, *Democracy and Discontent*, supra note 12 at 126; Agarwala, ibid at 119-120.

<sup>48</sup> Kohli, *Democracy and Discontent*, ibid at 126-127; Agarwala, ibid at 120.

<sup>49</sup> Chatterjee, supra note 14 at 190-191.

<sup>50</sup> Biplab Dasgupta, "The 1972 Election in West Bengal" (1972) 7: 16 Economic and Political Weekly 804

repressing all dissenting voices against the government.<sup>51</sup> Incidentally, the Congress-I rule in WB ran simultaneously with the infamous state of emergency declared by the Indira Gandhi government (by Congress-I) over the Indian Union (during which civil and political rights were repressed in the country).<sup>52</sup> In 1977, amidst much excitement, the CPM-led Left Front defeated the Congress-I government to claim power in West Bengal.<sup>53</sup> Since 1977 the Left Front had won state-legislative-assembly elections consecutively until 2011, when it comprehensively lost the election to a right-of-centre political alliance (that included the Congress-I).<sup>54</sup>

### 3.1. Left Front, and Agricultural and Rural Development

The Left Front's principal constituency is the rural population. Left Front partners such as the CPM, the Communist Party of India (CPI), the Revolutionary Socialist Party (RSP), and the Forward Block (FB) have been mobilizing peasants in rural West Bengal from their (the parties') early days.<sup>55</sup> Amongst the Left Front partners, CPM adopted a much more radical approach in their early days of peasant struggles.<sup>56</sup> However, ever since coming to power in 1977 the CPM (and the Left Front) has discarded much of its radicalism and pursued a reformist agenda.<sup>57</sup> The Left Front's goal was rural poverty alleviation;<sup>58</sup> some of the most successful policies pursued by the Left Front in rural WB are land distribution and tenancy reform,<sup>59</sup> strengthening the micro-credit system,<sup>60</sup> local

at 804-805; Kohli, *Democracy and Discontent*, supra note 12 at 132-133, 136, 139, 283, 287.

<sup>51</sup> Kohli, *Democracy and Discontent*, ibid at 131, 134, 137, 144, 147, 274-277, 282-284; Kohli, *Democracy and Development*, supra note 14 at 372.

<sup>52</sup> Agarwala, supra note 16 at 120.

<sup>53</sup> Kohli, *Democracy and Discontent*, supra note 12 at 127; Kohli, *Democracy and Development*, supra note 14 at 360, 371-372.

<sup>54</sup> Atul Kohli's prediction that if the oppositional parties can unite in the *first-past-the-post* electoral system, the Left Front in WB could well be voted out of power seems to have happened in 2011 state assembly elections. See Kohli, *Democracy and Development*, ibid at 360. also see generally Bag, supra note 14; also see Bidyut Chakrabarty, "The Left Front's 2009 Lok Sabha Poll Debacle in West Bengal, India" (2011) 51: 2 *Asian Survey* 290 at 307-309; The Left Front government in West Bengal is the "world's longest-serving democratically elected communist government". See Roy, *City Requiem*, supra note 2 at ix.

<sup>55</sup> On the relative strengths of the political parties in WB during the first decade of the Left Front government, see Kohli, *The State and Poverty*, supra note 35 at 106-108.

<sup>56</sup> Kohli, *Democracy and Development*, supra note 14 at 352, 360; Agarwala, supra note 16 at 121-122.

<sup>57</sup> Agarwala, ibid at 121-123.

<sup>58</sup> See Kohli, *Democracy and Development*, supra note 14 at 365, 376-387; A former state labour Minister of the Left Front government observed: "We have given [rural Bengalis] power, land reform, a decentralized *panchayat* .", as cited in Agarwala, ibid at 122.

<sup>59</sup> For a discussion of the Land Reform programme undertaken by the Left Front government in WB see

self-government (*panchayati system*),<sup>61</sup> and employment and wage schemes.<sup>62</sup> Many commentators believe that the Left Front's rural policies are the reasons for the continuous electoral success of the Left Front.<sup>63</sup>

Sixty percent of WB's land is owned by small and marginal farmers.<sup>64</sup> The Left Front's land and agricultural policies are responsible for the success of the state in agriculture. From 1980 to 1990 the state had the highest agricultural growth in India.<sup>65</sup> Currently, WB ranks fourth in agricultural productivity in the country.<sup>66</sup> The Left Front has also been able to reduce rural poverty to a significant extent.<sup>67</sup> Since the Left Front's rural policies have reaped enormous electoral dividends for the left political parties in WB, Agarwala argues that the Left Front has little incentive to revisit its policies in rural WB, especially with respect to the needs of informal workers.<sup>68</sup>

Since Agarwala undertook her study in Kolkata, WB (in the 2003), the Left Front has come a long way in recognizing the unemployment, underemployment, and informal employment problems of the state and has shown proactive interest in industrialization (and consequent employment) in the state.<sup>69</sup> However, in its effort to industrialize WB,

Kohli, *Democracy and Development*, *ibid* at 377-382.

<sup>60</sup> For a discussion of the credit support programme for sharecroppers and small landholders implemented by the Left Front government in WB see Kohli, *Democracy and Development*, *ibid* at 382-383.

<sup>61</sup> For a detailed discussion of the *panchayati system* in WB, and its political implications for the Left Front and the CPM, see Kohli, *Democracy and Development*, *ibid* at 327-332, 360, 365, 372-376. The *Panchayati system* of local self-government is now mandated by the Constitution of India through the *Constitution (Seventy-third Amendment) Act, 1992*.

<sup>62</sup> For a discussion of the Left Front government implemented employment and wage scheme in WB see Kohli, *Democracy and Development*, *ibid* at 384-385; also see generally Kohli, *The State and Poverty*, *supra* note 35 at 108-142, for the Left Front's celebrated Land Reforms and other rural policies.

<sup>63</sup> See Bag, *supra* note 14 at 80; also see at Vikas Rawal & Madhura Swaminathan, "Changing Trajectories: Agricultural Growth in West Bengal, 1950 to 1996" (1998) 33: 40 *Economic and Political Weekly* 2595 at 2598, 2600-2601; also see generally Madhusudan Ghosh, "Agricultural Development, Agrarian Structure and Rural Poverty in West Bengal" (1998) 33: 47/48 *Economic and Political Weekly* 2987; also see generally Nikhilesh Bhattacharya, Manabendu Chattopadhyay & Ashok Rudra, "Changes in Level of Living in Rural West Bengal: Perceptions of the People" (1987) 22: 48 *Economic and Political Weekly* 2071; also see generally Mohan Guruswamy, Kamal Sharma & Jeevan Prakash Mohanty, "Economic Growth and Development in West Bengal: Reality versus Perception" (2005) 40: 21 *Economic and Political Weekly* 2151.

<sup>64</sup> Agarwala, *supra* note 16 at 123. For a critical reflection of the land ownership in West Bengal, see Roy, *City Requiem*, *supra* note 2 at 44-48.

<sup>65</sup> Agarwala, *ibid* at 122; See Bag, *supra* note 14 at 80.

<sup>66</sup> Agarwala, *ibid*.

<sup>67</sup> Agarwala, *ibid*.

<sup>68</sup> Agarwala, *ibid* at 123.

<sup>69</sup> See generally Buddhadeb Bhattacharjee, "On Industrialisation in West Bengal" (2007) 23 *The Marxist* 1; Ishita Ayan Dutt, "CPI(M) toes Buddhadeb line, bats for industrialisation" *Business Standard*, Kolkata, 4<sup>th</sup> October 2012; Kalyan Chaudhuri, "A Record in West Bengal – With far-reaching achievements in the fields

the Left Front resorted to forcible acquisition of (sometimes agricultural) land in rural areas, thereby alienating its own constituency (i.e., the rural population) from itself.<sup>70</sup> Such newer Left Front policies of large scale industrialization throughout the state (especially in rural areas) and forcible land acquisition resulted in the crushing defeat of the Left Front in the 2011 state-legislative-assembly elections.<sup>71</sup>

### 3.2. Left Front, and Industrial and Urban Development

Observers note that the Left Front has largely failed to address the socio-economic problems of urban Kolkata.<sup>72</sup> The Left Front never enjoyed overwhelming support from the urban population of the state.<sup>73</sup> Accordingly, scholars contend that because the urban population does not attain enormous significance in the Left Front's ideological or strategic approaches, the Front has ignored industrialization and urban strategies in WB.<sup>74</sup> The Left Front's industrial policy was always confusing, if not conflicting. On one hand, the Left Front sought to promote small scale entrepreneurship and the public sector as engines of growth, on the other, it invited domestic and foreign investors to make large investments in WB.<sup>75</sup>

After India's liberalization in 1991, the 1994 Industrial Policy of the state of WB emphasized large investments and joint ventures, domestic or foreign.<sup>76</sup> During the long thirty-four years rule of Left Front government, the percentage of factory production decreased; employment in industries stagnated; and real wages have decreased.<sup>77</sup> Some scholars relate the relative failure of industrialization in WB to the initial years of radical UF rule (of which the left parties were constituents), when the government instructed police not to interfere in strife between the employers and the workers, which resulted in

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of agriculture and industry to its credit, the Left Front completes 25 years of uninterrupted rule in West Bengal", (2002) 19: 14 Frontline, available at <http://www.frontlineonnet.com/fl1914/19140310.htm> (site visited 30 December 2012).

<sup>70</sup> See Bag, supra note 14 at 90-93; also see generally Martha Nussbaum, "Violence on the Left – Nandigram and the Communists of West Bengal" (2008) *Dissent* 27.

<sup>71</sup> See Bag, *ibid* at 95-96; also see Chakrabarty, supra note 54 at 294-300.

<sup>72</sup> Kohli, *Democracy and Discontent*, supra note 12 at 144, 150-151, 294; See Bag, *ibid* at 84-85.

<sup>73</sup> Agarwala, supra note 16 at 123.

<sup>74</sup> Kohli, *Democracy and Discontent*, supra note 12 at 151-152; Agarwala, *ibid*; also see Amiya Kumar Bagchi, "Studies on the Economy of West Bengal since Independence" (1998) 33: 47/48 *Economic and Political Weekly* 2973 at 2975-2977.

<sup>75</sup> Agarwala, *ibid* at 124.

<sup>76</sup> See Bag, supra note 14 at 87-88; Agarwala, *ibid*.

<sup>77</sup> Agarwala, *ibid* at 126.

militant trade unionism.<sup>78</sup> In recent years, whatever employment generation has taken place in the state is in the public sector and informal economic activities.<sup>79</sup>

Scholars contend that the Left Front has failed to address urban poverty alleviation.<sup>80</sup> This failure has increasingly alienated urban voters from the Left Front. Slums in urban areas used to be the Left Front vote bank.<sup>81</sup> While in power in the Kolkata Municipal Corporation (KMC) and in the state government, the Left Front legalized slums and provided them with livelihood amenities, infrastructural facilities, and recognition.<sup>82</sup> However, more recently, the Left Front attitude towards urban slums began to change – the Left Front government attempted to evict slum dwellers and demolish slums.<sup>83</sup> Such policies resulted in the loss of Left Front support in urban slums and amongst informal workers.<sup>84</sup> The Left Front's loss of its support base in urban areas, Kolkata in particular, has been attributed to industrial stagnation, unemployment, and inflation.<sup>85</sup>

The Left Front support in Kolkata has thinned so much that it failed to secure more than a single seat from amongst sixty-six seats in the Kolkata region during the 2011 state-legislative-assembly elections.<sup>86</sup> However, according to the former Mayor of Kolkata (his Party is presently in power in WB and he is an important minister of the government), it is difficult to imagine that the predicament of the slum dwellers is going to improve anytime soon. He observed that even though the slum dwellers are good as a vote bank, they are a problem for the Corporation (i.e., the KMC) and the city.<sup>87</sup> What he meant was that even though slum dwellers' votes are important during elections, they exert pressure on municipal resources and services, and illegally occupy municipal land,

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<sup>78</sup> Kohli, *Democracy and Discontent*, supra note 12 at 130, 145-146, 284-285, 291; See Bag, supra note 14 at 81-82; also see Bagchi, supra note 74 at 2975-2977.

<sup>79</sup> Agarwala, supra note 16 at 126; also see generally Mukhopadhyay, supra note 13.

<sup>80</sup> Agarwala, *ibid.*

<sup>81</sup> Agarwala, *ibid.* All of the waste-pickers interviewed in Kolkata reside in the slums of Kolkata, and road-side and canal-side squatter settlements.

<sup>82</sup> Kohli, *Democracy and Discontent*, supra note 12 at 141; Agarwala, *ibid.* at 126-127.

<sup>83</sup> Agarwala, *ibid.* at 127; See Bag, supra note 14 at 89-90; also see Roy, *City Requiem*, supra note 2 at 173-176.

<sup>84</sup> Agarwala, *ibid.*

<sup>85</sup> Agarwala, *ibid.* at 128; also see generally Prasanta Sen Gupta, "Politics in West Bengal: The Left Front versus the Congress (I)" (1989) 29: 9 *Asian Survey* 883.

<sup>86</sup> See Bag, supra note 14 at 96.

<sup>87</sup> Former Mayor of Kolkata, Subrata Mukherjee, who is presently a Minister in the government of WB, as quoted in Agarwala, supra note 16 at 128.

which adversely affect the efficient functioning of the municipal corporation. Against the backdrop of such a negative attitude towards slum dwellers (who are mainly informal workers), it is useful to look at the treatment received by informal workers in pursuance with the state government laws and policies. In the following paragraphs, I briefly look into the government assistance programs for informal workers in West Bengal.

#### **4. An Appraisal of Institutional Protection Mechanism for Informal Workers in West Bengal**

The Left Front government in WB has carved out legislative and executive schemes for the benefit of informal workers in the state. While some of the beneficial guarantees are for specific categories of informal workers engaged in definite activities (such as transport, *bidi* manufacturing, construction),<sup>88</sup> other schemes are targeted towards a range of specified informal activities.<sup>89</sup> In 2001, WB became the first state to initiate a provident fund scheme for informal workers, in the absence of any social security guarantee from the Central Government.<sup>90</sup>

The *State Assisted Scheme of Provident Fund for Unorganised Workers in West Bengal* (SASPFUW)<sup>91</sup> specifies forty-nine informal enterprises and fifteen self-employed activities to be covered within the scope of the Scheme.<sup>92</sup> Recognizing the heterogeneous and flexible nature of informal economic activities, the Scheme maintains eligibility of workers engaged in more than one informal activity.<sup>93</sup> All informal workers engaged in the activities specified under SASPFUW are eligible under the Scheme if her/his family monthly income does not exceed 3,500 Indian Rupees, or around 70 US Dollars (approximately 50 Indian Rupees is equal to 1 US Dollar).

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<sup>88</sup> See generally Government of West Bengal, *Labour in West Bengal 2010 – Annual Report* (Kolkata: Govt. of WB).

<sup>89</sup> *Ibid.*

<sup>90</sup> The Parliament recently enacted the social security law in 2008, as discussed in chapter 3. The legislative scheme is not yet fully operational in the country. The Central and the State governments are to collaborate in the implementation of the law.

<sup>91</sup> Introduced as per the Labour Department Resolution Nos. 180-IR dated 24/01/2001 and 305-IR dated 19/02/2001 of the Government of West Bengal.

<sup>92</sup> See List of Industries under Unorganised Sector, Annexure-A, Vide Clause I of the *State Assisted Scheme of Provident Fund for Unorganised Workers in West Bengal* (SASPFUW) under Labour Department Resolution No. 180-IR dated 24/01/2001.

<sup>93</sup> SASPFUW, *ibid* at Clause 2.

As per the SASPFUW, each subscriber-worker needs to contribute a sum of Rs. 20 (US\$ 0.4) per month in furtherance of the creation of his/her provident fund.<sup>94</sup> The State Government contributes a matching amount every month.<sup>95</sup> The State Government also contributes interest on the balance at credit of a subscriber-worker at a government declared rate.<sup>96</sup> The fund thus generated is refunded to the workers at the attainment of fifty-five years of age, or at an earlier date as per emerging situation.<sup>97</sup> Workers can also take a loan against the fund.<sup>98</sup> Subscribing workers are issued an identity card-cum-Bank pass-book in order to prove their identity and maintain their provident fund account.<sup>99</sup> Collection of monthly subscription fees from informal workers is undertaken by designated collection agents.<sup>100</sup>

In 2007 the WB government enacted the West Bengal Unorganised Sector Workers' Welfare Act in order to constitute the West Bengal Unorganised Sector Workers' Welfare Board (WBUSWWB) for the purpose of administering the informal labour-welfare fund created under the Act.<sup>101</sup> The Welfare Board is to implement the SASPFUW scheme.<sup>102</sup> Additionally, the WBUSWWB is empowered to implement any health insurance scheme, pension scheme, house building loan, educational assistance for workers' children, maternity benefit scheme, or any other welfare scheme for informal workers in WB.<sup>103</sup>

Through a resolution of January 2011, the WB Department of Labour initiated the West Bengal Unorganised Sector Workers Health Security Scheme (WBUSWHS) with retroactive effect from 17<sup>th</sup> July 2010.<sup>104</sup> The WBUSWWB (i.e., the Board) is to implement the health scheme, which covers all informal workers who are beneficiaries of the SASPFUW Scheme.<sup>105</sup> Workers who are already covered under the Central

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<sup>94</sup> Ibid at Clause 4.

<sup>95</sup> Ibid.

<sup>96</sup> Ibid.

<sup>97</sup> Ibid.

<sup>98</sup> Ibid at Clause 6.

<sup>99</sup> Ibid at Clause 5.

<sup>100</sup> Ibid at Clause 7.

<sup>101</sup> See *The West Bengal Unorganised Sector Workers Welfare Act, 2007*, section 4.

<sup>102</sup> See Government of West Bengal, *Labour in West Bengal 2010*, supra note 88 at 74.

<sup>103</sup> Ibid.

<sup>104</sup> See *The West Bengal Unorganised Sector Workers Health Security Scheme (WBUSWHS)*, Labour Department, Government of West Bengal Resolution No. 34-IR, IR/MISC-06/10 of 05/01/2011.

<sup>105</sup> Ibid at Clause 1.

Government health scheme, the Rashtriya Swastha Bima Yojana (RSBY),<sup>106</sup> the Building and Other Construction Workers Act, 1996, the West Bengal Transport Workers Social Security Scheme, or the Beedi Workers Welfare Fund Act, 1976, are excluded from the purview of the State Government health scheme WBUSWHS.<sup>107</sup> A SASPFUW-beneficiary who has not defaulted in the last two accounting years is eligible for reimbursement for *hospitalization, clinical tests, and costs of medicine* in a government hospital.<sup>108</sup> While clinical tests and costs of medicine are fully reimbursed under the Scheme, workers are entitled to partial expenses for daily hospitalization charges.<sup>109</sup> Workers can receive financial assistance of a maximum amount of Rs. 5000 (approximately US\$ 100) per annum under the health scheme.<sup>110</sup> As per March 2011, a total number of 2,369,943 informal workers are registered in the SASPFUW Scheme and hence can benefit from the health scheme.<sup>111</sup>

Apart from these two social security schemes ensuring provident fund and medical assistance for sixty-one specified categories of informal workers, the Government of WB has implemented legislative and executive protection for construction workers, *bidi* workers, and transport workers of the state.<sup>112</sup> As per the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 and Rules made thereunder, workers employed in establishments employing ten or more workers are entitled to accidental and death (financial) assistance, pension benefits, medical expenses, maternity benefits, financial assistance for children's education, house building loans, funeral expenses, tool and spectacle purchase grants, financial assistance for marriage, and bicycle costs.<sup>113</sup> As of March 2011, there are 271,870 registered construction worker-beneficiaries under the legislative scheme.<sup>114</sup>

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<sup>106</sup> The Rashtriya Swastha Bima Yojana (RSBY) is a Central Government health insurance programme for the *Below Poverty Line* (BPL) population. For a detailed description of the Scheme, see Rashtriya Swastha Bima Yojana website at <http://www.rsby.gov.in/index.aspx> (site visited 12 June 2012).

<sup>107</sup> WBUSWHS, *supra* note 104 at Clause 1.

<sup>108</sup> *Ibid* at Clause 3.

<sup>109</sup> *Ibid*.

<sup>110</sup> *Ibid*.

<sup>111</sup> See Government of West Bengal, *Labour in West Bengal 2010*, *supra* note 88 at 86.

<sup>112</sup> See generally *ibid* at 91-110.

<sup>113</sup> *Ibid* at 92-94.

<sup>114</sup> *Ibid* at 97.

In addition to the Revised Integrated Housing Scheme (RIHS) of the Central Government which provides for Rs. 40000 (US\$ 800) to a *bidi* worker in order to assist her/him to build a house, the Government of WB has instituted the West Bengal Beedi Workers' Welfare Scheme (WBBWWS).<sup>115</sup> As per the Scheme the government has issued identity cards to 1,427,536 *bidi* workers.<sup>116</sup> Additionally the WBBWWS provides for electrification of *bidi* workers' houses, house building subsidies, and amenities development grants (e.g. for water supply, sanitation etc.).<sup>117</sup> Significant numbers of *bidi* workers have benefitted from these schemes.<sup>118</sup>

The Labour Department of the Government of WB initiated the West Bengal Transport Workers Social Security Scheme in 2010.<sup>119</sup> Transport workers are entitled to pensions, medical benefits, maternity benefits, disability and death (financial) assistance, assistance for children's education, marriage assistance etc. under the 2010 Scheme.<sup>120</sup> As of March 2011, 45,697 transport workers have registered under the Scheme.<sup>121</sup> The WB Government has introduced this Scheme upon the recommendation of the West Bengal State Social Security Board, which is constituted under the Unorganized Workers' Social Security Act, 2008 (Central legislation).<sup>122</sup>

It is against the backdrop of these institutional protections that the work-lives of waste-pickers in Kolkata need to be contextualized. Waste Management in the city of Kolkata is done pursuant to the Municipal Solid Wastes (Management and Handling) Rules, 2000 and the Bio-medical Waste (Management and Handling) Rules, 1998, both promulgated under the Environment (Protection) Act, 1986. The Environment (Protection) Act, 1986 was enacted "to provide for the protection and improvement of environment and for matters connected therewith."<sup>123</sup> According to the Municipal Solid Wastes (Management and Handling) Rules, 2000, municipal authorities<sup>124</sup> are responsible

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<sup>115</sup> See Labour Department, Government of West Bengal Resolution No. 658-LW/2B-02/07 of 23/08/2007.

<sup>116</sup> See Government of West Bengal, *Labour in West Bengal 2010*, supra note 88 at 98, 107.

<sup>117</sup> *Ibid* at 98-100.

<sup>118</sup> *Ibid* at 101-107.

<sup>119</sup> See Labour Department, Government of West Bengal Resolution No. 907-IR/EIL/1-A-4/10 of 13/08/2010.

<sup>120</sup> See Government of West Bengal, *Labour in West Bengal 2010*, supra note 88 at 108-110.

<sup>121</sup> *Ibid* at 110.

<sup>122</sup> See Labour Department, Government of West Bengal Notification No. 1025-IR of 06/11/2009.

<sup>123</sup> *Long Title* of the *Environment (Protection) Act, 1986*.

<sup>124</sup> Municipal authority is a local governing body established under a statute. See Section 3 (xiv), *Municipal*

“for collection, storage, segregation, transportation, processing and disposal of municipal solid wastes”<sup>125</sup> by establishing waste processing and waste disposal facilities.<sup>126</sup>

It is the responsibility of a municipality (such as the KMC) to prohibit littering of solid waste; organize house-to-house and community-bin waste collection; arrange for waste collection from slums, squatter areas, and slaughter houses; segregate bio-medical and industrial waste from municipal waste; segregate municipal waste for recycling and composting purposes; and minimize burden on landfill.<sup>127</sup> Bio-medical and hazardous wastes need to be disposed of as per the guidelines under the Bio-medical Wastes (Management and Handling) Rules, 1998 and Hazardous Wastes (management and Handling) Rules, 1989 respectively.<sup>128</sup> Municipal authorities are to collect and transport segregated non-bio-medical wastes and duly-treated bio-medical wastes from hospitals, nursing homes, medical clinics, animal houses etc. and dispose of such wastes at municipal dump sites.<sup>129</sup> Municipal dump sites are to be appropriately fenced and kept off limits to unauthorized people and stray animals.<sup>130</sup>

For the city of Kolkata, the Kolkata Municipal Corporation Act, 1980 provides for the *modus operandi* of solid waste collection, transportation, and disposal.<sup>131</sup> While the KMC has a larger mandate for the collection, segregation, transportation, recycling, and composting of waste, and management of landfills, waste-pickers’ activities in relation to waste is limited to segregation, collection, and recycling of waste as an economically productive activity. Solid waste is part of waste-pickers’ livelihoods – waste is central to their work-lives. So far as solid waste management is concerned, waste-pickers’ relation to the KMC is complementary rather than competitive. With its existing resources and

*Solid Wastes (Management and Handling) Rules, 2000.*

<sup>125</sup> Section 4 (1), *Municipal Solid Wastes (Management and Handling) Rules, 2000*. As per section 3 (xv), “municipal solid waste includes commercial and residential wastes generated in a municipal or notified areas in either solid or semi-solid form excluding industrial hazardous wastes but including treated bio-medical wastes”.

<sup>126</sup> Section 4 (2), *Municipal Solid Wastes (Management and Handling) Rules, 2000*.

<sup>127</sup> Management of Municipal Solid Wastes, Schedule II, *Municipal Solid Wastes (Management and Handling) Rules, 2000*.

<sup>128</sup> Specifications for Landfill Sites, Schedule III, *Municipal Solid Wastes (Management and Handling) Rules, 2000*.

<sup>129</sup> Rule 3 (5), Rule 3 (7), Rule 4, Rule 6 of the *Bio-medical Waste (Management and Handling) Rules, 1998*.

<sup>130</sup> Specifications for Landfill Sites, Schedule III, *Municipal Solid Wastes (Management and Handling) Rules, 2000*.

<sup>131</sup> See generally Solid Wastes, Chapter XX, the *Kolkata Municipal Corporation Act, 1980*.

waste management framework, the KMC is able to segregate and recycle solid waste in only seven of the one-hundred-and-forty-one *wards* (administrative units) of the KMC.<sup>132</sup> For the rest of the one-hundred-and-thirty-four wards, the KMC does not segregate between recyclable, compostable, and land-fill-able solid wastes, thereby violating the mandate of the Municipal Solid Wastes (Management and Handling) Rules, 2000.<sup>133</sup> Pragmatically speaking, the KMC is unable to treat and dispose of solid waste in the manner prescribed under the 2000 Rules.<sup>134</sup>

Instead of either recycling or composting, the KMC dumps (land-fills) bio-degradable, non-bio-degradable, and recyclable solid wastes together, once they are collected from the one-hundred-and-thirty-four wards that do not have segregation facilities. Waste-pickers, for their part, segregate a significant amount of solid wastes around all the one-hundred-and-forty-one wards of the KMC, in order to collect recyclable materials such as paper, plastic, glass, cardboard, metal etc. Waste-pickers transport recyclable materials to the intermediaries (middle-men or women), who in turn transport those to the recycling industry. Thus, while the KMC could only land-fill solid waste generated by the city, waste-pickers help in recycling segregated solid waste generated in Kolkata. The complementary nature of the relationship between waste-pickers and the KMC is, however, not evident from the work-life analysis of the waste-pickers. Waste-pickers in Kolkata suffer from serious capability deficiencies in their work-lives. Some of these deficiencies emanate from direct and indirect conflict with the KMC and its laws and policies.

It is in this socio-economic-political context that my case study of waste-pickers in Kolkata needs to be located. Typically migrant (both inter-state and international) workers, waste-pickers in Kolkata live in slums, and road-side and canal-side squatter settlements scattered around the city. While some of these settlements are legal, many are not. Identity, recognition, and basic amenities are some of the fundamental challenges faced by the slum dwellers in the city. Even though the left political parties have taken

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<sup>132</sup> Interview with Mr. Subhashish Chatterjee, Executive Engineer, Solid Waste Management Department, Kolkata Municipal Corporation on 19 April 2011 at his office at the Kolkata Municipal Corporation building.

<sup>133</sup> See Rule 4, Rule 7, and Schedule II of the *Municipal Solid Wastes (Management and Handling) Rules, 2000*.

<sup>134</sup> See Schedule II of the *Municipal Solid Wastes (Management and Handling) Rules, 2000*.

the initiative to organize rural landless workers,<sup>135</sup> they have not shown particular interest in organizing slum-dwelling urban informal workers in Kolkata.<sup>136</sup> Absence of informal workers' organization results in invisibility of such workers, which, in turn, is responsible for these workers marginalization and exclusion from policy circles.

I attempt to draw out informal workers' own interpretation of their lives. I seek to find issues that informal waste-pickers in Kolkata perceive as obstacles in their lives and work. My intention is to ascertain capability deprivations of waste-pickers and identification of factors, which might be able to enhance waste-pickers' capability in Kolkata. I identify these factors from the perspective of the waste-pickers in Kolkata. Accordingly, my study is based on multi-method analysis of the informal economic activity of waste-picking and waste-recycling in Kolkata, India. Empirical analysis of the study is based on *semi-structured qualitative interviewing* method along with the *participant observation* method. A brief description of the methodology employed in the study is the subject of the next section.

## **5. Methodology Employed in the Case Study of the Informal Activity of Waste-picking in Kolkata, India**

The case study of waste-pickers in Kolkata has multiple purposes. Since the objective of the larger study is to conceptualize labour law for informal economic activities, the case study helps in such conceptualization at a concrete level. If the normative goal of labour law for informal economic activities is the promotion of capabilities, it is a useful exercise to identify valuable capabilities for specific informal workers in order to identify sites of legal and regulatory intervention in their work-lives. In furtherance of identification of capabilities of waste-pickers, I have employed a *qualitative method* of data collection for the case study.<sup>137</sup> The study is principally based on *semi-structured interviews* supplemented by *participant observation*.

A substantial volume of data exists with respect to informal economic activities in India. Most of this data, however, is generated by quantitative methods. Even though

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<sup>135</sup> See Kohli, *Democracy and Development*, supra note 14 at 385-387.

<sup>136</sup> See Agarwala, supra note 16 at 115, 121, 123, 131-139.

<sup>137</sup> Martyn Hammersley, *The Dilemma of Qualitative Method – Herbert Blumer and the Chicago Tradition* (London and New York: Routledge, 1989) at 94, 156-157.

quantitative methods are extremely useful in charting out the larger picture with respect to informal economic activities, they often fall short in seeking out the subtle unfreedoms suffered by the individual workers working informally. A qualitative methodology is especially apt to identify the subtle unfreedoms, and thereby development deprivation, at the individual level of informal workers. In order to ascertain the element of choice and exercise of such choice by waste-pickers, individually lived experiences of such waste-pickers are central to the analysis.

Thus, my choice of case study methods was dependent on the ontological basis and epistemological considerations of my study. Individual interpretations and experiences of waste-pickers, and institutional attitudes towards waste-pickers, constitute the ontological basis of my study.<sup>138</sup> While texts and institutional structures are important for my case study, the study is principally dependent on individual workers, social actors, and their narratives, experiences, understandings, interpretations, and motivations involving waste-pickers' work-lives. Accordingly, I devised the qualitative semi-structured interview and participant observation methods for my participants with a view to comprehend underlying justifications for individual interpretations.<sup>139</sup>

The purposes of the case study was the identification of achieved functionings by the waste-pickers; identification of capabilities (or capability deficiencies) of waste-pickers by directly probing and analyzing achieved functionings; and, identification of future valuable capabilities and functionings for the waste-pickers. These purposes require an analysis of the work-lives of individual waste-pickers from their own perspectives, and a close observation of their work and environment. From an epistemological point of view, these perspectives could be obtained through *semi-structured interview* and *participant observation* methods.

### **5.1. Sampling and Recruiting**

The study was conducted in the urban area of Kolkata during the summer of 2011, from March to July. For the purposes of the present study, it was necessary that my analysis be based on multiple-perspectives offered by stakeholders directly or indirectly

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<sup>138</sup> Jennifer Mason, *Qualitative Researching* (London: Sage, 2002) at 14-16.

<sup>139</sup> *Ibid* at 16-17.

associated with the informal activity of waste-picking. Interviewing only waste-pickers would have presented one side of the phenomenon, albeit a critical one. Since my purpose was also to find out the sites of legal intervention and remove factors hindering capability development of waste-pickers, it was necessary for me to understand the socio-economic-political dynamic involved in the informal economic activity of waste-picking.

Therefore, in order to identify capabilities, or capability deprivation of waste-pickers in their work-lives and ascertain capability-enhancing factors, I found it necessary to extend the scope of my interviewing to other stakeholders, such as the *intermediary* (middle-person) to whom waste-pickers sell their collect, union leaders and organizers, elected representatives and ministers, government officials, and scholars from different disciplines. I interviewed seventy-five waste-pickers from eleven different locations in Kolkata; six intermediaries; nine government officials of different designations from the Department of Labour, Govt. of West Bengal; five elected representatives, including incumbent and former Labour Ministers of the Govt. of West Bengal; eleven union leaders and organizers; seven scholars; and three senior ILO officials as part of the study.

I randomly selected my waste-picker and intermediary participants. Since I worked with the waste-picker community in Kolkata earlier (in 2009), I was already familiar with the waste-scavenging and residential sites of waste-pickers. Therefore, I approached some of these sites without any assistance. However, I had assistance from the NGO Calcutta Samaritans, to reach some residential sites across the city. I have had previous occasions to work closely with the Calcutta Samaritans; I received tremendous support from the Calcutta Samaritans during my fieldwork this time as well. The West Bengal National University of Juridical Sciences helped me in contacting government officials and elected representatives.

## **5.2. Data Collection**

Through the case study of waste-pickers in Kolkata, I wanted to investigate available capabilities and the extent of choice enjoyed by waste-pickers in their work-lives. In order to achieve that goal it was necessary for me to have a clear and cogent idea about their work-lives, in addition to interviewing waste-pickers. There are two kinds of waste-pickers engaged in the economic activity of waste-picking: itinerant buyers and

waste scavengers.<sup>140</sup> Both of these categories of waste-pickers sell what they collect to an intermediary, who, in turn, buys from these waste-pickers and sells the recyclable materials to the recycling industry. The recycling industry uses these recyclables as raw materials for their final product. In this scheme, waste-pickers who are informal subsistence workers are linked to the formal establishment – the recycling industry – in a business relationship. Thus, the work-lives of waste-pickers need to be contextualized in the interaction between the formal and the informal economic activities in the overall production system.

For a contextual analysis of the achieved functionings and capabilities of waste-pickers, it was necessary for me to interact with other stakeholders directly or indirectly related to the recycling production system. Intermediaries are directly related to the activity of waste-picking – they are the buyers of the waste-pickers' collect. It was necessary for me to understand the relationship between the waste-pickers and the intermediaries to ascertain the extent of capabilities enjoyed by the waste-pickers. I was interested in finding out if an employment relationship exists between the waste-pickers and the intermediaries: would they have pseudo-contracts between them? Do the waste-pickers receive any benefits from the relationship? Are regular wages paid to waste-pickers by the intermediaries? Do the waste-pickers receive support from intermediaries during any emergency? Are waste-pickers free to change intermediaries? Some of these issues are helpful in identifying economic and social security, and thereby capabilities, enjoyed by waste-pickers.

In order to identify the social solidarity and political leverage enjoyed by waste-pickers, it was necessary for me to look into the role of trade unions and other organizers such as NGOs in the work-lives of waste-pickers. Social solidarity and political power are immensely important factors in promoting capabilities for informal workers (as I discuss in chapter 3). It was important for me to analyze whether waste-pickers were organized or not; if there were initiatives of organizing waste-pickers either by trade

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<sup>140</sup> *The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993*, section 2 (j) defines *manual scavenger* as “a person engaged in or employed for manually carrying human excreta”. Accordingly, manual scavenging is the activity of carrying human excreta. However, in the context of my study I use scavenging to mean collection of waste by waste-pickers for recycling purposes. Therefore, wherever I use the terms *scavenging* or *scavenger*, it should be understood in connection to waste-picking and waste-picker.

unions or NGOs; what could be achieved by such organizing activities; whether capability development opportunities are foregone because of non-organization. I interviewed trade unions leaders and NGO organizers to understand some of these issues.

As shown in chapter 3, recognition and social protection are other significant factors in promoting capabilities of informal workers in general and waste-pickers in particular. It was important for me to analyze government documents and initiatives in this regard. However, government documents and initiatives could not have revealed the logic and limitations of recognition and social protection for waste-pickers. It was important for the study purposes to interact with government officials and policy-makers in order to understand reasons and justifications for the inclusion or exclusion of waste-pickers from government policy consideration. Therefore, I interviewed the incumbent Minister-in-Charge for Labour of the Government of West Bengal, two former Ministers-in-Charge for Labour of the Government of West Bengal, and senior government officials in the Department of Labour of the Government of West Bengal. I also interviewed senior ILO officials in New Delhi and Geneva in order to determine the role of international policy-making in the work-lives of informal workers such as waste-pickers in India. Scholars from different disciplines working with informal workers have also been helpful in reflecting on the role of law and policy in promoting capabilities of informal workers in India. I conducted my interviews with waste-pickers at their worksites and their residences. I interviewed union leaders and NGO organizers at either their offices or at another mutually agreed place. I met government officials, incumbent and former Ministers, and other elected office-holders at their respective offices. Likewise, I met scholars and ILO officials at their places of business.

I adopted a qualitative methodology because waste workers' interpretations about their work-lives were central to the study. Since one of my purposes was to unearth the element of choice, if any, exercised by waste-pickers in their work lives, it was important for me to adopt a qualitative method. Qualitative interviews are specifically significant in asking *why* questions to participants, as discussed earlier. I conducted semi-structured interviews for the case study. I prepared a guiding questionnaire that aimed to ascertain available capabilities, achieved functionings, and future valuable capabilities (and functionings) for waste-pickers. If I were to devise a structured questionnaire-based

interview, there was a possibility that some valuable reflections about workers' choice related to their work-lives would have been missed because I could not have conceivably contemplated all possible situations where probability of exercise of choice existed.

Therefore, I thought it prudent to leave the interviewing process open to reflections by waste-pickers. Participant waste-pickers were allowed flexibility to describe their work-life stories to me during the interview process. Apart from occasional clarifications or anecdotes, I would only intervene if the study participants had missed something that is central to the study. Since I speak the languages spoken by the waste-pickers in Kolkata (Bengali and Hindi), I left the interview sessions as free flowing as they could be. My research participant and I would enter into a discussion, often beginning with the participant's origin and family, and an explanation of my background and my research. A participant would describe her or his life stories – different events in her/his life that s(he) thought significantly changed her/his life. A participant would narrate her/his achievements and failures in life, future aspirations and plans, present difficulties, possible improvements, etc. Participants would also ask about my life, mainly, if I was married or not, whether I had children, what I do for a living.

As central as it is to the overall study, *why* questions are not the only ones relevant for the study. I also had to investigate achieved functionings, and future valuable capabilities and functionings of the waste-pickers. Therefore, in addition to semi-structured interviews I conducted participant observation as a complement to the interviews. For the reasons charted earlier in chapter 5, it is necessary to examine achieved functionings as a proxy to ascertain available capabilities for informal workers in a developing country like India. In addition to interviews, participant observation enabled me to have a deeper understanding of the functionings achieved by waste-pickers.

A semi-structured interview method with the most marginalized and vulnerable group of workers suffers from the possibility that the researcher and the participants have different understandings of an issue or question.<sup>141</sup> The benefit of supplementing qualitative interviewing with participant observation is that it allows the researcher to

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<sup>141</sup> Howard Schwartz & Jerry Jacobs, *Qualitative Sociology – A Method to the Madness* (New York: Free Press, 1979) at pp. 112.

understand the context and environment within which to locate the interview. Accordingly, the factual evidence of achieved functionings helped me to locate capabilities of waste-pickers in Kolkata. I also wanted to identify future valuable capabilities of waste-pickers as valued by them because identification of future capabilities would help me identify the hindrances in the promotion of such capabilities. Labour law for informal economic activities should strive to remove these hindrances in its way to capability promotion.

As Sen identified, people in extremely vulnerable and marginalized situations often suffer from adaptive preferences (discussed in chapter 4).<sup>142</sup> Since these people hardly enjoy any capabilities in any meaningful sense, their aspiration levels are often placed at an extremely low scale. From this concern the participant observation technique was extremely useful for me because I could link waste-pickers' future aspirations to their present work-life situations. During the fieldwork, while I noted adaptive preference with respect to some of their aspirations, for some other aspirations adaptive preference was not a factor at all. For example, with respect to their work, most of the waste-pickers I interviewed could not even contemplate that their work could be structured and aligned along with the Kolkata Municipal Corporation's waste management system in order to ensure regular payment for their collect, something that waste-pickers in Pune, India, are accustomed to. On the other hand, aspiration for a permanent decent shelter was expressed by all waste-pickers I interviewed in Kolkata.

Additionally, the participant observation method contributed a unique perspective to the study. During my fieldwork in Kolkata, India, the waste-pickers in Kolkata had organized themselves into a trade union. The Trade Union, *Barjya Punarbyawaharikaran Shilpa Shramik Sangathan* (BPSSS)<sup>143</sup> is in the process of registering itself under the Indian Trade Unions Act, 1926. I actively participated in the formation of the Union.<sup>144</sup> I attended all the meetings during the formation of the Union, interacted with all the promoters of the Union, and interacted with the trade union Registrar's office.<sup>145</sup> The

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<sup>142</sup> Amartya Sen, *Development as Freedom* (New York: Alfred A. Knoph, 1999) at 62-63, 67.

<sup>143</sup> Which, translated into English would stand as: *Association of Workers in the Waste Recycling Industry* (AWWRI).

<sup>144</sup> Kathleen M. DeWalt & Billie R. DeWalt, *Participant Observation – A Guide for Fieldworkers* (Walnut Creek: Altamira, 2002) at 20-21.

<sup>145</sup> In a scale of *non-participation to complete participation*, my participation in the waste-picking

West Bengal National University of Juridical Sciences (WBNUJS) (my host university during the fieldwork), through its Legal Aid Clinic, the NGO Calcutta Samaritans (with assistance from Action Aid, another NGO), and intellectuals from the city of Kolkata promoted the Union along with the waste-pickers. The Union formation was an initiative of the waste-pickers to promote their capabilities in absence of any other capability promoting factors, which I discuss in more detail in the following chapter.

However effective semi-structured interviewing and participant observation methods may be for my study,<sup>146</sup> critics point out some of the problems with these methods. Max Weber emphasized the subjectivity of a researcher in sociological studies in general and qualitative studies in particular.<sup>147</sup> The element of subjectivity and bias is specifically attributed to interview and participant observation methods.<sup>148</sup> Critics point out that since the researcher and the research report are part of the social phenomenon that is studied and analyzed, a researcher brings her biases into her report.<sup>149</sup> Additionally, in a multi-method study involving the combination of qualitative interviewing and participant observation, research evidences are alleged to be contradictory sometimes, posing a problem for the researcher.<sup>150</sup> While subjectivity concerns are genuine concerns for interviewing and participant observation methods, these concerns are not limited to only these fieldwork methods. All research methods suffer from similar subjectivity; in every kind of social research a researcher would be part of the social space and universe studied. This social location is the very nature of social research. Even though these criticisms are not fatal to my case study of waste-pickers, it may be worthwhile to address them in the context of my specific study.

My participation in the waste-picker community was that of a known observer<sup>151</sup> and active participant.<sup>152</sup> Before my engagement with the participant community in the

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community was *active* but not *complete*. Even though I had participated in the unionization effort of the waste-pickers, I did not live with them within their community. I actively engaged with the NGO *Calcutta Samaritans* and the WBNUJS in order to promote the union of waste-pickers. See *ibid* at 19-21.

<sup>146</sup> See Schwartz & Jacobs, *supra* note 141 at 37-38.

<sup>147</sup> See *ibid* at 17-21.

<sup>148</sup> See *ibid* at 26-28; also see DeWalt & DeWalt, *supra* note 144 at 23-32.

<sup>149</sup> Schwartz & Jacobs, *ibid* at 51-52; also see John W Creswell, *Research Design - Qualitative, Quantitative, and Mixed Methods Approaches* (London: Sage, 2009) at 177-178; also see Mason, *supra* note 138 at 4-5; also see DeWalt & DeWalt, *ibid* at 23-32.

<sup>150</sup> Schwartz & Jacobs, *ibid* at 46-48.

<sup>151</sup> *Ibid* at 55-56.

summer of 2011, I worked with the waste-picking community in Kolkata for a substantial period during 2009. Many participants already knew me when I began my study in 2011. During my study in 2011, I became further involved with this group of informal workers. I share the concerns, insecurities, complaints, and perspectives of these workers. In this context, criticism of bias could be addressed through a researcher's reflexivity. As a researcher, I acknowledge my biases and prejudices related to my research. Since I already worked with the waste-picker community in Kolkata, during my present fieldwork I was aware that waste-pickers in Kolkata suffer from serious and multiple capability deprivations. I agree with my waste-picker participants when they complain of police harassment. I also agree to the fact that labour law and policy has largely excluded waste-pickers from its purview. My perspective that these informal workers are the most precarious and marginalized of all informal workers, and that they are devoid of any political and bargaining powers is shared by the workers themselves, the NGOs, organizers, by some union leaders, my host university colleagues in India, and other intellectuals involved with the group. My role as a researcher could be termed as an advocate-researcher.<sup>153</sup> My active engagement with the waste-picking community could therefore be seen as the strength of my case study, instead of a limitation.<sup>154</sup>

Since the purpose of my fieldwork was to ascertain the available and future valuable capabilities and functionings for the waste-pickers, it was necessary for me to identify which capabilities and functionings are *considered valuable by the waste-pickers themselves: what do they want to do or to be?* Because my study was to be based on the waste-pickers' perceptions and interpretations, it had to be from the perspective of waste-pickers. Such an interpretive account would have been difficult but for the adoption of interviewing and participant observation methods. In keeping with my role as a known observer (and a semi-insider), I derived data from my interviews in an *interpretive* manner, rather than in *literal* or *reflexive* manner.<sup>155</sup> My interpretive reading of interviews would mean that instead of literally understanding my participant's view, I

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<sup>152</sup> DeWalt & DeWalt, *supra* note 144 at 20-21.

<sup>153</sup> My thanks are due to my friend Agnieszka Zajackowska for coining this phrase to describe me in the context of my research.

<sup>154</sup> DeWalt & DeWalt, *supra* note 144 at 23-32.

<sup>155</sup> Mason, *supra* note 138 at 78-79.

understood their views as to what they actually meant, rather than what they said.<sup>156</sup> In contrast, a literal reading of interviews would mean deriving data from the literal dialogue between me and my research participants, whereas reflexive reading would be to read interviews in the context of my interface with my research participants.<sup>157</sup> An interpretative reading of interviews would, therefore, identify hurdles in realizing valuable capabilities for waste-pickers from the waste-pickers' perspective.

What could be, however, a significant objection for my study methodologically, is the possible disparity between my participants' words and deeds.<sup>158</sup> What if my interview revealed something, but my observation pointed towards something opposite?<sup>159</sup> To address this issue I would like to point out that a participant's reflections must be considered as something more than a mere true and false statement;<sup>160</sup> the agenda (or true intent) behind a statement needs to be revealed. Such intent or extraneous considerations (extraneous to the question asked by the researcher) forms the context of the interview. The context of a qualitative interview could be revealed through the method of participant observation.<sup>161</sup> During one of my initial interviews at one of the 11 sites in Kolkata, in response to my question whether the interviewee would prefer the flexibility of the informal activity of waste-picking or a regular monthly job (if possible) with the Municipality's waste management division, I found women waste-pickers guessing what would be a *right answer* that will make me happy. After becoming further engaged with the community and their way of work and lives (i.e., through participant observation), it became evident to me that my respondents could not think of the difference between the two answers – they could not even conceive what a regular job means. While different interpretations to this indecisiveness (tentativeness) are possible, for me it constituted a manifestation of adaptive preference. What follows from this example is that I confirmed

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<sup>156</sup> Ibid.

<sup>157</sup> Ibid.

<sup>158</sup> Schwartz & Jacobs, *supra* note 141 at 46-48.

<sup>159</sup> Ibid at 47.

<sup>160</sup> Ibid.

<sup>161</sup> A participant observation method could roughly be divided into three modes: participation, observation and interrogation. While I observed and participated with the waste-picking community in Kolkata in their natural setting, my interviews with them gave me occasions to interrogate my research participants. See DeWalt & DeWalt, *supra* note 144 at 2, 6-7.

and contextualized my interviews with participant observation, a strategy termed triangulation.<sup>162</sup>

One of the limitations of my data collection is the short duration of the study. I conducted my fieldwork in Kolkata, India, from March to July 2011. Qualitative interviewing and participant observation methods require a researcher to spend extended periods in the research universe<sup>163</sup> to have a comprehensive understanding of the research context. This extensive field work was not possible for me because of time and budget constraints during the study. However, since I am an Indian and a Bengali (i.e., domiciled in West Bengal), I was already familiar with the socio-economic-political-cultural context of my study. Moreover, because of my earlier work with the waste-picking community in Kolkata in 2009, I already had background knowledge before I began my study in 2011. Therefore, I do not think that short duration of my study poses a serious limitation to my research.

A final limitation of my case study is the exclusion of child waste-pickers from the scope of the study. Exclusion of child waste-pickers was a strategic decision adopted in view of the strict ethics approval requirement of the University of Victoria, Canada (the university where I wrote my dissertation). In order to receive ethics approval for interviewing children, I would have had to take written permission from children's parents. Since, I interviewed waste-pickers at several places such as dumping sites, slums, an intermediary's business place, and at waste-disposal bins around the city of Kolkata, it would have been very difficult for me to get access to a child waste-picker's parents to seek approval. Moreover, since the significant majority of informal workers (including waste-pickers) are illiterate, it would have been impossible for me to take written approval from a child waste-pickers' parents. In view of these problems and the short duration of the study, I consciously choose to exclude child waste-pickers from the scope of my study.

### 5.3. Data Analysis and Use

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<sup>162</sup> Royce A. Singleton, Jr. & Bruce C. Straits, *Approaches to Social Research* (New York: Oxford University Press, 2005) at 381-392; also see David Silverman & Amir Marvasti, *Doing Qualitative Research – A Comprehensive Guide* (Thousand Oaks: Sage, 2008) at 156-158.

<sup>163</sup> DeWalt & DeWalt, *supra* note 144 at 4.

As I discuss in chapters 4 and 5, there is a broad agreement amongst capability scholars that factors such as nutrition, health, and education are basic essentials in the enhancement of capabilities of vulnerable and marginalized people. Since the purpose of my fieldwork is to ascertain capability deprivation of waste pickers and identify factors responsible for such deprivation, I analyzed waste-pickers' interviews in the context of the abovementioned factors. My guiding questionnaire reflects these analytical factors (functionings) that I employ for my data analysis. I categorized waste-pickers' experiences in functioning categories such as deprivation of health, nutrition, and education. Even though these widely recognized functionings were the starting point of my analytical framework, I developed, modified, and evolved my framework during (and after) my fieldwork in India. In addition to functionings such as health, nutrition, and education, which are essential for capability enhancement, there are other functionings that are equally important towards waste-pickers' capability enhancement. During my fieldwork in Kolkata I found that factors such as recognition as worker, identity cards, physical and mental security at work are fundamental in waste-pickers' capability development. Accordingly, I included these factors within the framework of my analysis.

I conducted interviews of my study participants principally in Bengali and in Hindi. I transcribed and translated those interviews into English. Instead of using computer software, I have manually coded my interviews. Having identified the factors capable of promoting waste-pickers' capabilities, I categorized my study participants' experiences into ten factors (or capability aspirations). I had predetermined some of these factors (health, education etc.), while other factors (recognition, security at work etc.) emerged from my study participants' experiences. Thus, I have charted the stakeholders' experiences through the prism of *factors necessary for the enhancement of capabilities of informal waste-pickers*. The present chapter and the next chapter rely upon and incorporate data from my fieldwork. I have used my fieldwork data sometimes to support my contentions and assertions, and sometimes to supplement or contradict the official position. My fieldwork is aimed at generating the argument that labour law needs to be reconceptualized for informal economic activities and to show how such labour law could be formulated in the context of a specific informal economic activity. In the next section, I analyze the profile of informal waste-pickers in Kolkata.

## 6. A Profile of Informal Workers in the State of West Bengal with specific reference to Waste-Pickers

I have travelled across the *Kestopur Khal* on many occasions earlier on my way to the Calcutta airport. *Kestopur Khal* edges the *VIP Road* that connects the city of Kolkata with its international airport. The entire stretch of the *Kestopur Khal* area is unpleasantly distinctive. The canal (*Khal*) carries effluent from the North-Eastern part of the city. A foul odour from the canal fills the air around the area. The air is also polluted by sulphur and carbon-monoxide emissions. Business and commuter congestion contributes to the noisy chaos. The filthy water of the canal is covered with a thick green layer of hyacinth plant. A group of waste-pickers have encroached upon part of the canal to build a squatter settlement and a waste-segregation area. Even though I had always noticed the squatter settlement, for the first time I approached the slum to talk to its inhabitants. I came across Amir Alam and his wife Farida Yasmine, while they were segregating waste they had collected.<sup>164</sup>

Amir Alam and Farida Yasmine were both born in Bangladesh. They are engaged in the activity of waste-picking for approximately twenty-three years and twelve years, respectively. They have two daughters, one four and one six years old, both of whom attend a nearby school. They informed me that there is an *Anganwadi School* (*Anganwadi* schools are government run pre-schools where children learn to socialize) in their settlement. Amir devotes his entire day collecting and segregating waste. Farida engages in many different tasks: early in the morning she cooks for the family and sends her children to school; she then works at a nearby house as a domestic help; she returns home at around noon and feeds her children after they come back from school; she then goes on to help her husband with waste-collection and waste-segregation. She has been following this schedule for the last six years. The couple have been maintaining their family without any kind of external support. When asked, they informed me that they do not receive any government assistance whatsoever, despite the fact that the WB government has instituted legislative and executive protection for informal workers of the state. In absence of any assistance from the government, Amir and Farida lead an insecure and

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<sup>164</sup> Interview conducted on 13 April 2011 at Kestopur Khal area, Kolkata, India.

uncertain life. Insecurity and uncertainty result from multiple capability deficiencies that characterize informal workers' lives in Kolkata, as I document in the following section. In the following section, I not only analyze the capability deficiencies of waste-pickers in Kolkata, I also identify (future) valuable capabilities identified by the waste-pickers I interviewed in Kolkata.

### **6.1. Functionings and Capabilities of Waste-pickers in Kolkata, India**

Instead of concentrating on only the work-related issues of waste-pickers, my study takes a holistic view of their *work* experiences in the context of their lives. Such an approach was necessary because the informal activity of waste-picking is deeply integrated into everyday life; work experience and (family) life experience could not be distinguished in a straight-forward manner. Working conditions and living situations are interwoven into each other:

- i. their work-sites are not distant from their homes;
- ii. they store and segregate their collect in and around their slums;
- iii. flexibility in the nature of work allows them to balance work with family responsibilities;
- iv. for women waste-pickers (majority of waste-pickers interviewed during the present study are women) the work of waste-collection and segregation can be juxtaposed with their responsibilities of cooking for the family and child-care;
- v. waste-collection, segregation, and selling keeps a regular income flow in the waste-picking family, which might not be the case for some other economic activities (such as domestic work, for women) where income generally comes at a monthly interval;
- vi. waste-picking allows them the freedom to decide how much to work every day;
- vii. there are no supervisors in this work.

These are some of the beneficial features of the economic activity of waste-picking as perceived by the waste-pickers themselves. They identify some of these reasons for which they prefer waste-picking to activities such as domestic work or hand-rickshaw-pulling. In the following sections, I discuss some of the valuable capabilities that waste-pickers in Kolkata have identified as important to them. These capabilities do not necessarily have a definite order – there is no hierarchy to them. All of these capabilities

are necessary to enable waste-workers to lead the lives that they want and attain the functionings they value most.

### 6.1.1. Capability to be able to work: Recognition

One of the principal capabilities for the waste-pickers is the capability to work and to be recognized as workers. Workers undertake work not only to receive wages; work is a valuable source of self-respect and part of one's personality. While recognition of work or workers might not be an issue for the majority of the workers worldwide, for waste-pickers recognition constitutes an immensely important capability in their work-lives. Too often, they are deprived of recognition. Their capability to be recognized as workers is the first step towards the enhancement of their overall capabilities. Even though capabilities are a sum of well-being and agency, with respect to recognition as workers it is the well-being aspect of freedom that is missing. Well-being ensured by the recognition as workers could come from institutional conditions that can convert social, economic, and political resources into capabilities for these waste-pickers.

As per the Kolkata Municipal Corporation Act solid waste generated in the city is the property of the KMC.<sup>165</sup> The KMC has its own team for the collection, transport, and disposal of such property. Since waste is the property of the Corporation, any unauthorized transaction with such property, legally speaking, will constitute the offence of *theft* under the Indian Penal Code.<sup>166</sup> The non-cooperative and adversarial approach of the law enforcement officials (police) towards waste-pickers in Kolkata is in keeping with the juridical notion of waste as property of the Corporation. Such a property-based understanding of waste excludes all others from productively using waste, even in face of the KMC's incapacity to put the waste to productive use. The property-based concept of waste criminalizes the informal activity of waste-picking, thereby stripping waste-pickers of their recognition as workers.

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<sup>165</sup> *The Kolkata Municipal Corporation Act, 1980*, section 326 provides: "Solid wastes to be the property of the Corporation – All matters deposited in public receptacles, depots and places provided or appointed by the Corporation and all solid wastes collected shall be the property of the Corporation."

<sup>166</sup> *The Indian Penal Code 1860*, section 378.

The majority of the waste-pickers interviewed in Kolkata have been taken into police custody at least once during the performance of their work.<sup>167</sup> For most of these arrests, the police register *petty cases*<sup>168</sup> against the arrested waste-pickers. A Petty offence is an offence under the Indian Penal Code that is punishable only with a fine not exceeding one thousand rupees.<sup>169</sup> In most cases, the police release the waste-pickers after a day or two, after a small amount is paid to the police as a fine (i.e., when appropriate receipt against such payment is made by the police), or as a bribe.<sup>170</sup>

The vulnerability of waste-pickers during the course of their work is not only limited to police harassment. Waste-pickers are often harassed by local residents and anti-social elements of a ward during the collection of waste. While waste-pickers view these harassments as professional hazards, they are more concerned with harassment meted down by police, because they perceive their interaction with police as a necessary part of their work. While waste-pickers can secure their release from the police by bribing or paying them, they do not have the same leverage with local residents or touts, who are generally not after the waste-picker's money, and who view waste-pickers as thieves and vagrants who should not be allowed to scavenge in their neighbourhood. This approach towards waste-pickers in Kolkata (of both the police and civilians) is in keeping with the propertied notion of waste, which is one of the principal hurdles in waste-pickers' work-lives.

Moreover, waste-pickers are excluded from legislative recognition enjoyed by some of the other informal economic activities. The West Bengal Unorganised Sector Workers Welfare Act, 2007, recognizes both self-employed and wage-earning informal workers by providing a list of such activities and enterprises in its Schedule.<sup>171</sup> The Schedule lists sixty-nine informal enterprises and self-employed activities that are

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<sup>167</sup> Interviews conducted with waste-pickers in Kolkata, India, from March to July 2011.

<sup>168</sup> Even if the waste-pickers were not aware of the exact connotation of the phrase *petty offence*, they had a good idea of what it entails. Interviews conducted on 12 May 2011 at Tala Park area; 9 May 2011, and 11 May 2011 at Rajabazar area; 30 April 2011 at Golfgreen area; 12 May 2011 at BNR area in Kolkata, India.

<sup>169</sup> As per section 206 (2) of the *Code of Criminal Procedure, 1973*, "petty offence means any offence punishable only with fine not exceeding one thousand rupees, but does not include any offence so punishable under the *Motor Vehicles Act, 1939* (4 of 1939) or under any other law which provides for convicting the accused person in his absence on a plea of guilty."

<sup>170</sup> Interviews conducted on 12 May 2011 at Tala Park area; 9 May 2011, and 11 May 2011 at Rajabazar area; 30 April 2011 at Golfgreen area; 12 May 2011 at BNR area in Kolkata, India.

<sup>171</sup> See *The West Bengal Unorganised Sector Workers Welfare Act, 2007*, section 3 (i), section 3 (j), section 3 (k), Schedule – Part A & Part B.

recognized as informal (or unorganized).<sup>172</sup> Waste-picking does not feature in the Schedule of the 2007 law. This is an instance of active (conscious) non-recognition and de-legitimization of the informal activity of waste-picking. The SASPFUW Scheme also excludes waste-pickers from the list of sixty-one informal activities that are under its purview presently.<sup>173</sup>

However, there is room for argument that the 2007 law of the WB legislature and the SASPFUW Scheme implicitly recognizes waste-picking as an informal activity. Section 3 (j) of the law states: “[u]norganised sector means the Unorganised sector specified in Part A and Part B of the Schedule and includes any process or branch of work forming a part of such Unorganised Sector.” The Schedule of the law lists and thereby recognizes, informal enterprises of *plastic industry* (Entry 28 of the law and Entry 21 of the Scheme), *ceramic industry* (Entry 29), *rubber and rubber products* (Entry 25), *paper board and straw board manufactories* (Entry 43 and Entry 28 of the Scheme). The informal activity of waste-picking is intricately related to these *recognized* informal enterprises. Therefore, from the wording of section 3 (j), it could be argued that waste-picking is a *process or branch of work forming a part of the unorganized sector* recognized under the law and therefore waste-picking is also a recognized informal activity. However, the Minister-in-Charge-of-Labour of the Government of West Bengal and the government officials in the state Labour Department interviewed by me, were not convinced by this interpretation. According to them, only an express mention of waste-picking would amount to legal recognition of such informal activity. Thus, non-recognition as a worker amounts to a serious capability deprivation for waste-pickers. In the following sub-section, I explain why the institutional recognition as a worker constitutes a valuable capability-enhancing measure for informal waste-pickers.

### 6.1.2. Access to Work-sites

As with recognition, problems in access to work-sites (or collection sites) comprise an extremely important factor that seriously limits the capability of waste-

<sup>172</sup> See *The West Bengal Unorganised Sector Workers Welfare Act, 2007*, Schedule – Part A & Part B.

<sup>173</sup> See Government of West Bengal, *Social Security for the Working Class and Left-Front Government (Shramik-shrenir Samajik Suraksha O Bam-Front Sarkar)* (Kolkata: Govt. of WB, 2010) at pp. 3-4 [English title offered by author].

pickers to work as they wish. Limitations on waste-pickers' capability to access work-sites result from other legal, social, economic, and cultural deprivations. Inaccessibility is a unique factor for the activity of waste-picking in the sense that workers are not allowed access to their work-sites. Waste-pickers interviewed in Kolkata have identified access to work-sites as one of the valuable capabilities that they lack.<sup>174</sup> Inaccessibility of work-sites is the logical outcome of the property concept of waste. The Kolkata Municipal Corporation Act, 1980 declares matters deposited in *public receptacles, depots*, and solid waste dumping places to be KMC property.<sup>175</sup> Therefore, by implication, waste-pickers entering these premises to collect waste are trespassing on the Corporation's property. According to the directions issued under the Municipal Solid Wastes (Management and Handling) Rules, 2000, municipal dumping places or land-fill sites are off limits to unauthorized persons.<sup>176</sup> Municipal dumping sites must be fenced and properly monitored to prevent trespassing.<sup>177</sup>

Municipal land-fill sites are the biggest repositories of solid waste and therefore, the easiest way for waste-pickers to find valuable recyclable waste. During my visit to the largest municipal land-fill site, Dhapa, on the outskirts of Kolkata, I found about one-thousand waste-pickers scavenging for valuable recyclable waste.<sup>178</sup> I was informed by one of the attendants of the KMC (Group C employee of the KMC), under conditions of anonymity, that the number of waste-pickers at *Dhapa* vary from seven-hundred to three-thousand per day.<sup>179</sup> Legally speaking, all these waste-pickers are trespassers on government property. Trespassing is an offence under the Indian Penal Code punishable with three months imprisonment and/or five-hundred rupees fine.<sup>180</sup>

Perhaps mindful of the legal implications, the KMC authorities in charge of the *Dhapa* land-fill site dissuaded me from visiting the site.<sup>181</sup> After repeated attempts and

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<sup>174</sup> Interviews conducted with waste-pickers in Kolkata, India, from March to July 2011.

<sup>175</sup> Section 326.

<sup>176</sup> See *The Municipal Solid Wastes (Management and Handling) Rules, 2000*, Rule 6, Rule 7, and Schedule III (Entry 11, 12).

<sup>177</sup> *Ibid.*

<sup>178</sup> During my fieldwork in Kolkata (March to July 2011), I visited the Dhapa land-fill site several times. The first such visit was on 10<sup>th</sup> April 2011 and the last visit to the site was on the 2<sup>nd</sup> June 2011.

<sup>179</sup> Interview conducted with the Kolkata Municipal Corporation employee on 2 June 2011 at the Dhapa land-fill site in Kolkata, India.

<sup>180</sup> See *The Indian Penal Code 1860*, section 441, Section 447.

<sup>181</sup> When I first approached for permission to visit the Dhapa land-fill site on the 10<sup>th</sup> of April 2010, I was

multiple layers of official authorization, I was allowed to pay an *official visit* to the *Dhapa* site. Once at the site, it was evident to me that had I not insisted on paying an official visit, I could have used any one of the multiple inroads to enter the site. These are the same entry-ways thousands of waste-pickers use every day. I was also informed by the KMC attendant accompanying me that during official inspection of the sites (for example, by high ranking government officials) waste-pickers are driven out of the premises by him and other attendants. However sympathetic to the waste-pickers he may have been, he admitted that he had to “follow orders from above and evict waste-pickers from the premises.”<sup>182</sup>

Waste-pickers in Dhapa as elsewhere, while undertaking their work, are helping the KMC and the environment at large. As I have pointed out earlier, the KMC is only able to segregate waste from seven of the one-hundred-and-forty-one wards. Therefore, waste collected from the majority of the wards in Kolkata are not segregated and are simply dumped into the land-fill sites in Dhapa and Garden Reach (Kolkata presently has two land-fill sites). Since waste-pickers are interested in recyclable waste, they are segregating recyclable waste from non-recyclable and compostable waste at the land-fill sites. The KMC has an agreement with a composting company that composts waste generated in Kolkata. The factory of the composting company is located at the premises of the Dhapa land-fill site. Waste-pickers, by helping in segregation, facilitate work on the composting and waste disposal front. Despite being helpful to the KMC and the environment, waste-pickers are often excluded from the very premises that constitute their livelihoods.

Waste-pickers in Kolkata are thereby socio-economically marginalized and maligned by the existing legal scheme. While Dhapa stands out as an example for its size, it reflects the exclusion of waste-pickers from their work-sites that permeates all the wards in Kolkata. Non-access to worksites seriously limits waste-pickers’ capabilities. Even if waste-pickers choose to work in recycling businesses, institutional factors such as

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not only dissuaded from visiting the site, authorities at the land-fill site informed me that in order to visit the site I would need to have written permission from their superior officers. This does not, however, mean that the Dhapa site is inaccessible for outsiders. Thousands of people could access the open land-fill site from several unofficial entry-points. Entry through the *official gate* is only restricted and is subject to written permission.

<sup>182</sup> Interview conducted with the Kolkata Municipal Corporation employee on 2 June 2011 at the Dhapa land-fill site in Kolkata, India.

laws, policies and social-prejudices hinder their choice. Not surprisingly, therefore, waste-pickers identify the capability to be able to choose their work-sites as a valuable capability in their work-lives.

### **6.1.3. Identification as a citizen of the country**

Status as a citizen of the country entitles workers to claim certain rights and benefits from the state. Different departments of the state government, including the Food and Public-Distribution Department, the Health and Family Welfare Department, the Labour Department etc., execute hundreds of Central and State Government welfare schemes that are conditional upon citizenship, or based on the requirement of proof of identity.<sup>183</sup> The absence of identification or citizenship, therefore, seriously limits the capabilities of waste-pickers. Proof of citizenship ensures some degree of social, economic, and political safeguards for informal workers. In the absence of citizenship identity, waste-pickers are deprived of some minimum level of security, and remain perpetually vulnerable and marginalized. Their capability sets get significantly limited because of such vulnerability and marginalization.

The majority of the waste-pickers I interviewed in Kolkata were migrants.<sup>184</sup> Most of these migrants were inter-state and intra-state migrants. Many waste-pickers that I interviewed had migrated from the neighboring states of Bihar, Orissa, and Jharkhand. Some of them had migrated from the *Sundarbans* area (delta) of the state of WB. I also interviewed waste-pickers who had migrated from Bangladesh. A mix of migrant populations, including intra-state, inter-state, and international migrants, complicate matters related to citizenship and associated rights and privileges. State government officials argue that they have been unable to provide identification to many of the migrant population in Kolkata who have migrated from different parts of the country because of the complications arising from the risk of issuing identification to illegal immigrants to the country. Many of the migrant waste-pickers that I interviewed in Kolkata were second generation migrants; some of the first-generation migrant waste-pickers have been living

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<sup>183</sup> For a list of the different Central and State Government Schemes executed in West Bengal, see generally Society for Participatory Research In Asia, *People's Autonomy in Government Schemes* (Kolkata: PRIA, 2008).

<sup>184</sup> Interviews conducted with waste-pickers in Kolkata, India, from March to July 2011.

in Kolkata for about twenty years or more. Despite having lived in the city for more than two decades or a generation, the majority of the waste-pickers I interviewed did not possess any identification of citizenship such as *Voter Identity Card* or *Ration Card*. However, a small minority of waste-pickers do possess Voter Identity Cards.

It is very interesting to note the apparent difference of living standards between waste-pickers who possess a proof of citizenship and those who do not. I interviewed a group of waste-pickers in the *Rajabazar* area of Kolkata.<sup>185</sup> Living by the edge of a canal that carries industrial and non-industrial effluent, the lives of waste-pickers in *Rajabazar* are far from dignified. What is distinctive about waste-pickers in this area of Kolkata is that they all had multiple documents proving their citizenship such as Voter Id., Ration Card, Below Poverty Line (BPL) Card, etc. These workers live in bamboo-thatched houses with the roof covered with tarpaulin sheets or roof-tiles. They have constructed *bunks* inside the house so that five to six individuals could fit in a tiny house of five-foot-by-ten-foot. What was surprising for me was to note that some of these workers had televisions, video-players, and cable television connection in their tiny homes. During my interaction with waste-pickers in *Rajabazar* I was invited into their homes – I was offered tea and snacks – their hospitality and forthcoming nature made up for the foul smell from the canal. Waste-pickers here had many complaints against politicians. A few of the waste-pickers used to be active cadres of the Communist Party of India (a partner of the Left Front), but had long become inactive, disillusioned with its policies. Waste-pickers in *Rajabazar* complained that politicians come to them only during election time: “throughout the year we do not see them. If we approach them for some help they have no time for us. But when vote comes [during elections], they are at our doorsteps. [They] tell us: *mashi* [maternal aunt] go and cast your vote soon, don’t be late – have your lunch only after casting your vote.”<sup>186</sup>

Such spontaneity was absent when I interviewed waste-pickers in the *Aajkaal* area.<sup>187</sup> Living on the footpath with a tarpaulin sheet or jute sack hanging above their heads, something they call home, these waste-pickers were scared to talk to me. They

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<sup>185</sup> Interviews conducted with waste-pickers on 9 May 2011 and 11 May 2011 at Rajabazar area in Kolkata, India.

<sup>186</sup> Woman waste-picker interviewed on 9 May 2011 at Rajabazar in Kolkata, India.

<sup>187</sup> Interviews conducted with waste-pickers on 1 June 2011 at Aajkaal area in Kolkata, India.

wanted me to talk to their wards' Councillor before they could entertain me. However, with much persuasion and help from one of the organizers of the Calcutta Samaritans (NGO), they agreed to talk to me. I learned that the local councillor had thrashed their tarpaulin cover shanties along with local strongmen on more than one occasion earlier. Since then, these workers suffer from perpetual insecurity and are scared to talk to strangers. None of these waste-pickers had any citizenship documents. Their lives centre around the footpath where they live and the garbage dumping places where they scavenge, living and working in perpetual fear. Similar insecurities surfaced during my interview with waste-pickers in the *Kestopur Khal* area.<sup>188</sup> Many waste-pickers in this area came from Bangladesh. Even though they have lived here for decades, they could not secure a citizenship-identity card. These waste-pickers have been expressly instructed by their local councillor not to talk to strangers. While I was interviewing waste-pickers in this area, a local strongman came and mildly threatened me (I use 'mildly' because I was aware of how a full-fledged threat might sound). He wanted me to leave the area immediately and not talk to anyone. Finding me unphased, he threatened to call the local councillor, but when I insisted that he call the local councillor so that I could personally talk to her, he withdrew.

I am not attributing the difference in living standards (or quality of life) and the interactions of waste-pickers with a stranger, *only* to the possession or absence of citizenship identity cards. I am suggesting that there might be a linkage between citizenship identity, and better living standards and security of waste-pickers. These workers live in shanties and slums by the side of a canal, or on roadside footpaths, or near garbage dumping places. Because of educational, cultural, social, political, and economic reasons, these people, more often than not, are not in possession of valid identification documents. While this absence of documentation prohibits them from seeking any benefits and entitlements from the state, it is much more damaging in terms of perpetually pushing these workers into ignominy and illegitimacy. Because the waste-pickers do not possess valid citizenship documents, they try to hide from state authorities, law enforcement officials, and other citizens. They perform their work in a hideous manner and are easily intimidated. Accordingly, identity as a citizen has been identified

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<sup>188</sup> Interviews conducted with waste-pickers on 13 April 2011 at Kestopur Khal area in Kolkata, India.

by the waste-pickers as an institutional guarantee that is capable of enhancing their capabilities.

#### 6.1.4. Shelter or Housing

Waste-pickers live in slums and squatter settlements spread around the city of Kolkata. Many of these slums and squatter settlements are illegal. The better off waste-pickers would possess a bamboo-thatched hut, in which a space as small as five-foot-by-ten-foot, a family of five people would live together. Waste-pickers not so well off would spend their lives on railway platforms and footpaths under the shelter of a tarpaulin sheet. In view of their living situations, it was not surprising that almost all of the waste-pickers I interviewed have identified shelter as providing them with valuable capability. Shelter is a source of security, confidence, and comfort. Whatever may be the uncertainties of the informal activity of waste-picking, shelter provides confidence and satisfaction to the waste-pickers. Such confidence and satisfaction is irrespective of the fact that all of the waste-pickers I interviewed were occupying shelters that were temporary in nature.<sup>189</sup> The sense of security emanating from the existence of a shelter allows waste-pickers to exercise *choice* in their work-lives, however limited in scope.

A shelter is significant for waste-pickers not only for their living purposes, it is also valuable for waste-pickers' work. Waste-pickers' work-lives are spread across different locations around the city. Their work is stretched from the garbage dumping places around the city to their individual shelters. Segregation of solid waste is central to the work of waste-pickers. Waste-pickers segregate solid waste at two levels: first, while collecting recyclable waste from around the city, waste-pickers segregate recyclable plastics, metal, glass, ceramics, paper etc. from non-recyclable waste; second, once a day's collect has been made, waste-pickers segregate their collect into plastic recyclables, glass recyclables, metal recyclables, and so on. This second stage of segregation takes place either at or near the shelter of the waste-pickers, or a separate designated place (generally in close proximity to the middleperson's business). Accordingly, shelter is not only important for living purposes to these waste-pickers; shelter is also an extension of their work-site.

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<sup>189</sup> Interviews conducted with waste-pickers in Kolkata, India, from March to July 2011.

Although there are legal slums and settlements in Kolkata, all the waste-pickers I interviewed live in illegal slums, squatter settlements, and temporary shanties. Their shelters are actually a manifestation of the marginalized and vulnerable nature of their work. The Kolkata Municipal Corporation Act prohibits construction of any structure over or along any *water-main, drain, or sewer* without prior permission.<sup>190</sup> Such construction is punishable with one-thousand rupees fine or six months imprisonment.<sup>191</sup> Many of the illegal slums of waste-pickers are constructed along drainage canals – the KMC can demolish these slums anytime and punish their owners with imprisonment or fine. The KMC prohibits using residential premises for non-residential purposes.<sup>192</sup> The KMC also prohibits deposit and storage of waste in slums, municipal land, and along public-ways, violation of which would attract up to five-thousand rupees fine.<sup>193</sup> Moreover, the KMC can order demolition and removal of *huts* and *sheds* if they perceive such shelters as unsanitary<sup>194</sup> and can punish scavenging and waste-carrying as nuisance.<sup>195</sup> Thus, even if waste-pickers in Kolkata have temporary shelters, they could be deprived of such shelter anytime under the law.

In view of the legal-institutional arrangements that are prejudicial to their interests, waste-pickers in Kolkata have identified *permanent shelter* as an enabling factor towards promotion of their capabilities. However, it was interesting to note the difference amongst different groups of waste-pickers in this respect. Those waste-pickers who had better shelters than other waste-pickers were much more assertive about a permanent shelter. They wanted the government to take proactive measures in offering shelters to them. Waste-pickers living in the *Golfgreen* area of the city went to the extent of showing me a piece of land where they propose the government build them permanent shelters.<sup>196</sup> On the other hand, waste-pickers who were living in small shanties or living on the footpaths with a tarpaulin cover over their heads did not even bother to talk about

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<sup>190</sup> *The Kolkata Municipal Corporation Act, 1980*, section 317.

<sup>191</sup> See *The Kolkata Municipal Corporation Act, 1980*, Schedule VI.

<sup>192</sup> See *The Kolkata Municipal Corporation Act, 1980*, section 435, section 441, Schedule VI.

<sup>193</sup> See *The Kolkata Municipal Corporation Act, 1980*, section 334, section 336, section 337, section 338, Schedule VI.

<sup>194</sup> *The Kolkata Municipal Corporation Act, 1980*, section 493.

<sup>195</sup> *The Kolkata Municipal Corporation Act, 1980*, section 516, 517, 517A.

<sup>196</sup> I visited the waste-picker' squatter settlement at the Golfgreen area on several occasions. On my third visit to the area on 10 May 2011 they showed me this nearby vacant land.

a permanent shelter. Such a behavior on the part of the more precarious of the waste-pickers is suggestive of their adaptive preference. These migrant waste-pickers living on the footpaths and railway platforms have left their aspirations to the mercy of their fate. They have long been subjected to abject poverty and perpetual want, and have lost hopes in deciding the course of their lives. Irrespective of adaptive preference looming large over many of the waste-pickers' psychology, as a group, waste-pickers of Kolkata have identified permanent shelter as a capability-enhancing factor.

#### **6.1.5. Protection from Eviction from resort to temporary shelters**

Even when waste-pickers have shelter (which are the temporary structures where they live), because of the other deprivations they suffer from (such as educational, social, political, etc. mentioned above) and of the illegal nature of such dwellings, they are often evicted. Every so often, law enforcement officials visit the slums, demolish the temporary structures, and force the waste-pickers to leave, with or without their belongings. Such demolitions are more frequent when these people do not have enough money to bribe the officials. Tawassum Biwi reflects: "sometimes they [the police] just come for money. They have no official orders from above, but just come to harass us. If we can give them a fifty [rupees] or a hundred [rupees] bill, they leave us in peace."<sup>197</sup> Waste-pickers have pointed out that protection against eviction would be one of the most valuable components towards capability enhancement in their work-lives. All the waste-pickers I interviewed in Kolkata, irrespective of their places of residence or area of operation, noted that forced eviction seriously limits their capabilities.

Ameena Bewa has been living in the *Tala Park* area for the last thirty-five years since her husband moved to Kolkata in search of work. All of her children were born here and her husband died here. She has experienced many evictions. She describes some of her experiences:

Police will generally come when we are least prepared to deal with them. They will come and beat our men and young children so that we are scared. They will then smash our shanties. They have kicked out utensils during their raids; they once kicked my bowl full of rice when we were having lunch. Sometimes local people accompany police. The *babus* [local people living in neighboring residential complexes] don't like us –

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<sup>197</sup> Interview conducted on 10 May 2011 at Tollygunge area in Kolkata, India.

they call the police to drive us away. When I was young and new here I was very scared during these [police] raids. Now we have our own strategy. We do not argue with or fight police. When they come we simply run away with whatever belongings we can. After things calm down a little we come back and live as usual.<sup>198</sup>

However, law enforcement officials are not always seen in a bad light by the shanty-dwelling waste-pickers. Jamina Mahato of *Golfgreen* is sympathetic:

We cannot always blame them [the police]. Even they have their limitations – they have to follow orders. What can they do if their bosses pressurize them to demolish our *bustee* [slum] and evict us? Yes, many of them come for money, but not all. There are some good police personnel. Whenever they come to know of a possible eviction and demolition drive, they inform us beforehand. They come during the day and tell us: *mashi* [maternal aunt] be careful for the next few days; there is going to be an eviction drive soon; if possible take your belongings and go somewhere. We are then all prepared when they come to evict us.<sup>199</sup>

Thus, shelters are a site of regular conflict and a source of insecurity. Challenge, confrontation, struggle, and cooperation are performed as everyday activity between the waste-pickers and law enforcement officials in particular. It is therefore evident that for a meaningful capability enhancement of waste-pickers, protection from eviction needs to be ensured.

#### **6.1.6. Physical and Mental Security at Work-site**

Waste-pickers are harassed at their work-sites everyday by local touts, hooligans, law enforcement officials, local residents, and rodents. Women waste-pickers are often sexually and mentally harassed. Accordingly, waste-pickers have identified workplace physical and mental security as one of the enabling conditions for enhancing capabilities for their work and lives. For waste-pickers, work is spread from dumping grounds to their temporary shelters. It is in this large expanse that waste-pickers are concerned about their physical and mental safety and security.

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<sup>198</sup> Interview conducted on 12 May 2011 at Tala Park area, Kolkata, India.

<sup>199</sup> Interview conducted on 10 May 2011 at Tollygunge area, Kolkata, India.

Srikanta Majhi and Indranath Mandal scavenge around the southern fringes of the city.<sup>200</sup> They work together, collecting waste with their hand-pulled-cart, which has been loaned to them by a middleman Kuber Mian to whom they sell their collect. Like the majority of waste-pickers in Kolkata, both Majhi and Mandal are migrant workers. They have been taken into custody by police several times on varying grounds. Most of the time, police take them into custody without any reasonable proof of theft or vagrancy. However, Majhi and Mandal were never produced before a Magistrate;<sup>201</sup> they were always released on bail from the police station.<sup>202</sup> The more outspoken Majhi notes:

They [the police] have to fulfill a regular quota of arrest per month. They also have to fuel their motorcycles free of charge. Arresting people like us helps them in both of these respects. We are people who know no one [worth knowing] in the city. Therefore we cannot bargain with the police to release us. Either we have to rot in jail for several days or months, or we must pay them [police]. The work we do [i.e. waste-picking] makes it much easier for the police to allege theft against us. We never protest because we have to go back to the same locality for scavenging.<sup>203</sup>

Thus, work-place(s) are sites of constant struggle, where waste-pickers find themselves devoid of any power to negotiate their security at work.

Law enforcement officials are not the only villains of the story. During the last state assembly elections in 2011, local people in *Tala Park* area threatened waste-pickers with eviction from their shanties once the election results were out.<sup>204</sup> This threat, even though not targeted for the first time, attained significance in the socio-political context of the 2011 assembly elections. After coming to power in 1977, the Left Front suffered heavy losses in the 2009 parliamentary elections for the first time in thirty-two years. The right-of-centre opposition began to gain more strength from 2009 onwards. A Left Front loss in the 2011 elections was widely predicted. Traditionally, the right-of-centre opposition has more support in the city of Kolkata than the Left Front. While the Left Front is perceived to be more tolerant of informal workers and their shanties, slums, and

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<sup>200</sup> Interview conducted on 30 April 2011 at Golfgreen area, Kolkata, India.

<sup>201</sup> Persons arrested without Warrant are to be produced before the nearest competent Magistrate within twenty-four hours of his/her arrest as per Article 22 (2) of the *Constitution of India*, and sections 57 and 76 of the *Criminal Procedure Code, 1973*.

<sup>202</sup> Persons arrested without Warrant in a bailable offence could be released on bail upon sureties directly from the Police Station as per sections 50 and 56 of the *Criminal Procedure Code, 1973*.

<sup>203</sup> Interview conducted on 30 April 2011 at Golfgreen area, Kolkata, India.

<sup>204</sup> Interview conducted on 12 May 2011 at TALA Park area, Kolkata, India.

squatter settlements, opposition forces always despised these informal workers and their settlements. Therefore, right before the elections, predicting a heavy Left Front loss, threats from local people from residential complexes of the city held enormous significance.

The right-of-centre government's apparent disapproval of these workers and their living conditions is well captured through the reflections of a Mayor-in-Council of the KMC. Presently, both the KMC and the state government are run by the right-of-centre coalition government (incidentally, they also run the Central Government). The KMC Mayor-in-Council for Parks, Gardens and Sports, Debashish Kumar reasons:

Why would the waste-pickers live in the city? None of these people are from the city. They have come here from *Lakkhikantapur* and *Canning*. They do not belong to the city. They can come and work here but must go back when the day's work is done. They are responsible for the filthy conditions of the city. How can you appreciate people [waste-pickers and the like] cooking and reproducing on the footpaths? However, we are not in favour of forcibly evicting them – but they cannot just spoil our city.<sup>205</sup>

While the Mayor-in-Council might be correct in noting that some waste-pickers are responsible for polluting and littering the city, he shows a lack of understanding on how the recycling industry (including waste-pickers) works. Waste-pickers do not have a nine-to-five job. Their collecting hours are varied: some scavenge at midnight, some at the wee hours of the morning, and some in the afternoon. Most of the waste-pickers do not sell their collect the same day. After their daily collection, they store their collect in a definite place (generally around their shanties). When they have collected enough to sell, they segregate their collect and sell it to the middle-person. During their work, therefore, the waste-pickers need to be in close proximity to their waste. Moreover, if they had to spend five hours a day commuting, they could not collect enough waste for the activity to be economically viable. Waste-pickers also have to negotiate on a regular basis with other waste-pickers for the control of designated scavenging areas. If they are absent from the city for chunks of time during a day, they cannot generate enough bargaining power to negotiate with fellow waste-pickers for scavenging privileges in a particular area.

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<sup>205</sup> Interview with Debashish Kumar, Mayor-in-Council, Parks, Gardens and Sports, Kolkata Municipal Corporation, on 7 June 2011, at his office at the Kolkata Municipal Corporation building, Kolkata, India.

Thus, work-place insecurity seriously undermines capabilities of waste-pickers to decide when and how to perform their work. These power-based dynamics are not the only source of work-related (physical and mental) insecurity that waste-pickers are subjected to. Mundane issues such as absence of protective gear or social security provisions vitiate their work. Waste-pickers spend most of their days in garbage dumping places. They sort waste such as metal, glass, and ceramic with their bare hands. They are totally ignorant of the risks and dangers posed by handling hazardous materials. A significant number of children waste-pickers scavenge with bare hands. They walk barefoot on the land-fill areas while scavenging. Almost all waste-pickers I interviewed in Kolkata had some cut and burn marks that were fresh, suggesting that cuts, burns and scratches are everyday occurrences. They do not even bother to see the doctor for these apparently “small scratches”.<sup>206</sup> Social securities available to other categories of informal workers such as hand-rickshaw-pullers, *bidi* workers, construction workers, tailors, or street hawkers, are not available to waste-pickers. All of these factors culminate in depriving waste-pickers of their basic capabilities. Waste-pickers have therefore identified physical and mental security at work as enabling conditions for capability enhancement.

#### **6.1.7. A regular channel to Paid Labour (or selling of their collect)**

The informal economic activity of waste-picking is dependent to a great extent on the relation between people. Such relations are determined by caste, locality, ethnicity etc.<sup>207</sup> Sometimes there are tensions within these relations. Because of this tension, sometime it becomes difficult for the waste-pickers to sell the product of their labour (or collect) on a regular basis to ensure a regular source of income. Therefore, the waste-pickers in Kolkata have identified *regular channel of paid labour* as one of the important factors for the promotion of their capabilities.

Once a waste-picker has a problem with an intermediary to whom she usually sells her collect, it becomes difficult for her to find a replacement intermediary. Generally

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<sup>206</sup> When asked whether they have seen a doctor for their cuts and burns, this is what all my research participants replied.

<sup>207</sup> See generally Barbara Harriss-White, “Work and Wellbeing in Informal Economies: The Regulative Roles of Institutions of Identity and the State” (2010) 38: 2 World Development 170.

intermediaries are area-specific – in each area there are one or two intermediaries. Therefore, if workers get in trouble with one or both of them, it becomes extremely difficult for them to find an intermediary to sell their collect to. All of the intermediaries I interviewed in Kolkata told me that waste-pickers were free to sell their collect to anyone they pleased. Intermediaries do not maintain a contractual employment relationship with the waste-pickers. Even though sometimes waste-pickers accept loans from intermediaries and have to pay back such loans through regular deductions, none of the parties are interested in formalizing their relationship. However, the general practice is to sell collect to one specific intermediary, unless something dramatic happens to spoil the relationship. Therefore, even though in theory waste-pickers are free to sell their collect to anyone, practically speaking, they have to depend on one or two specific intermediaries.

If a waste-picker's relation with an intermediary is irreparably damaged, it is also very difficult for him/her to find replacement work. Ameena Bewa has been living in the *Tala Park* area for about the last thirty-five years.<sup>208</sup> She used to work as domestic help in the area when her husband was alive. But after the death of her husband, she could not afford to work as domestic help anymore. This is because as domestic help, her salary would be due at the end of every month, which is the common payment practice for domestic help in Kolkata and generally in India. Monthly payments make it difficult for her to have a decent income throughout the month, something that she enjoyed when her husband was living and earning. There were times when her salary would be exhausted by the 15<sup>th</sup> of the month – she had to take loans from neighbors. Waste-picking, on the other hand, provided her with a regular source of income throughout the month. She could sell her collect whenever she wanted. She chose to sell her collect twice a week, which provided her with enough resources to look after herself. Even though waste-picking can generate flexible and regular income, waste-picking is physically exerting work, which took its toll on Ameena Bewa's health. With age, she was becoming prone to diseases. She would remain sick and bedridden for days, which prohibited her from working and earning regularly.

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<sup>208</sup> Interview conducted on 12 May 2011 at TALA Park area, Kolkata, India.

Because of her deteriorating health and inability to scavenge efficiently, Ameena Bewa decided to get back to her earlier work as domestic help. But this time she could not find work as domestic help. When she went back to her former client-family, they refused to take her back. She was told that because she was working as a waste-picker for a long time, she could not work at their house. Her client-family told her that since she scavenged all around the city and worked at the garbage dumping places, she cannot maintain the level of cleanliness that is required from domestic help. They also told her that she was unhygienic and diseased. They did not want her to be around their children or to do their dishes. With an assurance of helping her in an emergency, they refused to take her back as domestic help. She never went back to her client-family's home again. She has met the same fate at other places. She now scavenges from nearby dumps and somehow maintains herself. She told me that she is not scared to work, but if only she could have had an assurance of regular income, life would have been much easier for her. A regular source of assured income, therefore, is capable of promoting capabilities for waste-pickers.

#### **6.1.8. Appropriate Payment for their Labour/Work**

Because of their precarious bargaining power that results from their multiple socio-economic-political and cultural deprivations, waste-pickers are exploited by the middlemen and middle-women who buy collect from them and sell it to the recyclers. Accordingly, the corresponding capability deprivation identified by the waste-pickers in Kolkata was the capability to sell their collect at appropriate market prices to the highest bidder. Their choice to sell the product of their labour to the highest bidder is severely restricted by several factors identified earlier (caste, locality, ethnicity). For waste-pickers in Kolkata, locality-based factors, rather than caste or ethnicity-based factors, seemed to be the biggest obstacle for appropriate payment for labour. The activity of waste-picking and consequent selling in Kolkata is arranged in an area-specific manner, which means that both waste-pickers and intermediaries operate in an area-specific manner. While localized activities do not pose a problem for waste-pickers so far as scavenging is concerned, such limitations have an adverse effect on the selling of waste-pickers' collect.

Area-specific scavenging is a practice that waste-pickers have themselves devised in order to avoid unhealthy competition amongst them. While area-division is not rigid, waste-pickers more or less honour such division of areas so far as scavenging is concerned. Division of areas for scavenging does not adversely affect waste-pickers because of the availability of recyclable waste all around the city. But because of the area-based operation of intermediaries, the intermediaries enjoy a semi-monopoly in their business. During my fieldwork in Kolkata, except for the *Rajabazar* area, I did not find more than one intermediary in or around a waste-picker inhabited slum. In *Rajabazar* area, I found two intermediaries who had specific waste-picker clients. This semi-monopolistic situation tends to ensure that prices of collect are unilaterally determined by intermediaries rather than negotiated between intermediaries and waste-pickers. There could be an argument that market value determines the price of waste-picker's collect, but such an argument would ignore the monopolistic nature of the transaction that is capable of devaluing waste-pickers' labour.

Waste-pickers have not thought through the monopolistic nature of their transaction with intermediaries, but they are aware of their limited avenues. Shekhar Seal of the *BNR* area puts it thus:

We are not bound to sell our collect only to one person – but then we also do not have a lot of options. I once refused to sell it [his collect] to Maniklal Dam [an intermediary] because he was paying me less than Gangaram Singh [an intermediary of another area]. [But,] if I have to sell to Gangaram [Singh] I have to go a long way to sell my collect. I segregate my collect here outside my *chala* [hut] – Gangaram's business is an hour's walk from here. I have got back to selling my collect to Dam.<sup>209</sup>

Shyama Das of the *Tollygunge* area was far more assertive:

They [intermediaries] always cheat us. They keep on telling us that they do not get a good price for these collect and therefore cannot pay us more than what they do. They just need excuses to pay us less. During the rainy season their favourite excuse is that our [waste-pickers'] collect have absorbed water and therefore weights more than it should be. They pay us much less by arbitrarily deducting our [collects'] price.<sup>210</sup>

<sup>209</sup> Interview conducted on 12 May 2011 at BNR area, Kolkata, India.

<sup>210</sup> Interview conducted on 10 May 2011 at Tollygunge area, Kolkata, India.

“This is something”, Shyama reflects, “that needs to be corrected if we are to have any say in our business.”<sup>211</sup> Waste-pickers’ capabilities, therefore, are also dependent on the appropriate valuation of their labour.

### **6.1.9. Provision for Emergency Fund**

Waste-pickers interviewed are compelled to take loans from the middle-person to whom they sell their collect. Interest on such loans often becomes burdensome for waste-pickers. Often, waste-pickers would not understand the nature and extent of the loan and the middle-person would make them work for him almost as bonded workers. When a waste-picker borrows from an intermediary, the general practice is that the intermediary would deduct from each day’s payment (against the waste-picker’s collect) to the worker until the loan is fully paid. During the repayment of a loan, the waste-pickers are compelled to sell their collect only to the middle-person who has given them the loan. Therefore, the provision of emergency funds has been identified by the workers as a valuable capability enhancing factor.

The government of WB has initiated few welfare schemes for informal workers in WB (delineated earlier). The government also executes a few welfare schemes for informal workers that are initiated by the Central Government. As part of these schemes, the government provides financial assistance for health-related emergencies, housing, electrification, marriage, education, etc. to informal workers engaged in a wide range of informal economic activities. However, waste-pickers remain outside the scope of all government initiatives in this regard. The government of WB has not recognized waste-picking as an informal economic activity and waste-pickers as informal workers (as discussed earlier). Such non-recognition contributes only towards heightened vulnerability of waste-pickers, compared to several other groups of informal workers, such as hand-rickshaw-pullers, street vendors, domestic workers. These other informal workers are institutionally recognized and are prospective beneficiaries of government initiatives.

In light of government non-recognition and exclusion from welfare benefits, waste-pickers are compelled to depend on intermediaries and other local money lenders

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<sup>211</sup> Ibid.

for their emergencies. Because of institutional non-recognition, these waste-pickers find it impossible to receive easy loans from banks and other official agencies. Because waste-picking is not institutionally recognized as an informal activity while many other informal activities are recognized, it becomes impossible for waste-pickers to convince micro-credit organizations of their credit-worthiness. This situation would have been different if none of the informal economic activities were recognized – waste-pickers would have been at the same level of vulnerability as other informal workers. But, the present situation makes them the most precarious workers amongst other precarious workers. Once waste-pickers loan from intermediaries, the waste-pickers subject themselves to a quasi-debt-bond relationship. Benimadhav Singh of *Sealdah* area describes his plight:

My *mahajan* [intermediary] helps me during my needs. I borrow hundred or two-hundred rupees from him once in a while. He then gradually deducts around twenty to thirty rupees from each transaction between us. Once I had to borrow some thousand rupees from him when my child was sick and had to undergo operation. It took me around three years to repay that debt. I do not know accounting or calculation – I cannot even read. Every time I asked [the intermediary] whether my debt was repaid, he kept on telling me it [the loan] is a lot and will take a long time to repay. During all these while I had to sell only to him just to repay my debt.<sup>212</sup>

Evidently, therefore, the lack of institutionalized financial support during emergencies seriously restricts a waste-picker's capabilities.

#### **6.1.10. Provision for Health**

Even though government hospitals provide treatment with minimal or no payment, medicines have to be bought from outside the hospitals. Many waste-pickers are not aware that state hospitals are free. They generally visit the local doctor (sometimes, a crook) for all of their ills, which compels them to borrow money from the middle-person. Unsurprisingly, therefore, provision for health funding (or support for health) has been identified as one of the important factors towards improvement of capabilities of waste-pickers. Health provisioning is important for waste-pickers from two perspectives. First, the activity of waste-picking is hazardous in nature. Waste-

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<sup>212</sup> Interview conducted on 1 June 2011 at Sealdah area, Kolkata, India.

pickers spend significant parts of their day amongst waste in different garbage dumping places. They collect waste ranging from metals to plastic. I have come across waste-pickers in Dhapa land-fill site who burn waste in a drum in order to produce bitumen, which fetches them better payment. Hence, because of their work, they are prone to diseases during the course of their work. Second, during health emergencies, waste-pickers require financial and social support.

Most of the waste-pickers I interviewed had given birth to their children in their shanties and huts, without any professional assistance. Even though information and registration of birth and death are legally mandated,<sup>213</sup> none of the waste-pickers I interviewed have ever registered births or deaths in their families. These workers and their families are not aware of basic health and sanitation safeguards. They often take baths and eat their food in the same place; their cooking area is in close proximity to their toilets. Their living conditions are extremely unhygienic. Therefore, financial provisioning for health alone will not fully address the typical problems waste-pickers and their families face. In addition to financial assistance, waste-pickers and their families need to be educated and made aware of health and sanitation related safeguards and precautions.

Waste-pickers are excluded from institutional health assistance program WBUSWHS of the state government;<sup>214</sup> they are also excluded from the central government health scheme RSBY. Therefore, waste-pickers do not receive assistance for hospitalization, clinical tests, or other medicinal costs that many other informal workers are entitled to. Governmental educational and awareness programs on health and sanitation are also absent. However, some NGOs occasionally undertake health and sanitation awareness drives in different slums and homeless areas around the city. The effectiveness of these once-in-a-while NGO initiatives is questionable considering the health and sanitary conditions waste-pickers and their families live with. In the absence of an institutional health security mechanism, waste-pickers' capabilities remain seriously restricted.

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<sup>213</sup> See sections 456 and 458 of the *Kolkata Municipal Corporation Act, 1980*.

<sup>214</sup> See Labour Department, Government of West Bengal Resolution No. 34-IR, IR/MISC-06/10 of 05/01/2011.

Elected representatives at the KMC and at the Government of WB note that many of the proposals (i.e., the factors identified by waste-pickers as promoting their capabilities) could be discussed and brainstormed at the appropriate level. Even though Debabrata Mazumdar, the Mayor-in-Council for Solid Waste Management of KMC pointed out that waste-pickers pollute the city by littering and living on footpaths and illegal squatter settlements, he also appreciated that the waste-pickers were assisting the KMC by segregating and removing recyclable waste from the city.<sup>215</sup> He informed me that the KMC was executing a workfare program that provides one-hundred days of guaranteed work for KMC residents.<sup>216</sup> He thought that the KMC could devise something along similar lines to address some of the concerns raised by the waste-pickers. Mazumdar noted that the factors identified by waste-pickers in Kolkata need to be discussed with the waste-pickers before any further progress could be made in promoting their capabilities. But the problem with such a dialogue with waste-pickers, Mazumdar pointed out, was that waste-pickers are scattered around the city and they do not have a representative organization with whom the KMC can speak. He observed that if the waste-pickers could organize themselves and send representatives to the KMC with definite proposals, the KMC could have a social dialogue with waste-pickers.

When the KMC proposal was conveyed to waste-pickers, they showed enthusiasm and initiative by quickly organizing themselves into a trade union. Such enthusiasm was further promoted by the Calcutta Samaritans (NGO), the WB National University of Juridical Sciences (a premier university), and other intellectuals. I describe the trade union formation and its prospective role for waste-pickers in Kolkata in the next chapter. Trade union formation by waste-pickers in Kolkata, even though a remarkable initiative, was not in any way surprising considering political consciousness of waste-pickers in the city. I had undertaken my fieldwork in Kolkata in the immediate aftermath of the electoral defeat of the Left Front government in May 2011. In its thirty-four years of rule, the CPM-led Left Front had two Chief Ministers – Jyoti Basu and Buddhadev Bhattacharya. Basu led the Left Front uninterrupted for twenty-three years (from 1977), a

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<sup>215</sup> I interviewed Debabrata Mazumdar, Mayor-in-Council, Solid Waste Management, Kolkata Municipality, on 4 July 2011 at his office at the Kolkata Municipal Corporation building in Kolkata, India.

<sup>216</sup> This KMC programme is modeled on the *Mahatma Gandhi National Rural Employment Guarantee Scheme* implemented in pursuance of the *National Rural Employment Guarantee Act, 2005*.

record period of elected Chief Ministership. Bhattacharya, Basu's successor, was defeated by the right-of-centre coalition led by Mamata Banerjee in 2011. In the context of this political-administrative shift, Jehadi Bewa reflects:

CPM Party allowed us to live here [squatter settlement]. Now that these people [the right-of-centre coalition government] have come to power we do not know what they will do. Our Jyoti-Babu [Former Left Front Chief Minister], who ruled for twenty-five years,<sup>217</sup> protected all poor, marginalized, and indigent people everywhere around the state. Police used to torture us a lot – police used to take us into custody at will. But he [Basu] would say that my poor brothers can eat and live in their chosen places [without police interference]. But, the future is threatening for us, these people [her co-workers] do not understand; in near future we will be destroyed. The local Councillor who died recently used to help us in getting our Ration Cards.<sup>218</sup> If we have Ration Card, forget Mamata [present right-of-centre coalition Chief Minister], even Mamata's father [this is a typical Bengali slang, which means *however powerful a person is*] could not evict us from our places. A Ration Card is very valuable. Do you understand?<sup>219</sup>

## 7. Conclusion

In this chapter, I analyzed capability deficiencies suffered by waste-pickers in Kolkata. Based on reflections of the waste-pickers I interviewed in Kolkata, I have also identified desirable capabilities for the promotion of functionings important for waste-pickers. I have also shown that waste-pickers have identified factors, which might be able to enhance their capabilities. For a labour law-based enhancement of capabilities for waste-pickers, it would, therefore, be necessary to institutionalize the identified factors into law. However, for a labour law dispensation not all of the valuable capabilities identified by waste-pickers need to be promoted through law; a labour law framework needs to promote capabilities that are related to *work* performed by waste-pickers. In the next chapter I will show how the strategy of social dialogue could be used in formulating labour law for informal waste-pickers in order to promote their capabilities. I will argue that capability-enhancing factors identified by waste-pickers could be institutionalized into labour law through a process of social dialogue that engages multiple institutions

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<sup>217</sup> Jyoti Basu actually ruled the state for twenty-three years.

<sup>218</sup> Ration Card acts as identification and domicile proof. Holders of Ration card are entitled to free or subsidized ration from the state through the Public Distribution System.

<sup>219</sup> Interview conducted on 1 June 2011 at Sealdah area, Kolkata, India.

into the dialogue process. I will also analyze the unionization initiative of the waste-pickers in Kolkata, which may be instrumental in promoting capabilities of waste-pickers in the absence of legal-institutional protection.

## Chapter 8

### Proposal for a Labour Law Framework for Waste-Pickers in India

#### 1. Introduction

In chapter 6, I propose a labour law framework for informal workers, which is based on the capability approach developed by Amartya Sen and Martha Nussbaum. The theoretical framework that I propose argues that enhancement and equality of capability should be the normative goal of labour law. It also proposes that labour law conceptualization should be based on the idea of democratic equality amongst stakeholders involved in the co-operative system of production. The theoretical framework further argues that labour law for informal workers must be developed through a democratic deliberation process involving all stakeholders engaged in, or related to, a specific informal economic activity. In chapter 5, I discuss the significance of the social dialogue pillar of the Decent Work Agenda as a strategy in the development of labour law for informal workers. In chapter 7, charting an account of informal waste-pickers in Kolkata, India, I describe necessary factors identified by waste-pickers in the development of their desirable capabilities. In this chapter, I propose to offer a labour law approach for waste-pickers in India by merging theoretical insights from chapter 6 and strategic principles from chapter 5, with the concrete situation of waste-pickers' work-lives described in chapter 7.

In this chapter, I propose to show how a labour law approach might work for the informal economic activity of waste-picking. The labour law framework developed in chapter 6 is a theoretical exercise. From the theoretical exercise it is not clear as to how such a conception of labour law might work in a concrete situation involving informal workers. By using the different components of the theoretical framework developed in chapter 6, I show how they might work for developing a labour law for waste-pickers. I discuss the development of labour law for waste-pickers in different stages, largely following the stages described in the theoretical model developed in chapter 6. Since I am concerned with the enhancement and equality of capabilities of informal workers, in this chapter, I propose ways in which capability enhancing factors could be institutionalized through law. I propose pluralistic ways for the institutionalization of capability-enhancing

factors with active and direct participation of informal workers. I argue that institutionalization effort requires collective action, wherein stakeholders engaged in a specific informal economic activity need to be integrated. In the context of informal waste-pickers in Kolkata, I argue that collective action towards institutionalization could be undertaken through two principal mechanisms – the unionization or organization of informal workers and the involvement of other integrated institutions. Using specific examples involving waste-pickers in Kolkata, I discuss the role of integrated institutions including trade unions and other membership-based organizations to indicate how an institutionalization process needs to be devised for informal workers.

In my proposed scheme, social dialogue is central to the development of a labour law framework for informal workers in general and waste-pickers in particular. I conceive of two situations for an effective social dialogue process: one, when waste-pickers have a representative organization and two, when waste-pickers (like most other informal workers) do not have their own organization. I discuss the significance of unionization for an effective and productive social dialogue process. As a backdrop of this discussion of the significance of unionization, I describe the unionization initiative of waste-pickers in Kolkata, which began during the course of my fieldwork. I then argue that in the absence of representative organization of waste-pickers, integrated institutions of a democratic society can integrate waste-pickers into the social dialogue process.

In section 2, I discuss the significance of unionization for social dialogue. Referring back to some of the earlier chapters of the dissertation, I argue that informal workers' organizations play a three-pronged role in the lives of their members: the promotion of capabilities of members as an intrinsic factor; the provision for socio-economic resources; and the negotiation with government. By drawing on my fieldwork in Kolkata, I also discuss why it is necessary for waste-pickers to organize themselves into a union. In section 3, I describe the unionization initiative of waste-pickers in Kolkata. In sections 4 and 5, I discuss how integrated institutions can promote social dialogue through the integration of waste-pickers into the dialogue process in absence of the workers' organization initiative. I use specific examples in order to point out how multiple institutions in Kolkata can integrate waste-pickers into a social dialogue process.

In section 6, I also consider a concrete implication of the idea of democratic equality in the context of labour law for informal economic activities.

## 2. Role of Unionization in Social Dialogue

Unionization has multiple benefits for workers and for the society as a whole. In their book *What do Unions Do?*,<sup>1</sup> Richard B. Freeman and James L. Medoff articulate that first and foremost labour unions enable workers to have a *collective voice* in the sense that workers can directly communicate in order to “bring actual and desired conditions closer together.”<sup>2</sup> Unions are constitutive units of a democratic polity.<sup>3</sup> By enabling political voice and political participation<sup>4</sup> labour unions influence outcomes in a democratic polity.<sup>5</sup> In this sense labour unions are important institutions of social dialogue in the democratic deliberation process. Unions are not only important institutions of social dialogue in the political process; they also inculcate the culture of democratic dialogue internally amongst their members,<sup>6</sup> something that Hill documents through her study of informal workers of the trade union Self Employed Women’s Association (SEWA).<sup>7</sup>

Analyzing the larger social role played by the unions, Tito Boeri et. al. show how unions have been able to negotiate socio-economic benefits not only for union members, but also for non-members and the society as a whole.<sup>8</sup> Unions historically were crucial in the development of the welfare state.<sup>9</sup> In some regions, unions had developed significant political clout that shaped political discourse of nations and stabilized societies.<sup>10</sup> Considering the enormity and marginalization of informal workers in India and the role

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<sup>1</sup> See generally Richard B. Freeman & James L. Medoff, *What do Unions Do?* (New York: Basic Books, 1984).

<sup>2</sup> See *ibid* at 8; also see generally Ela R. Bhat, *We Are Poor but So Many – The Story of Self-Employed Women in India* (New York: Oxford University Press, 2006).

<sup>3</sup> See Freeman & Medoff, *ibid* at 18.

<sup>4</sup> *Ibid* at 17.

<sup>5</sup> *Ibid* at 192-206.

<sup>6</sup> *Ibid* at 10.

<sup>7</sup> See Elizabeth Hill, *Worker Identity, Agency and Economic Development: Women's empowerment in the Indian informal economy* (New York: Routledge, 2010) at 104-114.

<sup>8</sup> Tito Boeri et al, *The Role of Unions in the Twenty-First Century – A Report for the Fondazione Rodolfo De Benedetti* (New York: Oxford University Press, 2001) at 17-19, 159-162, 196-204.

<sup>9</sup> *Ibid* at 163-171.

<sup>10</sup> See Gregory M. Luebbert, *Liberalism, Fascism, or Social Democracy* (New York: Oxford University Press, 1991) at pp. 159-184; also see *ibid* at 175-177, 183-186.

that unions are capable of performing in a democratic polity, there is an urgent need for unions in India to organize informal workers in order to ensure basic minimum conditions of a dignified life for them. Unionization ensures the visibility of informal workers,<sup>11</sup> which is an essential requirement for an effective process of social dialogue. But, as the 2007 National Commission for Enterprises in the Unorganised Sector (NCEUS) Report notes, informal workers in India remain largely invisible from policy circles,<sup>12</sup> a fact confirmed during my fieldwork in Kolkata, India. Informal workers' organizations generally adopt a three-pronged strategy in improving conditions of specific groups of informal workers. As I discuss earlier, they enable workers to take advantage of the existing beneficial guarantees; they negotiate with government in extracting benefits for workers; and they directly provide for social and economic benefits for workers. Following is a brief description of the relation between informal workers' organizations and enhancement of their capabilities in India.

### **2.1. Empowering informal workers**

During my fieldwork in India, ILO officials emphasized the indispensability of a union to enhance visibility of waste-pickers in policy-circles and promote bargaining with the government. Coen Kompier, a Senior Specialist on International Labour Standards at the ILO Country Office for India, noted:<sup>13</sup>

The first element would be organizing, you know. [It] creates some kind of a platform for them to raise their voice. There are different kinds of small [trade] unions. For instance, here in Gurgaon informal garment workers are part of many small trade unions. The first problem that many run into is that the Labour Commissioner [...] refuses to register [these small trade unions]. This is a symptom of a larger disease ... there are these powers of exclusion ... certain categories of workers cannot organize on the basis of definitional deficiencies.<sup>14</sup>

Kompier identifies initiatives to organize informal workers as a central requirement in furtherance of empowering such workers so that they can pursue their goals.

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<sup>11</sup> See generally Bhat, *supra* note 2.

<sup>12</sup> NCEUS, *Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector*, August 2007 (New Delhi: NCEUS, 2007) at 37, 50, 75-76, 79-80, 165, 196, 356.

<sup>13</sup> Interview conducted on 22 June 2011 at the ILO Office (India Habitat Centre) in New Delhi, India.

<sup>14</sup> Kompier was referring to the numerical and wage-based definition of worker, which excludes a section of workers from being recognized under Indian labour laws. I have discussed this issue in chapter 2.

In chapter 3, I discuss how informal workers' organizations enhance capabilities of informal workers through the provision of resources and promotion of conversion factors. Informal workers' organizations provide a range of services such as literacy programs, education for children, vocational training, health awareness, legal awareness, insurance, etc. for workers. Moreover, Hill points out that simply by bringing together informal workers at one place organizations significantly enhance workers' capabilities.<sup>15</sup> Based on her study of SEWA members, Hill shows that there is a marked change in the demeanor of informal workers once they join the trade union; the once timid, insecure, vulnerable workers are transformed into assertive, confident, and empowered individuals after they joined the union.<sup>16</sup> The union inculcated a sense of identity, recognition, respect, and public status amongst its members.<sup>17</sup> Hill notes that SEWA's organization of informal women workers generates mutual recognition and respect that produce individual self-confidence, self-respect, and self-esteem amongst self-employed informal women workers in India.<sup>18</sup> She further observes: "[b]y formally coming together and establishing their own institutions, workers recognize themselves both as individuals and as part of a larger community of workers who have a legitimate claim to public resources."<sup>19</sup>

Organizations thus have intrinsic value in informal workers' lives<sup>20</sup> in the sense that "structures of living together" such as a trade union determines its members' capabilities by contributing towards their personal development (or influencing personal conversion factors).<sup>21</sup> Accordingly, positive influence on personal conversion factors of women members of the union (discussed above as delineated by Hill) would not have

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<sup>15</sup> See Hill, *supra* note 7 at 97-100.

<sup>16</sup> *Ibid* at 97-100, 104-112.

<sup>17</sup> *Ibid* at 101-102, 109-112.

<sup>18</sup> *Ibid* at 116.

<sup>19</sup> *Ibid* at 119.

<sup>20</sup> Peter Evans, "Collective Capabilities, Culture, and Amartya Sen's Development as Freedom" (2002) 37: 2 *Studies in Comparative International Development* 54 at 56; also see Martha C. Nussbaum, *Women and Human Development – The Capabilities Approach* (Cambridge: Cambridge University Press, 2000) at 79; also see Frances Stewart, "Groups and Capabilities" (2005) 6: 2 *Journal of Human Development* 185 at 185, 187-188.

<sup>21</sup> Severine Deneulin, *The Capability Approach and the Praxis of Development* (New York: Palgrave Macmillan, 2006) at 60, 67-68, 72-76, 86; also see Jerome Ballet, Jean-Luc Dubois & Francois-Regis Mahieu, "Responsibility for Each Other's Freedom: Agency as the Source of Collective Capability" (2007) 8: 2 *Journal of Human Development* 185 at 188, 196-199.

been possible if those individuals were not part of the collective.<sup>22</sup> Even though the analytical focus of the capability approach is individual, Amartya Sen notes that collective capabilities and collective action can be conceptualized within the capability approach.<sup>23</sup> Solava S. Ibrahim argues that in developing countries development of capabilities is a communal process rather than an individual one.<sup>24</sup> His argument is based on his study of poor communities in Egypt. He found that poor communities organized self-help groups<sup>25</sup> and that these initiatives not only promoted economic opportunities, but also facilitated grassroots political participation, developed social capital, and enhanced bargaining power of the poor.<sup>26</sup> The promotion of capabilities in these economic, social, and political fronts would not have been possible except for communal (self-help group) action.<sup>27</sup> Thus, collective action is significant in promoting intrinsic freedom of individual informal workers, especially in a developing country context. In its promotional capacity of intrinsic freedom, collective action contributes to individual capabilities (in distinction to collective capabilities), thereby enabling individual informal workers to perform as effective agents. However, collective organization of informal workers also contributes to the promotion of collective capabilities as discussed below.

## 2.2. Negotiating with Government

Unorganized waste-pickers in Kolkata are at a disadvantage in communicating their interests to the government. In view of the significant impact waste-pickers have on the waste management system of Kolkata (discussed in chapter 7), integration of waste-pickers into the municipal waste management system of the city could be beneficial for both the Municipality and the waste-pickers. However, such a proposal was never discussed with government officials. On being asked whether the Kolkata Municipal

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<sup>22</sup> Deneulin, *ibid* at 63-65; also see Evans, *supra* note 20 at 56-59.

<sup>23</sup> Amartya Sen, "Response to commentaries" (2002) 37: 2 *Studies in Comparative International Development* 78 at 85; also see Amartya Sen, "The place of capability in a theory of justice" in Harry Brighouse & Ingrid Robeyns eds, *Measuring Justice Primary Goods and Capabilities* (Cambridge: Cambridge University Press, 2010) 239 at 249-250.

<sup>24</sup> See generally Solava S. Ibrahim, "From Individual to Collective Capabilities: The Capability Approach as a Conceptual Framework for Self-help" (2006) 7: 3 *Journal of Human Development* 397 at 398, 402-404, 407-408, 411; also see Evans, *supra* note 20 at 56.

<sup>25</sup> Ibrahim, *ibid* at 398-399, 405-406, 411-413.

<sup>26</sup> Ibrahim, *ibid* at 398-399, 411-413.

<sup>27</sup> *Ibid* at 407-408, 411.

Corporation could employ waste-pickers in its solid waste management system, the incumbent Minister-in-Charge of Labour of the Government of West Bengal reflected:

Municipalities [around the state] are already overburdened because of over-staffing. Therefore, it will be difficult for the municipalities to bring in new waste-pickers in their regular roles.

Echoing the Labour Minister's observation, Debabrata Majumdar, the Mayor-in-Council for Solid Waste Management of the Kolkata Municipal Corporation pointed out that they have adequate staff for solid waste management.<sup>28</sup> Majumdar noted:

While segregating solid waste, waste-pickers litter on city roads and *vats* [garbage dumping places].<sup>29</sup> They pollute the city. Only a small portion of waste-picker collected waste goes for recycling – the rest of the waste is dumped in *Dhapa* [landfill site]. It is difficult to employ waste-pickers as part of the regular workforce of the Municipality. Their [waste-pickers] attitude is not conducive for a disciplined regular labour force. Moreover, since educated workforce is available even for waste-collection jobs, it is difficult to integrate uneducated waste-pickers with the municipal solid waste management system. Even though the Municipality cannot integrate waste-pickers in its waste management system, we definitely encourage NGOs to work with waste-pickers. However, there may be ways in which the Municipality can help waste-pickers. But to do that, we need to know what their problems are. Because these people [waste-pickers] do not have a representative organization, there is a communication gap between authorities and them [waste-pickers]. If waste-pickers can organize themselves into a union it becomes much easier for us [the Municipality] to communicate with them.

The Mayor-in-Council attributed the lack of communication and effective dialogue between waste-pickers and the government to the absence of a representative organization of waste-pickers.

Kompier also pointed out the need for a representative organization of informal workers in order to negotiate and bargain with the government. He noted that workers can make use of the ILO complaint procedure to improve their conditions. If a registered trade union files a *comment* (i.e. a complaint) to the ILO, mentioning that in spite of

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<sup>28</sup> Interview conducted on 4 July 2011 at the Mayor-in-Council's office at the Kolkata Municipal Corporation Building in Kolkata, India.

<sup>29</sup> Amongst the 141 Wards of the Kolkata Municipal Corporation, municipal staff segregates solid waste in only 7 Wards. See chapter 5 for a detailed discussion.

ratifying an ILO Convention, the government is violating the Convention provisions, the ILO can take the issue up with the respective government. He mentioned a recent ILO initiative with the government of India:

For instance ...we have been able to do something on manual scavenging. India has ratified Convention 111 on discrimination in occupation and employment, which is one of these eight fundamental Conventions; there are two on discrimination. The unions were filing complaints to our supervisory body, which is the Committee of Experts. This is an independent body; they meet every year in December for almost a month to look into the application[s] [i.e., complaints] against a ratified Convention by a country.

Upon receipt of a complaint (comment) from different unions that since the work of manual scavenging is based on caste, it is in violation of Convention 111, the ILO Committee of Experts brought it to the notice of the Government of India. The ILO has then taken up a hundred-thousand dollar project with manual scavengers in India.<sup>30</sup> Kompier was of the view that this mechanism could be utilized even by waste-pickers in India.<sup>31</sup> When asked whether waste-pickers could initiate a complaint (comment) to the ILO Committee of Experts if they are not part of a trade union, Kompier reflected: “the complaint procedure can only work if you are registered as a trade union; [otherwise] we [the ILO] would be very embarrassed.”<sup>32</sup> Noting that the ILO cannot help waste-pickers’ cause in absence of their representative union, Kompier advised that the waste-pickers in Kolkata should try to form a trade union. I will describe their unionization initiative in section 3 of the chapter.

In chapter 3, I discuss how informal workers’ organizations constantly negotiate and bargain with the government at different levels (central, provincial, and local) in order to ensure concrete social and economic support for informal workers. Organizations such as the Kagad Kach Patra Kashtakari Panchayat (KKPKP) and Chintan have bargained with local governments to secure recognition and integration of waste-pickers into the formal municipal waste management system. Hill, too, notes the centrality of bargaining with the government: “SEWA interventions for work-life reform rely on

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<sup>30</sup> Interview conducted on 22 June 2011 at the ILO Office (India Habitat Centre) in New Delhi, India.

<sup>31</sup> Interview conducted on 22 June 2011 at the ILO Office (India Habitat Centre) in New Delhi, India.

<sup>32</sup> Interview conducted on 22 June 2011 at the ILO Office in New Delhi, India.

public action and support from the state, its institutions and officials to make productive resources accessible to informal workers.”<sup>33</sup> However, bargaining with the government is not limited only to workers’ socio-economic needs; organizations like SEWA lobby with the government in order to amend and enact laws for informal workers.<sup>34</sup>

In her study on Indian informal workers’ organizations, Agarwala documents the nature of negotiations and bargaining between informal workers’ organizations and the government.<sup>35</sup> Agarwala points out that informal workers’ unions must negotiate with government: “unlike the formal sector unions, informal workers’ unions make their demands directly to the state, because their employers are not constant and are often unknown.”<sup>36</sup> She further observes that “the tone of the new movement is non-violent, framed as a bargain between the citizen and the state.”<sup>37</sup> Agarwala shows that in some Indian states such as Tamil Nadu, West Bengal, and Maharashtra, certain categories of informal workers (construction workers and *bidi* workers) have been able to secure legal right to economic benefits by continuously negotiating with the government.<sup>38</sup> Even though certain categories of informal workers have been able to negotiate with the government in availing themselves of some economic benefits, the majority of informal workers in India remain excluded from legislative and executive assistance.<sup>39</sup> However, informal workers’ organizations are increasingly generating socio-economic benefits for a large number of workers who remain excluded from government welfare programs. In chapter 3, I discuss how informal workers’ organizations provide socio-economic resources to their members and beneficiaries. In what follows, I briefly describe why socio-economic resources are not available to waste-pickers in Kolkata and how waste-pickers’ organization can become important in realizing socio-economic benefits for them.

### 2.3. Providing social and economic benefits

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<sup>33</sup> See Hill, *supra* note 7 at 136.

<sup>34</sup> See chapter 4; also see *Ibid* at 137-139, 142-145.

<sup>35</sup> Hill, *ibid* at 61-63, 66-69.

<sup>36</sup> Rina Agarwala, *From Work to Welfare: Informal Workers' Organizations and the State in India* (PhD Thesis, Princeton University, 2006) at 32 [unpublished].

<sup>37</sup> *Ibid* at 70.

<sup>38</sup> *Ibid* at 80-81, 89-90, 107-108, 114-116, 141-143.

<sup>39</sup> See generally NCEUS, *Conditions of Work*, *supra* note 12.

In chapter 7, I discuss the different legally mandated beneficial schemes available to certain categories of informal workers in the state of West Bengal. Waste-pickers are excluded from the government beneficial measures designed for informal workers. When asked why waste-pickers are excluded from the purview of the legally mandated SASPFUW provident fund scheme (see chapter 7, for a discussion of the scheme), Sarkari Munsii,<sup>40</sup> a government official at the Labour Department of the Government of West Bengal, replied:

We cannot include anyone [everyone] within the purview of the Scheme by ourselves. If there are some such workers and if they have a union they can apply to the government for the inclusion of their name in the Schedule of the law. If there are only fifty or hundred people waste-picking it is not possible to include them under a different professional category. If a union is able to organize about thousand or so waste-pickers, they can apply to be included within the SASPFUW Scheme.<sup>41</sup>

Even though an unofficial account estimates the number of waste-pickers in and around Kolkata to be about 20,000,<sup>42</sup> waste-pickers are not visible for policy-making purposes.<sup>43</sup> The government official also seems to be taking the position that if only some insignificant minorities of people are engaged in an economic activity that cannot qualify to be work (at least for the purpose of social protection). However, more importantly, for the purpose of the present discussion, the official makes it amply clear that in the absence of a union, waste-pickers would not be brought within the purview of the social protection legislation of the state.

This official's views were corroborated by Purnendu Bose, the Minister-in-Charge of Labour, a revolutionary Marxist (Maoist/Naxal) turned proponent of neo-liberalism. Although he was sympathetic to these workers' cause,<sup>44</sup> he noted that it is better if a request for inclusion in the SASPFUW Scheme comes from a union of waste-

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<sup>40</sup> This is a pseudonym that I use upon a request from my research participant.

<sup>41</sup> Interview conducted on 9 June 2011 at the State Secretariat Building in Kolkata, India.

<sup>42</sup> See Martin Medina, "Waste Picker Cooperatives in Developing Countries", *El Colegio de la Frontera Norte, Mexico*, 1 at 12, available at <http://wiego.org/sites/wiego.org/files/publications/files/Medina-wastepickers.pdf> (site visited 23 May 2012); also see "Trash Talk: Gaining value from waste, as it relates to the global poor", *The 2012 Yunus Challenge Waste: Put it to use*, available at [http://web.mit.edu/idi/yunus\\_2012/Yunus\\_2012.pdf](http://web.mit.edu/idi/yunus_2012/Yunus_2012.pdf) (site visited 23 May 2012).

<sup>43</sup> Such ignorance might also be a carefully crafted strategy on the government's part. If the government claims ignorance about the existence of waste-pickers, they can easily excuse themselves from dealing with issues involving waste-pickers.

<sup>44</sup> Interview conducted on 29 June 2011 at the Writers' Building in Kolkata, India.

pickers. However, he did not insist that waste-pickers could only be included within the Scheme if a union applies on their behalf, stating that if a report documenting waste-pickers' situation in Kolkata was submitted to him, he would consider including waste-pickers within the purview of the law.<sup>45</sup> Delineating the newly formed government's informal worker policy,<sup>46</sup> the Minister noted:

We already have laws and Schemes for informal workers.<sup>47</sup> There is no use of having more legislation for them. What is required is appropriate implementation of existing legislation. The days are over when the governments used to protect workers. This is an era of *hire and fire*; there is no employment guarantee. Concepts such as minimum wages should be obliterated in the open market system; it should be the market that will decide wages of informal workers. [Our] government cannot protect workers. It is an open market – workers have to compete in that market. Our government proposes to create an *employment bank*; an employment bank will be a repository of informal workers. Whenever employers need they can draw from this pool of informal workers [to be enlisted in the employment bank]. We plan to provide on-hand training such as knitting, ironing of clothes etc. to informal workers.

Even though the present government has not discontinued any of the existing welfare schemes for informal workers, the Labour Minister made it clear that the government does not envisage developing new frameworks to promote informal workers' interests.

State support for informal workers is meager considering the multiple capability deficiencies suffered by such workers (discussed in chapter 3 and chapter 7). Moreover, state support is limited to only certain categories of informal workers such as construction workers, *bidi* workers, head-load workers etc. Under such circumstances, informal workers' organizations provide economic benefits and social services to their members and beneficiaries. In chapter 3, I discuss the range of social and economic services and assistance provided to informal workers by their organizations. SEWA, for example, arranges for banking services, housing services, health care services, child care

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<sup>45</sup> What the Minister implied by this statement is that I submit a report documenting living standard and working conditions of waste-pickers in Kolkata to him. He would consider including waste-pickers within the legislative scheme if he is satisfied with my report.

<sup>46</sup> The new coalition Government of West Bengal was formed in May 2011. See chapter 7 for detailed discussion on the socio-political situation in West Bengal.

<sup>47</sup> Such as the West Bengal Unorganised Sector Workers' Welfare Act, 2007, West Bengal Beedi Workers' Welfare Scheme (WBBWWS), the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996, the Rashtriya Swastha Bima Yojana (RSBY). See chapter 7 for a discussion of the different Schemes available to informal workers.

services, insurance scheme, and legal assistance for its members; KKPKP provides its members with group insurance, credit facilities, and vocational training; Chintan has arranged for door-to-door waste collection by its beneficiaries. The ILO has documented a comprehensive list of services and benefits offered by informal workers' organizations to their members and beneficiaries.<sup>48</sup>

Thus, collective organization is also of instrumental value (apart from intrinsic value) in the sense that collective action helps in attaining social, economic, and political conditions necessary for the development of capabilities of all workers.<sup>49</sup> If waste-pickers did not undertake collective action through organizations such as the SEWA, the KKPKP, or the Chintan, they would not have been able to secure municipal contracts, beneficial statutes, banking services, insurance, credit facilities, etc. – all of which contributes to the enhancement of capabilities of these informal workers' collectives (or aggregate<sup>50</sup> of all informal workers).<sup>51</sup> Their collective action is instrumental in furtherance of their collective capabilities.<sup>52</sup> Evans notes that organized collectives such as unions are central for *less privileged* groups in order to promote their capabilities.<sup>53</sup> Frances Stewart shows how collective action has *intrinsic* and *instrumental* significance for impoverished groups and promotes their capabilities around the world.<sup>54</sup> Sen himself notes that collective capabilities emanating from collective action is capable of addressing larger public policy issues.<sup>55</sup>

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<sup>48</sup> See generally Piush Antony, *Towards Empowerment: Experiences of Organizing Women Workers* (New Delhi: ILO, 2001); also see generally Pong-Sul Ahmed, *Organizing for Decent Work in the Informal Economy – Strategies, Methods and Practices* (New Delhi: Subregional Office for South Asia, ILO, 2007).

<sup>49</sup> See Amartya Sen, *Development as Freedom* (New York: Alfred A. Knopf, 1999) at 116; also see Evans, supra note 20 at 57; also see Stewart, supra note 20 at 185, 188, 190.

<sup>50</sup> Even though it might appear self-evident, a brief note is in order here: Legal fiction envisages an organization (Union or Cooperative) as a separate legal entity apart from its members. However, in the discussion of collective capabilities one needs to be careful that enhancement of collective capability of a group actually means that capabilities of all the group members are enhanced, rather than the group as an abstract entity.

<sup>51</sup> Ibrahim, supra note 24 at 398, 402-404, 407-408, 411.

<sup>52</sup> F. Comim & F. Carey, "Social capital and the Capability Approach: are Putnam and Sen incompatible bedfellows?" (Paper delivered at the EAEPE Conference 'Comparing Economic Institutions', Siena, November 2001, as cited in Ibrahim, *ibid* at 403; also see Evans, supra note 20 at 56.

<sup>53</sup> See Evans, *ibid* at 56; also see generally Aili Mari Tripp, "Creating Collective Capabilities: Women, Agency and the Politics of Representation" (2010) 19: 1 *Columbia Journal of Gender and Law* 219; also see Ibrahim, *ibid* at 405.

<sup>54</sup> Stewart, supra note 20 at 189, 195-199.

<sup>55</sup> Sen, "Response", supra note 23 at 85.

Thus, informal workers' organizations play a developmental role in the lives of their members and beneficiaries. By providing for resources and social conditions of capability enhancement, informal workers' organizations promote workers' development in terms of freedom. These organizations provide for the necessary conditions for capability development of informal workers. As discussed in chapter 3, informal workers' organizations promote constitutional labour rights for informal workers in India.

However, waste-pickers in West Bengal remain excluded from any capability-development initiative. My interviews in West Bengal indicated that one of the prominent reasons for the exclusion of waste-pickers from the purview of government welfare schemes is the absence of organization amongst waste-pickers. The incumbent minister and other government officials emphasized the importance of unionization in order to access government welfare schemes. During the course of my fieldwork in Kolkata, waste-pickers of the city organized themselves into a trade union. While it is too early to analyze the significance of the unionization initiative, some early indications point at the advantages of the unionization. In the next section of the chapter, I discuss how within a very short span of time waste-pickers' union in Kolkata has been able to draw attention from various quarters, which is useful in promoting visibility of the waste-pickers and drawing attention to their predicament.

### **3. Waste-pickers Organize in Kolkata**

While I was conducting my fieldwork in Kolkata, during the course of an informal meeting between the organizers of the Calcutta Samaritans (the NGO), few waste-pickers, some city intellectuals and activists, the idea of organizing waste-pickers into a trade union was discussed.<sup>56</sup> The Calcutta Samaritans has been involved with issues related to waste-pickers and other homeless population in Kolkata since 1971, and Pratim Roba, a Calcutta Samaritans organizer enthusiastically supported the idea of unionization.<sup>57</sup> The Calcutta Samaritans campaigned for the inclusion of homeless population in Kolkata under the Below Poverty Line (BPL) Scheme in order to enable

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<sup>56</sup> Meeting on 12 June 2011, at the Calcutta Samaritans Office at Ripon Street in Kolkata, India.

<sup>57</sup> Interview conducted on 30 June 2011 at the Calcutta Samaritans Office at Ripon Street in Kolkata, India.

homeless people to seek government assistance.<sup>58</sup> In 2009, they prepared a report on the socio-economic situation of waste-pickers in Kolkata.<sup>59</sup> Recently the Calcutta Samaritans conducted a survey on homeless population in Kolkata with assistance from the Government of West Bengal.<sup>60</sup>

Armed with the idea of forming a trade union, the Calcutta Samaritans' organizers reached out to waste-pickers in different locations of the city. The organizers received positive response from the waste-pickers in the city and they proposed that a meeting of waste-pickers be convened with a view to initiate the formation of a trade union, and delineate a road-map for the union activities. Reshmi Ganguly, another organizer with the Calcutta Samaritans, planned the meeting with financial assistance from the Action Aid.<sup>61</sup> We (Calcutta Samaritans' organizers, city intellectuals, and I) approached the Legal Aid Society of the West Bengal National University of Juridical Sciences (WB NUJS),<sup>62</sup> Kolkata, India, to provide us a venue for the meeting of waste-pickers. The then Vice Chancellor and Registrar of the law University enthusiastically agreed to allow us the use of the university auditorium free of cost for the meeting.

The Calcutta Samaritans' organizers went to the different localities in order to brief waste-pickers about the advantages of unionization and the tentative agendas for waste-pickers' union in Kolkata. After this phase of reaching out to waste-pickers, the Calcutta Samaritans' organizers sensed immense enthusiasm amongst waste-pickers to form a trade union of their own. The organizers estimated about six-hundred waste-pickers' presence for the proposed meeting.<sup>63</sup>

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<sup>58</sup> In this respect several NGOs in Kolkata has moved the High Court of Calcutta in a Public Interest Litigation in order to enlist homeless population in the BPL List. *Griha Adhikar Mancha and Others v Union of India and Others*, Writ Petition Number 19802 (W) of 2008 (in file with author).

<sup>59</sup> Supriya Routh et al, *Situational Analysis of Ragpickers in Kolkata* (Kolkata: Calcutta Samaritans, 2009).

<sup>60</sup> Sharmistha Banerjee et al, *A Report on Rapid Assessment Survey of Homeless Population within Kolkata Municipal Corporation Area* (Kolkata: Calcutta Samaritans, Undated).

<sup>61</sup> "Action Aid is an anti-poverty agency, working in India since 1972 with the poor people to end poverty and injustice together." See Who we are, ActionAid, available at <http://www.actionaid.org/india/who-we-are> (site visited 23 May 2012).

As I mention in chapter 7, I was directly involved with the organization initiative of waste-pickers in Kolkata. During the unionization initiative I actively worked with the Calcutta Samaritans, the West Bengal National University of Juridical Sciences and waste-pickers.

<sup>62</sup> The West Bengal National University of Juridical Sciences (WB NUJS) is a premier law University of India, located in the city of Kolkata.

<sup>63</sup> Meeting of Calcutta Samaritans' organizers at the Calcutta Samaritans Office, 4 July 2011 at Ripon Street, Kolkata, India.

On 6<sup>th</sup> July 2011 about five-hundred waste-pickers assembled at the WBNUJS auditorium for their meeting in furtherance of formation of a trade union. Many of the women waste-pickers came with their children because they did not want to miss the occasion but at the same time they had no one back home to take care of their children. During the meeting, waste-pickers were asked to identify their problems. Waste-pickers identified the factors inhibiting their capability enhancement during the meeting, many of which were similar to those I discovered in my interviews with waste-pickers (discussed in chapter 7). Once this exercise was completed, the idea of formation of a trade union was advanced.

Once the idea of membership of the trade union and of the executive committee (office bearers) was discussed, all the waste-pickers present at the meeting became members of the union by paying a membership fee of Rupee 1 for a year. The women waste-pickers were enthusiastic and eager to represent their locality in the executive committee of the union. The union members elected twenty executive committee members, with Kalu Das, a waste-picker himself, elected its General Secretary.<sup>64</sup> On the same day the Executive Committee held its first meeting and decided a name for their union: *Barjya Punarbyawaharikaran Shilpa Shramik Sangathan* (BPSSS), which was translated into English as *Association of Workers engaged in Waste Recycling Industry* (AWWRI). Kalu Das enthusiastically pointed out that the Union must have a symbol like other political parties.<sup>65</sup> In their second meeting, the Executive Committee of BPSSS decided on their symbol.<sup>66</sup>

Having already discussed the problems faced by waste-pickers in the general member meeting, it was incumbent on the Executive Committee of the Union to frame such problems in terms of a more focused agenda, which the Union could pursue. Based

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<sup>64</sup> After I returned from my fieldwork in India, I was informed that the Executive Committee had to meet to reduce the strength of the Committee to nine members, on the basis of their possession of an official identity document. This was necessitated when the Union members applied for the registration of their trade union. The Executive Committee was informed by the Department of Labour that for the registration of the Union, all executive committee members have to submit identity proof and residential certificate. Accordingly, Executive Committee members who did not possess valid identification document or residential certificate had to be removed from the Committee.

<sup>65</sup> Meeting of the Executive Committee of BPSSS on 6<sup>th</sup> July 2011 at the West Bengal National University of Juridical Sciences, Kolkata, India.

<sup>66</sup> Meeting of the Executive Committee of BPSSS on 12 July 2011 at the Calcutta Samaritans, Kolkata, India.

on the discussion with the members the BPSSS identified five primary action plans: first, to provide their members with safety gear such as gum-boots, gloves, and aprons; second, to lobby with the Government of West Bengal in order to bring waste-pickers within the purview of the existing legislative protection for informal workers (discussed in the previous chapter); third, to lobby with the Kolkata Municipal Corporation so that waste-pickers could be integrated with the municipal solid waste management system; fourth, to prepare a Comment on their deprivations to be submitted to the ILO; and fifth, to generate fund in order to institute a group health insurance scheme for waste-pickers.

During the first Executive Committee meeting, the WBNUJS Legal Aid Society expressed interest in providing legal and other assistance to BPSSS.<sup>67</sup> The WBNUJS Legal Aid Society has adopted BPSSS as one of their projects, thereby enabling students of the law university to work in furtherance of promoting BPSSS's interests.<sup>68</sup> Students engaged with the Legal Aid Society have undertaken to educate waste-pickers' children.<sup>69</sup> Students have also undertaken a membership drive on behalf of the Union through awareness campaign amongst waste-pickers in Kolkata.<sup>70</sup> The Legal Aid Society is also providing legal assistance to individual members of the Union when they are getting arrested or are harassed by law enforcement officials.<sup>71</sup> Recently, the WBNUJS Legal Aid Society devoted an *Open House Discussion* session in order to discuss their role in promoting BPSSS initiatives.<sup>72</sup> The Legal Aid Society prepared a petition to be filed with the Ministry of Urban Affairs, Government of India, National Human Rights Commission, and the Supreme Court of India, advocating right to work and livelihood for homeless waste-pickers in Kolkata.<sup>73</sup>

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<sup>67</sup> Meeting of the Executive Committee of BPSSS on 6<sup>th</sup> July 2011 at the West Bengal National University of Juridical Sciences, Kolkata, India.

<sup>68</sup> Legal Aid Society – Brief Report of Activities Undertaken over the Period from July, 2011 to January, 2012; also E-mail conversation with Prof. Anirban Chakraborty, Assistant Professor and Faculty Advisor of the Legal Aid Society, the West Bengal National University of Juridical Sciences, Kolkata, India, on 8 February 2012.

<sup>69</sup> E-mail conversation with Prof. Anirban Chakraborty, *ibid.*, on 5 February 2012.

<sup>70</sup> *Ibid.*

<sup>71</sup> *Ibid.*

<sup>72</sup> “Open House Discussion on Deemed Homeless”, AWWRI Project of NUJS Legal Aid Society & Center for Human Rights, National Conference on Place of Deemed Homeless in Good Governance and Inclusive Growth in India, January 27-29, 2012, WB NUJS Campus (in file with author).

<sup>73</sup> E-mail conversation, 5 February 2012, *supra* note 69.

What is evident from the above description is that the waste-pickers who were living at the margins of the society became significantly visible with their unionization initiative. Within days of formation of the Union, the Legal Aid Society began collaborating with waste-pickers on different issues. Within months of the formation of the Union, the Legal Aid Society brought the waste-pickers to the notice of academics and policy makers through a national conference. What is much more significant is that unionization works as an instrument of social dialogue. However, as important as unions may be for the promotion of informal workers' visibility and social dialogue, the fact is that only a small section of informal workers are organized in membership-based unions, and non-membership organizations. Accordingly, the policy challenge for these unorganized informal workers is to make themselves more visible and engage in social dialogue in furtherance of their capability enhancement.

In the next section, I propose a way through which informal workers could be made participants in the social dialogue process in furtherance of enhancing their capabilities, which is based on the specific case of informal waste-pickers in Kolkata.

#### **4. Role of Integrated Institutions in the social dialogue process**

In chapter 6, I propose a capability-based approach for developing labour law for informal economic activities. I develop the proposed approach in three stages. First, I advocate that the normative goal of labour law for informal workers must be enhancement and equality of capability. Second, invoking Anderson's insights, I propose that labour law must be based on the concept of democratic equality in the cooperative production process. Third, based on Dréze and Sen, I argue that labour law for informal economic activities should be operationalized through social dialogue amongst integrated institutions in a democratic society, which integrates informal workers into the dialogue process. In the absence of an organization of informal workers, integrated institutions can become immensely important in promoting social dialogue involving informal workers. In this section of the chapter, by using the example of waste-pickers in Kolkata, I propose how integrated institutions can promote social dialogue for waste-pickers in absence of a waste-pickers' organization.

In chapter 7, I delineate factors (resources) identified by waste-pickers as necessary for the development of their capabilities. As I argue in chapter 6, if development of capability is to be the normative goal of labour law, then one of the prerequisites for developing a labour law framework for informal economic activities would be the ascertainment of factors necessary for capability enhancement. Since the capability approach is a choice-based conceptualization of development, it is the perspective of the specific group of informal workers that is relevant in determining necessary valuable capabilities. Once capabilities valuable for specific categories of informal workers are identified, the next task is the identification of resources and socio-economic-political-cultural factors that are necessary for enhancing identified capabilities. Accordingly, a labour law approach for specific informal economic activities would involve identification of valuable capabilities and determination of necessary factors responsible for promoting such capabilities.

While participation of the specific category of informal workers are *sine qua non* in identifying valuable capabilities, their participation is not a sufficient enough condition in determining necessary factors to promote capabilities. This insufficiency is the result of the possibility that informal workers might suffer from adaptive preferences (discussed in chapter 4) arising from their deprivation of basic capabilities such as health, nutrition, and education. As a result of their marginalization and adaptive preferences, it might be difficult for them to identify factors necessary for their capability enhancement (I discuss more on adaptive preference in section 5 of this chapter). Accordingly, capability-enhancing factors need to be determined through the involvement of a wider range of stakeholders. Therefore, at a preliminary level, the challenge is to devise a mechanism through which capabilities and necessary factors could be decided upon for a labour law for specific categories of informal workers. I address this challenge in the context of waste-pickers in Kolkata.

In order to meet this two-pronged challenge, an institutional platform for the promotion of social dialogue (amongst stakeholders) has to be devised. Such an institutional platform has to ensure the participation of informal workers as its principal objective. If informal workers are organized, it becomes much easier to ensure their representative participation in such a platform for social dialogue. In the context of

waste-pickers in Kolkata, the waste-pickers' union BPSSS can be one such representative organization. However, it must be remembered that the BPSSS is a very new initiative (and as of now has a small membership base); for all means and purposes waste-pickers in Kolkata were unorganized until recently. This lack of organization characterizes not only waste-pickers in Kolkata, but a significant majority of informal workers in India.<sup>74</sup>

Reflecting on the problem of the lack of organization of informal workers in India, Kompier noted: "There is a kind of catch-22 situation."<sup>75</sup> He reflected that to receive some benefits, such as the advantage of the ILO complaint mechanism, informal workers (or for that matter, formal workers) must be part of a trade union. However, to register as a trade union informal workers have to be employed by an employer.<sup>76</sup> Trade Union Registrars in different jurisdictions refuse to register informal workers' trade unions because informal workers are mostly self-employed and accordingly, there are no employers to bargain with. Even though registration of informal workers' trade union, such as SEWA has shown the futility of this approach as noted earlier in chapter 3, Kompier observed that many Trade Union Registrars in the country refuse to register trade union of informal workers because these workers are not employed. He further noted:

Amongst the big trade unions in India it is only the HMS [Hind Mazdoor Sabha] and BMS [Bharatiya Mazdoor Sangh] who are trying to organize informal home-based workers. Formal sector unions are reluctant to venture into organizing informal workers. ... With informal workers social dialogue can happen through any group: self-help group, cooperative, etc.<sup>77</sup>

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<sup>74</sup> Lack of organization is one of the central features of informal workers in India. Therefore, unsurprisingly informal workers are termed as unorganized workers in policy parlance and government documents in India.

<sup>75</sup> Interview conducted on 22 June 2011 at the ILO Office (India Habitat Centre) in New Delhi, India.

<sup>76</sup> *The Trade Unions Act, 1926*. The Act defines a "trade union" as "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, ..." (Section 2(h)). The Act defines "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, and "workmen" means all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arises" (Section 2 (g)).

<sup>77</sup> Interview conducted on 22 June 2011 at the ILO Office (India Habitat Centre) in New Delhi, India.

Thus, Kompier advised that if Trade Union Registrars are unwilling to register trade union of informal workers under the Trade Unions Act 1926, informal workers should try to organize as self-help groups or cooperatives in order to promote their involvement in the social dialogue process.

Kompier's reflection on big trade unions' lack of involvement in organizing informal workers was confirmed by leaders of two of the biggest trade unions in India. Mrinal Das, a Secretary of the Centre of Indian Trade Unions (CITU) for twenty years, observed that even though the CITU has affiliated unions in the informal sector such as brick-kilns, auto-rickshaw workers, *bidi* workers, construction workers, street vendors, it has been unable to reach out to the majority of workers employed in informal activities.<sup>78</sup> Das frankly admitted that CITU's orientation still lies in the employment-relationship based concept of workers. Accordingly, self-employed own account informal workers mostly remain outside the Union's radar. When asked whether CITU organizes informal domestic workers or waste-pickers in Kolkata or West Bengal, Das replied in the negative. Likewise, Pradip Bhattacharya of the Indian National Trade Union Congress (INTUC) pointed out that INTUC organizes agricultural workers, construction workers, *bidi* workers, street vendors, etc.<sup>79</sup> However, like the CITU, the INTUC has also not been able to organize either domestic workers or waste-pickers.

Organization or unionism is one of the prerequisites for workers' democratic participation in the policy-making process. However, if organizing initiatives amongst workers is absent or inadequate, there may be other ways by which workers could be integrated into a democratic dialogue process. In the context of informal workers, one of the ways of integrating workers into a dialogue process other than through union organizing could be through the multiple institutions of a democratic society with which informal workers regularly interact. In the following section with a few examples in the context of waste-pickers in Kolkata, India, I discuss how multiple institutions can integrate waste-pickers into the social dialogue process.

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<sup>78</sup> Interview with Mrinal Das, Centre of Indian Trade Unions (CITU), on 1 June 2011, at the CITU Office, Kolkata, India.

<sup>79</sup> Interview with Pradip Bhattacharya, Indian National Trade Union Congress (INTUC), on 2 June 2011, at the INTUC Office, Kolkata, India.

## 5. In What Ways Can Integrated Institutions Facilitate Integration of Waste-pickers into the Social Dialogue Process

Under circumstances where informal workers are not represented by unions or other kinds of organizations, their integration into the process of social dialogue is challenging. In this scenario, integrated institutions of a democratic society might be able to provide a mechanism through which un-organized informal workers could be integrated into the social dialogue process. Using the example of waste-pickers in Kolkata, I indicate how integrated institutions could bring informal workers within the fold of the social dialogue process. In the context of my fieldwork in Kolkata, I argue that integrated institutions such as police, NGOs, elected representatives, universities, and media might be able to integrate waste-pickers into an effective social dialogue process. One of the institutions that waste-pickers regularly interact with is the institution of law enforcement officials. Waste-pickers in Kolkata share a love-and-hate relationship with the police. While most waste-pickers complain about the police, many waste-pickers point out the cordial and helpful role that police plays in their work-lives.<sup>80</sup>

In the preceding chapter I describe how police play a helpful and cooperative role in the lives of waste-pickers in Kolkata. Even though the police are aware that waste-pickers' squatter settlements are illegal encroachments on public space, some of the police officers adopt a tolerant approach towards waste-pickers' slums and their work. There have been instances when, prior to conducting a raid or eviction drive, police personnel warned waste-pickers to vacate their slums and return only after matters have dried down.<sup>81</sup> Showing a remarkable understanding of the law enforcement officials' limitations, waste-pickers reflected that they understand that the police have to do their job (i.e., evicting them from their slums) when ordered from above.<sup>82</sup> However, as waste-pickers point out, in spite of such limitations, many police personnel cooperate with them in allowing them to collect waste and live in their slums without interference.

But, as waste-pickers also point out, helpful and cooperative police personnel are a minority. The police are generally perceived as a threat in their work-lives by the waste-

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<sup>80</sup> See discussions in chapter 7.

<sup>81</sup> Interview conducted on 20 April 2011 at Tollygunj-Golfgreen area, Kolkata, India.

<sup>82</sup> Ibid.

pickers.<sup>83</sup> Some police regularly arrest waste-pickers on allegations of theft and other petty offences.<sup>84</sup> Others regularly extract bribes from waste-pickers and keep them under continuous threat.<sup>85</sup> Police are aware that on account of ignorance, illiteracy, and lack of education, waste-pickers are vulnerable, and therefore, cannot complain against police atrocities. They are also aware that in order to have access to waste-collection sites waste-pickers need to negotiate with police on a regular basis. Thus, the police are not only aware of the *modus operandi* of the waste-picking and waste-recycling activity, they also regularly interact with waste-pickers. Accordingly, the police can be one of the institutions amongst many that could be involved in a social dialogue process in absence of representative organizations of waste-pickers.<sup>86</sup>

NGOs can be important institutions in promoting integration of informal workers in the social dialogue process. Registered under the Societies Registration Act,<sup>87</sup> the Calcutta Samaritans undertakes crisis counseling, rehabilitation of drug addicts, aftercare for children and adult drug addicts, harm minimization of drug addicts, treatment of sexually transmitted diseases, AIDS awareness and prevention, campaign and advocacy for marginalized population, vocational training, and workplace care and counseling programs.<sup>88</sup> The Calcutta Samaritans organizes medical camps for waste-pickers; the NGO helps waste-pickers' children get into schools, and campaigns and lobbies against eviction of waste-pickers from their shelters.<sup>89</sup> Moreover, it is involved in a day-to-day interaction with waste-pickers at several levels. Since it is involved with multidimensional issues of waste-pickers, the Calcutta Samaritans is in a very good position to analyze the work-life conditions of waste-pickers in Kolkata. Accordingly, the

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<sup>83</sup> Interview conducted on 20 April 2011 at Tala Park area, Kolkata, India; also Interview conducted on 20 April 2011 at Aajkaal area, Kolkata, India.

<sup>84</sup> Interviews conducted on 20 April 2011 at Tala Park area; 9 May 2011, 10 May 2011, 11 May 2011 at Rajabazar area; 19 April 2011 at Golfgreen area; 5 June 2011 at BNR area in Kolkata, India.

<sup>85</sup> Ibid. This is a general perception about law enforcement officials shared by waste-pickers across different locations in Kolkata.

<sup>86</sup> However there is a possibility that police personnel might not be empathetic (or at least, sympathetic) to the issues involving waste-pickers, because if they are sympathetic to the waste-pickers' cause, they cannot extract bribe from waste-pickers. The police might not want to risk the loss of some additional income.

<sup>87</sup> See the Calcutta Samaritans, available at <http://thecalcuttasamaritans.org/contact.htm> (site visited 21 February 2012).

<sup>88</sup> Projects of Calcutta Samaritans, the [calcuttasamaritans](http://thecalcuttasamaritans.org/project.htm), available at <http://thecalcuttasamaritans.org/project.htm> (site visited 21 February 2012).

<sup>89</sup> Interview with Reshmi Ganguly on 9 June 2011 at the Calcutta Samaritans Office at Ripon Street in Kolkata, India.

Calcutta Samaritans would not only be important to integrate waste-pickers in the social dialogue process, it can also provide important reflections on the required factors necessary for the enhancement of capabilities of waste-pickers in Kolkata.

Local elected representative could be another institution who is important in integrating informal workers in the social dialogue process. Waste-pickers have to interact with local elected representatives on a regular basis. However, one must be mindful that these interactions are not always positive and to the benefit of waste-pickers. Sometimes the waste-pickers have to negotiate their very existence with these local elected representatives. Waste-pickers have to seek permission from local representatives to live in a squatter settlement or collect waste. I discuss some of the indications in this respect in the last chapter. In *Aajkaal* and *Kestopur Khal*, waste-pickers seemed to be scared of local elected representatives. In the *Aajkaal* area the local representative has tried to evict waste-pickers from their shanties, whereas in the *Kestopur Khal* area waste-pickers were instructed not to talk to strangers without the local representative's permission. However, as I discuss in the previous chapter, one of the waste-pickers, Jehadi Bewa, notes that the former local representative used to help waste-pickers secure Ration Cards. Ration Cards have a two-fold purpose: one, it acts as an identity for waste-pickers; and two, it entitles waste-pickers to state-subsidized ration. Thus, elected representatives deeply interact with waste-pickers. Some of them also appear to be sympathetic to the informal workers' cause. Accordingly, in absence of waste-pickers' organizations, local elected representatives can promote the integration of waste-pickers into the social dialogue process.

A final institution that I will discuss here is a university. A premier law university, the WB NUJS has undertaken a pioneering initiative in promoting waste-pickers' interests in Kolkata. The WB NUJS has been working with waste-pickers in Kolkata since 2009. The Legal Aid Society and students of the Legal Clinic of the university have undertaken a study on situational analysis of waste-pickers in Kolkata with assistance from the Calcutta Samaritans.<sup>90</sup> More recently, the Legal Aid Society is working closely with BPSSS, the newly formed trade union of waste-pickers in Kolkata as I discuss

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<sup>90</sup> I was a participant in the Legal Aid Society, and Legal Clinic initiative of the WB NUJS on waste-pickers in Kolkata in 2009.

earlier in this chapter. In addition to initiatives discussed earlier, the Legal Aid Society is also devising ways to secure identity cards for BPSSS members<sup>91</sup> and enabling waste-pickers to claim social protection from the state.<sup>92</sup> Such an intricate relationship between the Legal Aid Society of the WB NUJS and the waste-pickers in Kolkata suggests that in absence of an organization of waste-pickers the university could be an institution that is also capable of integrating waste-pickers into the social dialogue process.

In this context the role of media also needs to be appreciated. For about a decade the media have been reporting on different aspects of waste-pickers' lives and livelihood in Kolkata. Such media reports have drawn attention towards the lives of waste-pickers;<sup>93</sup> discussed proposals of door-to-door waste-collection by waste-pickers;<sup>94</sup> reported on rehabilitation plan for waste-pickers;<sup>95</sup> discussed municipal plans to undertake awareness for and organize waste-pickers;<sup>96</sup> and, reported on private and government initiatives undertaken by some states in order to better understand waste-pickers and their work-lives.<sup>97</sup> Therefore, quite naturally, media can be one of the institutions that are capable of integrating waste-pickers into the social dialogue process.

The above discussion shows that waste-pickers closely interact with multiple institutions at several levels. The nature of interaction differs depending on the orientation and capacity of an institution. For example, while the police are non-committal to the issues involving waste-pickers, the Calcutta Samaritans has been

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<sup>91</sup> E-mail conversation, supra note 69.

<sup>92</sup> Ibid.

<sup>93</sup> See Prasanta Paul, "Pujas bring bonanza for Bengal ragpickers", A Dalit-Bahujan Media, Dr, BabasahebAmbedkar and his People (undated) available at <http://www.ambedkar.org/News/Pujasbring.htm> (site visited 22 February 2012)

<sup>94</sup> See "Ragpickers, NGOs to help collect household plastic waste", The Hindu Business Line (1 May 2004) available at <http://www.thehindubusinessline.in/2004/05/01/stories/2004050101611900.htm> (site visited 22 February 2012).

<sup>95</sup> See Ajanta Chakraborty, "Rehab plan for city's ragpicker community", The Times of India (13 August 2010) available at [http://articles.timesofindia.indiatimes.com/2010-08-13/kolkata/28304234\\_1\\_rag-pickers-solid-waste-urban-development](http://articles.timesofindia.indiatimes.com/2010-08-13/kolkata/28304234_1_rag-pickers-solid-waste-urban-development) (site visited 22 February 2012).

<sup>96</sup> See "Ragpickers to help recycle waste", The Times of India (11 May 2002) available at [http://articles.timesofindia.indiatimes.com/2002-05-11/kolkata/27142733\\_1\\_solid-waste-ragpickers-recyclable-material](http://articles.timesofindia.indiatimes.com/2002-05-11/kolkata/27142733_1_solid-waste-ragpickers-recyclable-material) (site visited 22 February 2012).

<sup>97</sup> "Study to determine the role of rag pickers – Outsourcing and innovation mantra for solid waste management in urban centres", The Telegraph (29 December 2010) available at [http://www.telegraphindia.com/1101229/jsp/bihar/story\\_13362268.jsp](http://www.telegraphindia.com/1101229/jsp/bihar/story_13362268.jsp) (site visited 22 February 2012); also see Antara Bose, "Rag-pickers take to reading, saving – Interactive session motivates underprivileged children to join schools", The Telegraph (22 August 2009) available at [http://www.telegraphindia.com/1090822/jsp/jharkhand/story\\_11394087.jsp](http://www.telegraphindia.com/1090822/jsp/jharkhand/story_11394087.jsp) (site visited 22 February 2012).

constructively working with waste-pickers for quite some time. The purpose of this discussion is to drive home the point that even if waste-pickers are not organized<sup>98</sup> there are avenues through which they can become visible if the state wants to take note of them. This finding about waste-pickers might be generalizable for all informal workers. Multiple institutions such as NGOs, police, and media interact with informal workers at different levels on a day to day basis. These multiple institutions are immensely important in furtherance of the promotion of informal workers' capabilities.

The involvement of integrated institutions in the social dialogue process is not only important when informal workers are un-organized. The role of such institutions is significant also when informal workers have their own organization. Integrated institutions are a safeguard against adaptive preference,<sup>99</sup> which might be inherent in the choices made and valuable capabilities identified, by informal workers. Adaptive preference is a subjective state of mind that determines preference commensurate to one's actual surrounding circumstances.<sup>100</sup> Preferences are conditioned by circumstances. Informal workers live under conditions of insecurity, uncertainty, exploitation, marginalization, and outside the scope of public policy. Accordingly, their preferences are adapted to their precarious situation. They might consider themselves undeserving of even an insignificant act of charity. Because of their adaptive preference informal workers might lack "the courage to demand any radical change" in their work-lives.<sup>101</sup> While working alongside informal workers during the social dialogue process integrated institutions can help remove this lack of courage to demand radical changes from the minds of informal workers. The multiple institutions envisaged above as social partners do not share similar socio-economic-political circumstances and marginalization that are faced by informal workers. These institutions are free from the influence of adaptive preference, which might shape informal workers' behavior. Therefore, while the interface between informal workers and integrated institutions could help chart a comprehensive framework for the benefit of informal workers engaged in a specific informal activity, both informal workers and integrated institutions would bring different perspectives into

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<sup>98</sup> One has to remember that waste-pickers in Kolkata have begun to organize only in 2011.

<sup>99</sup> Sen, *Development*, supra note 49 at 62-63.

<sup>100</sup> Benedetta Giovanola, "Personhood and Human Richness: Good and Well-Being in the Capability Approach and Beyond" (2005) LXIII: 2 Review of Social Economy 249 at 250.

<sup>101</sup> *Ibid* at 254.

dialogue. Since integrated institutions are, reasonably, free from the subjective considerations characterizing informal workers, they are capable of offering reasonably objective but empathetic insights into the law-making process for specific informal workers. Accordingly, integrated institutions could also be important in helping to identify factors that are important for the facilitation of capabilities of informal workers.

As I have noted above, in order to ensure social, economic, political, and cultural factors necessary for the enhancement of valuable capabilities identified by informal workers, such informal workers should be heard through the social dialogue process. However, while informal workers might be able to identify valuable capabilities important to them, they might not be able to identify the factors necessary for the promotion of such capabilities. Accordingly, multiple institutions should be involved in the social dialogue process to help identify factors necessary for the enhancement of capabilities. The integration of informal workers and multiple institutions into a process of social dialogue is necessary. If informal workers are organized as a trade union or a cooperative (which are also integrated institutions), their integration into the social dialogue process in a representative capacity is, at least in a formal sense, possible. But, in reality, informal workers in India are mostly un-organized. Therefore, it would be difficult to integrate informal workers into the social dialogue process through their representative organizations.

In such a scenario, other integrated (multiple) institutions can ensure informal workers' participation in the social dialogue process. Such participation can be conceptualized at two levels: as institutions involved in the social dialogue process in a representative capacity, or as institutions assisting informal workers to participate in the social dialogue process. While participation of integrated institutions is essential they still may not optimize the identification of valuable capabilities of informal workers. It would be a far better approach to enable informal workers to speak for themselves. If informal workers are allowed to speak for themselves their emergent points of views could be sharpened and sophisticated with the participation of integrated institutions through the social dialogue process.

Thus, in the context of the specific example of waste-pickers in Kolkata, integrated institutions such as the police, the NGO (Calcutta Samaritans), local elected

officials, the university (WB NUJS), and the media need to be involved in the social dialogue process with waste-pickers and the government. The hope is that such a social dialogue process will be capable of identifying valuable capabilities for waste-pickers. Once the range of valuable capabilities are identified, integrated institutions (including the government) along with waste-pickers should be able to identify factors that are necessary for the promotion of the informal workers' capabilities.

Dréze and Sen's institutionally integrated approach<sup>102</sup> envisages that institutions (such as NGOs, media) have to be assessed collectively in an integrated manner<sup>103</sup> on the basis of their collective capacity to promote individual capabilities.<sup>104</sup> Noting that mere existence of institutions is not enough for enhancement of capabilities, Sen calls for the examination of institutions based on their contribution to capability development.<sup>105</sup> Sen advocates for actual participation of people in the social dialogue process.<sup>106</sup> According to Sen, it is through the involvement of people in the social dialogue process that valuable capabilities and functionings should be identified for a particular society.<sup>107</sup> Accordingly, it is the responsibility of the participants in the social dialogue process to institutionalize factors necessary for the enhancement of capabilities. Sen is not in favour of trusting government to institutionalize factors necessary for the enhancement of capabilities as a benevolent provider.<sup>108</sup> He calls upon integrated institutions to mediate government action.<sup>109</sup> In the context of formulation of labour law for waste-pickers integrated institutions are expected to do just that – mediate government and legislative action. In order to formulate labour law for waste-pickers integrated institutions of NGO, police, elected officials, university, and media<sup>110</sup> are to engage in a democratic deliberation

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<sup>102</sup> See Jean Dréze and Amartya Sen, *India Development and Participation* (New Delhi: Oxford University Press, 2002) at p. 20.

<sup>103</sup> Sen, *Development*, supra note 49 at 142.

<sup>104</sup> Amartya Sen, *The Idea of Justice* (Cambridge: Harvard University Press, 2009) at 75-86.

<sup>105</sup> Ibid at 81-83.

<sup>106</sup> Sen, *Development*, supra note 49 at 156-159; also see Sen, *Idea of Justice*, ibid at 91, 324-327, 392.

<sup>107</sup> See Sen, *Development*, ibid at 31-32, 36-40, 51-53, 123, 147-148, 152-155; also see Sen, *Idea of Justice*, ibid at 91, 324-327, 392; also see Amartya Sen, "Human Rights and Capabilities" (2005) 6: 2 *Journal of Human Development*, 151 at pp. 158-163; also see Shelley Marshall, (undated) "Main Findings Concerning the Role of Labour Law in Promoting Decent Work" in *Promoting Decent Work: The Role of Labour Law* (in file with author).

<sup>108</sup> Dréze & Sen, *India Development*, supra note 102 at 45.

<sup>109</sup> Ibid.

<sup>110</sup> Etc. because depending on specific circumstances opposition political parties, and other groups can be part of integrated institutions.

process to assist the government and the legislature to institutionalize factors promoting capabilities of waste-pickers.

Thus, one of the prerequisites of labour law for informal workers is an institutional mechanism ensuring social dialogue involving integrated institutions. From a substantive point of view labour law for informal workers needs to institutionalize factors that promote capabilities of such informal workers. One additional element that needs to characterize such labour law for informal economic activities is democratic equality amongst participants in a cooperative production system.<sup>111</sup> I want to conclude this chapter by looking into a concrete implication of the idea of democratic equality in the context of waste-pickers in Kolkata. Before venturing into that discussion, following is a brief explanation of the diagram in which I chart my proposed labour law framework.

The diagram explains the labour law framework that I propose in the context of informal waste-pickers in the Indian context. Waste-pickers, who could either belong to organizations in the form of trade unions, cooperative societies or charitable trusts, or who could be unorganized (i.e., who do not belong to an organization) are charted at the bottom of the diagram. According to the framework I propose, a social dialogue process integrating waste-pickers should be the precursor of labour law for waste-pickers. The large oval-shaped circle represents the social dialogue process. Integration of waste-pickers into the dialogue process, as the figure indicates, could be done through the representative institutions (such as trade unions, cooperative societies, or charitable trusts), or through other integrated institutions (such as NGOs, police, elected representatives, universities). The diagram indicates that during the social dialogue process waste-pickers need to interact with several institutions of the democratic society that interface with their work and their lives.

The diagram illustrates how the social dialogue process needs to discuss means of capability-enhancement for waste-pickers in three stages: first, by recognizing capability deprivations of waste-pickers; second, by identifying desirable capabilities for waste-pickers; and third, by determining factors necessary for the enhancement of desirable

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<sup>111</sup> Elizabeth Anderson, "What is the Point of Equality?" (1999) 109: 2 *Ethics* 287 at 317-318.

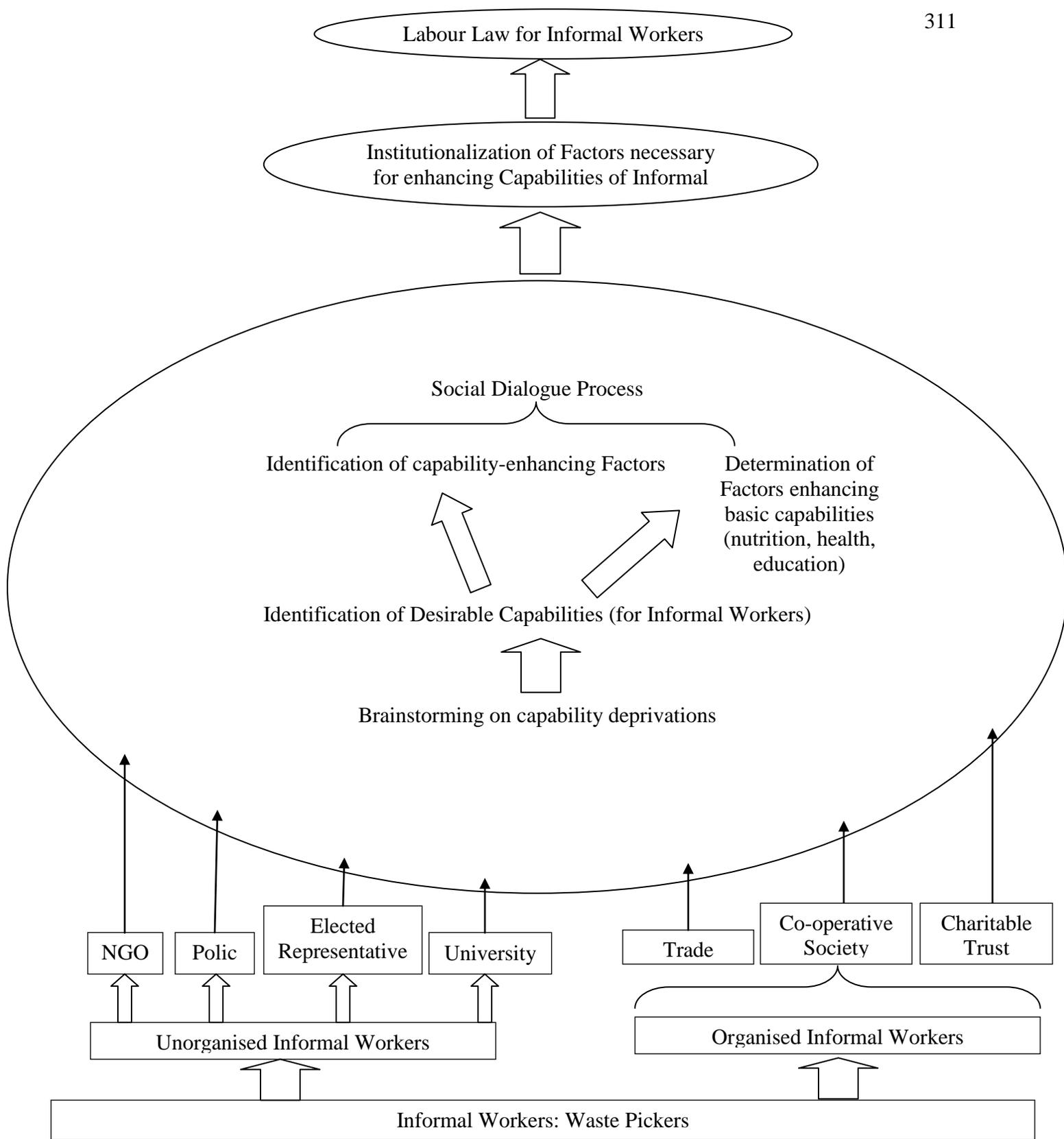


Figure: A diagrammatic representation of a Labour Law Framework for Informal Waste-pickers

capabilities. Once the social dialogue process has determined the factors necessary for the capability development of waste-pickers, such factors need to be institutionalized through legislative guarantee. These legislative guarantees would constitute labour law for waste-pickers in the context of my study.

## **6. The Idea of *Democratic Equality* in the Concrete Context of Labour Law for Informal Workers**

According to Elizabeth Anderson, democratic equality envisages the creation of equal opportunity for participants in a cooperative production system (discussed in chapter 6).<sup>112</sup> Such equality is based on the principles of recognition and respect.<sup>113</sup> All participants in a cooperative production system ought to have an obligation to recognize and respect other participants.<sup>114</sup> The purpose of democratic equality is to remove the social basis of inequality so that participants in a cooperative production system can have effective voice in self-determination.<sup>115</sup> Accordingly, institutional arrangements need to remove socially created relations of oppression, violence, marginalization, domination, exploitation, and cultural imperialism.<sup>116</sup> In the context of my study, it is important to remove relations of oppression, violence, marginalization, domination, exploitation, and cultural imperialism in order to enhance capabilities of informal workers.

Therefore, the challenge is to conceptualize a concrete framework that ensures democratic equality while enhancing and equalizing capabilities of informal workers. By looking at an Indian example I offer one concrete framework through which the concept of democratic equality could be assimilated into labour law for informal economic activities. In the Indian state of Kerala a legislation mandated fish-traders and fish-exporters to pay welfare benefit to fish-workers.<sup>117</sup> Even though fish-workers do not have an employment relationship with fish-traders and fish exporters, they sell their collect to such traders and exporters. In the absence of a direct employment relationship between fish-workers and fish traders (or fish exporters), the law asserted that entities benefiting

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<sup>112</sup> Ibid at 288-289.

<sup>113</sup> Ibid at 313, 315.

<sup>114</sup> Ibid at 315, 319.

<sup>115</sup> Ibid at 288-289, 291, 313.

<sup>116</sup> Ibid at 308-309, 313, 315.

<sup>117</sup> *The Kerala Fishermen's Welfare Fund Act, 1985*, available at [http://wiego.org/sites/wiego.org/files/resources/files/fw\\_kerala\\_1985.pdf](http://wiego.org/sites/wiego.org/files/resources/files/fw_kerala_1985.pdf) (site visited 24 February 2012).

from fish-workers (i.e., fish traders and fish exporters) should contribute towards fish-workers' welfare.<sup>118</sup> However, when the fish-traders and fish-exporters challenged the legislation, the Supreme Court held that the Law envisaging such a contributory scheme is unconstitutional.<sup>119</sup>

[T]he State cannot in an Act under Entry 23 of List III, place the burden of an impost by way of contribution for giving effect to the Act and the scheme made thereunder for the social security and social welfare for a section of society upon a person who is not a member of such section of society nor an employer of a person who is a member of such section of society. The burden of the impost may be placed only when there exists the relationship of employer and employee between the contributor and the beneficiary of the provisions of the Act and the scheme made thereunder.<sup>120</sup> ... In the instant case, the only nexus between the categories or persons covered by the sweep ... of the Act, ... is that the former [fish-exporters] are the purchasers and the latter [fish-workers] are the catchers and sellers of fish.<sup>121</sup>

Thus, the Supreme Court held that collectors (i.e., catchers of fish) and purchasers (i.e., fish-exporters) are not in an employment relationship; and since they are not in an employment relationship, purchasers cannot be compelled to contribute towards the welfare of collectors. The Supreme Court found itself unable to move beyond the employer-employee relationship in establishing a mutual obligation amongst participants in a cooperative production system. What this case shows is that the Court did not have the theoretical tools necessary to justify a contributory scheme arranged amongst participants in a cooperative production system.

However, it could be argued that by mandating an obligation on fish-traders and fish-exporters for the welfare of fish-workers (fish catchers), the state of Kerala envisaged a mechanism that recognized that a production system (*fisheries industry*) necessarily involves the cooperation of a diverse range of participants, even if there is no employer-employee nexus between them.<sup>122</sup> These participants share an obligation of

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<sup>118</sup> Ibid.

<sup>119</sup> *Koluthara Exports Ltd. v State of Kerala*, (2002) MANU 0070 (SC), at para 25.

<sup>120</sup> Ibid at para 20.

<sup>121</sup> Ibid at para 24.

<sup>122</sup> It might be useful to note here that the state of Kerala is one of the states in India, which has a tradition of organised Left movement. A Left Front led by the Communist Party of India (Marxist) governs the state in regular intervals (every five years the government in Kerala changes).

recognition and respect towards their co-participants.<sup>123</sup> From this point of view, all participants share a responsibility to remove socially created relations of oppression, violence, marginalization, domination, exploitation, and cultural imperialism vitiating other participants in the production system.<sup>124</sup> This is precisely what Anderson's *democratic equality* seeks to achieve.

Unfortunately, however, the Court failed to perceive such equality amongst participants in the fisheries industry. Interestingly, in order to overcome the Court judgment, the state of Kerala enacted the Kerala Fishermen's and Allied Workers' Welfare Cess Act, 2007.<sup>125</sup> The 2007 Act provides "for the levy and collection of cess [i.e. tax] on the sale proceeds of fish, fish products allied objects and equipments within the State with a view to augmenting the resources of the Kerala Fishermen's Welfare Fund constituted under section 3 of the Kerala Fishermen's Welfare Fund Act, 1985 (30 of 1985)."<sup>126</sup> Taking account of the Court judgment, the 2007 Act imposes tax on "sale proceeds" on fish products, rather than mandating welfare contribution by fish-traders and fish-exporters, as was envisaged in the 1985 Act. This initiative of the Kerala Legislature shows that even though the Legislature had to accept the judicial reasoning on non-imposition of financial obligation in the absence of an employment-relationship, the Legislature was unwilling to let fish-traders and fish-exporters evade their responsibility of contributing towards the welfare of fish-workers.

Kerala's mandatory contribution by fish-traders and fish-exporters for the welfare of fish-workers could serve as an example of how the theoretical idea of democratic equality amongst participants in a cooperative production system could work in practice. In the *Koluthara Exports Ltd. v State of Kerala* case,<sup>127</sup> if the Supreme Court had analyzed mandatory contribution through the theoretical frame of democratic equality, it would have been possible for the Court to justify such contribution even in absence of employment-relationship between workers and traders. Taking cue from the Kerala law contributory scheme, which has been held unconstitutional by the Supreme Court, the

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<sup>123</sup> Anderson, *supra* note 111 at 313, 315.

<sup>124</sup> *Ibid* at 308-309, 313, 315.

<sup>125</sup> See *The Kerala Fishermen's and Allied Workers' Welfare Cess Act, 2007*, available at [http://wiego.org/sites/wiego.org/files/resources/files/fw\\_keralafishermen\\_2007.pdf](http://wiego.org/sites/wiego.org/files/resources/files/fw_keralafishermen_2007.pdf) (site visited 24 February 2012).

<sup>126</sup> See Object of the *The Kerala Fishermen's and Allied Workers' Welfare Cess Act, 2007*, *ibid*.

<sup>127</sup> (2002) MANU 0070 (SC).

WIEGO Law Pilot Project propose that participants in the waste-recycling industry (a cooperative production system) such as municipalities, itinerant waste traders, the (formal) recycling industry etc., need to “contribute towards a fund that will provide welfare benefits” for waste-pickers.<sup>128</sup> The WIEGO Report further notes: “[t]he idea that such forest workers, fish workers and waste collectors are ‘workers’ outside of an employment relationship, but nevertheless capable of raising a claim upon the industry is crucial.”<sup>129</sup> The idea of democratic equality provides for a theoretical basis where workers outside an employment relationship can raise a claim upon the industry (production system).

## 7. Conclusion

By considering the concrete example of informal waste-pickers in Kolkata, in this chapter I offer a mechanism through which a labour law framework for such waste-pickers could be devised. My proposal is designed to improve the conditions of informal workers in India on the basis of their work. In my proposal, labour law moves beyond the narrow employer-employee notion and takes work as its point of reference, as I discuss earlier.

In my proposed scheme, waste-pickers attain central significance in the formulation of a statutory framework for themselves. Such a scheme allows informal workers (waste-pickers) to decide what they want to do or want to be and accordingly, identify factors that would be necessary for the attainment of such doing or being. Once those factors are identified, labour law needs to institutionalize them. Informal waste-pickers are to be integrated in the law-making process through a social dialogue mechanism. I envisage such a social dialogue process in an expansive manner so that any number of integrated institutions in a democratic society can engage in the social dialogue.

I contemplate two situations for the participation of waste-pickers in the social dialogue process: one, when they are organized and two, when they are unorganized.

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<sup>128</sup> Kamala Sankaran, “Informal Economy, Own-account Workers and the Law: An Overview”, WIEGO Law Pilot Project on the Informal Economy, at para 6.7, available at [http://wiego.org/sites/wiego.org/files/resources/files/iei\\_background\\_paper\\_oaw\\_and\\_law.pdf](http://wiego.org/sites/wiego.org/files/resources/files/iei_background_paper_oaw_and_law.pdf) (site visited 24 February 2012).

<sup>129</sup> Ibid at para 6.8.

When waste-pickers are organized, their organization can represent their perspectives in the social dialogue process. But, when waste-pickers are unorganized, I propose integrated institutions play an additional role in integrating waste-pickers in the social dialogue process. Under both of these scenarios, the participation of integrated institutions is essential. Integrated institutions are not only important to help to identify capability-enhancing factors for the waste-pickers (or any other group of specific informal workers), their participation in the social dialogue process is important in order to ward off any adaptive preferences held by waste-pickers. Finally, drawing upon a concrete example in the Indian state of Kerala, I indicate a taxation mechanism capable of striking democratic equality between informal waste-pickers and formal recycling industry. In the following chapter, instead of offering any new insights, I summarize the different chapters of my study and identify future areas of research.

## Chapter 9

### Conclusion

The purpose of this dissertation is to ascertain whether a legislative framework is capable of improving the work-life experiences of informal workers. Since informal economic activities are heterogeneous in nature and unique to particular regions and places, a legislative framework that might work for one particular category of informal workers, might not be effective for other categories of informal workers. Accordingly, I select one specific informal economic activity as my frame of reference. In this dissertation, I analyze the specific informal economic activity of waste-picking in order to see if a definite idea of labour law could be invoked for the purpose of improving the conditions of waste-pickers in India.

I undertake the case study of waste-picking in Kolkata for the purpose of understanding the work-lives of waste-pickers and *modus operandi* of the activity of waste-picking. Waste-pickers are self-employed informal workers who collect recyclable solid waste, segregate such waste, and sell it to the intermediary (or middle-person). Intermediaries supply the recyclable waste to the recycling factories. Even though waste-pickers mostly sell their collect to one or two definite intermediaries, an employment relationship does not exist between waste-pickers and intermediaries, or between an intermediary and a recycling factory. The different entities in the recycling production process – waste-pickers, intermediaries, recycling factory – are related as sellers and buyers. The recycling production process is a continuum constitutive of the informal economic activities of waste-collection, waste-segregation and supply, and the (mostly) formal economic activity of factory-based production of recycled goods. Being engaged in the informal part of the production process, waste-pickers in Kolkata are excluded from the purview of labour rights guaranteed under the numerous labour laws in India; they are also excluded from the scope of social security protections available to certain categories of informal workers in West Bengal. As a result of such exclusion, waste-pickers in Kolkata live vulnerable, marginalized, and invisible lives outside the domain of public-policy.

Through the case study of the informal economic activity of waste-picking I unearth the capability deprivations of waste-pickers in their work-lives in Kolkata. However, understanding the capability deprivations of waste-pickers is not the only objective of the case study. A much more important aim of the case study is the ascertainment of valuable capabilities from the perspective of the waste-pickers. The waste-pickers in Kolkata identified some of the desirable capabilities for them: the capability to be able to work and recognition as workers; access to work-sites; being in possession of an identification document proving citizenship of the country; shelter or housing; protection against forced eviction from their shelters; physical and mental security at work-sites; access to a regular channel of paid labour (or selling of their collect); appropriate payment for their work; provision for economic (and other) assistance during emergency; and provision for health. While all of these capabilities are considered valuable by waste-pickers, all of these capabilities need not necessarily become part of a labour law dispensation; capabilities that are valuable for waste-pickers' *work* only should become part of a labour law framework.

While a labour rights-based framework might be able to address some of these concerns raised by waste-pickers in Kolkata, some of the other concerns, such as access to work-sites, access to identification document (in the sense I discuss in chapter 7) do not traditionally fall within the domain of labour rights. The capability approach, on the other hand, is more sensitive to intergroup (and interpersonal) variations, and accounts for the unique characteristics and requirements of each specific group of people. The capability approach envisages an analytical framework in which the objective of public policy is to ensure appropriate social, economic, political, environmental, and physical conditions in which desirable capabilities of an individual or a specific group of people could be promoted. Accordingly, the theoretical underpinning of the capability approach provides an appropriate analytical basis for the purpose of accounting for the typical necessities (i.e. desirable capabilities) of informal waste-pickers.

The traditional idea of labour law is not well equipped to address problems involving the informal economic activity of waste-picking at two levels. First, since the traditional idea of labour law is based on the juridical concept of employment relationship it excludes waste-pickers who are not in an employment relationship from its

purview. Second, as I indicate, being based on the idea of definite labour rights that are (theoretically) available to all categories of workers irrespective of the nature and *modus operandi* of their work, it fails to account for the typical characteristics of waste-picking and waste-pickers.

Accordingly, based on an emerging idea of labour law, in my dissertation I offer a way to conceptualize a labour law framework, which can address the challenges posed by the informal economic activity of waste-picking. Waste-pickers are self-employed workers without an employer or any definite workplace and accordingly, an employment relationship or a workplace is absent. Even though waste-pickers are not, a significant number of informal workers are waged workers. Even when informal workers are waged workers, it is difficult to determine an employer for such workers, because an employment-relationship is hidden or disguised for many informal workers. Additionally, many informal workers work for more than one entity, who may or may not be an employer. Thus, the domain of informal economic activities poses conceptual challenge to the traditional scope of labour law. The phenomenon of informal economic activities is conceptually problematic because it is incapable of being framed in terms of an existing theoretical framework of labour law. It characterizes a messy situation wherein it is difficult for the traditional labour law framework to address the typical problems posed by informal economic activities and the activity of waste-picking in particular. The absence of law and policy, resulting from this conceptual difficulty, adversely affects the work-lives of informal workers in general and waste-pickers in particular.

The logic behind the traditional normative goal of labour law is that if labour law can strike a better balance of power between employer and employees they can bargain between themselves in order to determine the nature and extent of benefits that each party would enjoy. In the absence of an employment-relationship the normative goal of balance of bargaining power cannot work. Accordingly, a proposal for a labour law for the advancement of informal waste-pickers needs to look for other normative goals that are independent of an employment-relationship.

Under such circumstances, human development of waste-pickers emerges as an attractive contender as a normative goal of labour law. Labour law for waste-pickers should aim to promote human development of waste-pickers, regardless of whether or not

an employment relationship exists. I invoke Amartya Sen's capability approach, a flexible and non-deterministic human development approach as a normative goal of labour law for informal waste-pickers. According to Sen, public policy needs to promote individual capabilities. Based on Sen's insight I propose that labour law for waste-pickers needs to institutionalize factors that are capable of promoting desired capabilities of waste-pickers. Since the capability approach is a choice-based development theory, it is necessary to integrate waste-pickers themselves in the process of institutionalization of factors that can promote their capabilities. Integration of waste-pickers in the legislative institutionalization process could be ensured through the ILO-promoted strategy of social dialogue. Dialogue is also central in the capability approach. Sen envisages a participatory democratic dialogue process for the determination of desired capabilities for particular societies.

According to this approach, the law-making process needs to be attentive to the voices of different stakeholders directly or indirectly engaged in, or related to the informal economic activity of waste-picking. However, institutionalization of the social dialogue principle has to be carefully devised in order to make such institutionalization effective. An effective social dialogue mechanism could be devised only when such mechanism is alert to the subtleties involving the specific activity of waste-picking and the waste-pickers involved in the process. Since the legislative policy I propose seeks to institutionalize factors that can promote capabilities as desired by waste-pickers themselves, the proposed legislative policy for waste-pickers needs to be shaped to a great extent by the waste-pickers themselves.

Since informal workers are heterogeneous, I have grouped together one specific category of workers – waste-pickers in Kolkata, and I offer a proposal through which waste-pickers could be integrated into the social dialogue process that shapes the legal regime promoting waste-pickers' interests. In addition to waste-pickers, I propose that multiple institutions of the democratic society, such as law enforcement officials, NGOs, trade unions (if exist), elected representatives, media, political parties, universities and research institutions etc., need to be integrated into the social dialogue process.

Since the goal of my dissertation is to conceptualize a framework for labour law that is designed to promote improvements in the working lives of waste-pickers my point

of reference is informal employment, rather than informal sector or informal economy. Informal employment takes informal workers as its point of reference, unlike the concepts of informal sector and informal economy, concerned respectively with enterprise and the economy, as I explain in chapter 2.

After discussing the notion of informal employment, I discuss the conditions of informal workers in India in chapter 3. The Constitution of India provides the basis of labour jurisprudence in India. It guarantees the rights to life, health, education, social protection, and workers' welfare – all necessary conditions for actual human development. However, these constitutional guarantees remain largely unrealized for informal workers. In the absence of government and legislative action in promoting these guarantees, private entities in the form of trade unions, co-operative societies, and charitable trusts are undertaking proactive measures in availing these guarantees to informal workers. Even though trade unions and NGOs are promoting informal workers' *interests*, these initiatives remain far too meager considering the enormity of informal economic activities in India.

In chapter 4, I discuss the nuances of the capability approach formulated by Amartya Sen. Sen conceptualizes human development in terms of freedom of choice. I discuss the constitutive elements of Sen's theory: development in terms of freedom; notion of freedom in Sen's approach; concept of well-being and agency; and the idea of integrated institutions. I use these constitutive elements of Sen's theory to develop a new understanding of the role and scope of labour law. The concept of public participation and democratic dialogue is central to Sen's idea of development as freedom. The ILO also envisages the strategy of social dialogue in furtherance of its Decent Work (DW) Agenda for workers. In chapter 5, I discuss how the ILO strategy of social dialogue could be used in order to effectively integrate waste-pickers in the law-making process.

In chapter 6, based on Sen's capability approach, I argue that enhancement and equality of capabilities of informal workers should be the normative goal of labour law for informal economic activities. I supplement Sen's theory with Elizabeth Anderson's conceptualization of democratic equality in a cooperative production process. Anderson's concept, extended to the context of production process, provides a premise to the claim of enhancement and equality of capability. I also argue that a labour law framework for

informal workers requires the involvement of multiple institutions in order to institutionalize capability-enhancing-factors into labour law.

Having outlined the idea of a capability-inspired labour law approach, I attempt to concretize it. Accordingly, in chapter 7, I document capabilities that informal waste-pickers identified to be valuable for them. Once these desirable capabilities are identified, they become invaluable resources in the law-making process. However, one cannot encompass all valuable capabilities under a labour law framework. While some valuable capabilities may be preconditions to a successful labour law dispensation, capabilities that are relevant to working lives need only constitute labour law.

In chapter 8, I describe a law-making process (institutionalization of factors promoting capabilities) for waste-pickers, which engages the strategy of social dialogue in integrating multiple institutions, including stakeholders, into the law-making process. Using the example of the informal economic activity of waste-collection, I propose that integration of waste-pickers into the law-making process could happen either through waste-pickers' membership-based organization (for example, trade unions), or in absence of membership-based organizations, via integrated institutions of a democratic society.

The Kerala fishermen's dispute I discuss in the chapter 8 proves the significance of integrated institutions in promoting capabilities of informal workers. In that particular dispute the social basis of capability enhancement (i.e., trader's contribution towards workers' welfare) emerged out of the conflict between the fish traders, the government, and the judiciary. While it might be expected that a government committed to the cause of the downtrodden and marginalized people will facilitate their interests, government benevolence might not always stand the test of time. Accordingly, membership-based organizations of informal workers should become participants in the process of determining the social basis of capability development. The challenge is to institute a social dialogue framework which is respectful of informal workers and a range of other institutions. Informal workers are not mere passive victims of fate. As my case study shows, given an opportunity waste-pickers (one of the most marginalized informal workers) can become active agents of change. Their awareness, articulation, negotiation, and bargaining skills could be substantially improved by instituting social basis of capability enhancement, such as trade unions.

Indications of newly attained functionings were visible after the waste-pickers in Kolkata organized themselves into a trade union. In the second executive committee meeting of the BPSSS, Najma Biwi, a waste-picker and an executive committee member, described an incident of a recent eviction attempt by local hooligans in the Gariahat area of Kolkata.<sup>130</sup> She described how five or six local strongmen, who were working at the behest of a local real estate promoter, came to her neighbourhood and threatened the residents with eviction from their slum. She recounted how she gathered a number of slum dwellers in order to encounter the thugs, informing them that the residents were part of a trade union, and if they were forcibly evicted they would take the matter to the police, the court, and “lawyers from the university” would put the thugs behind the bars. Not accustomed to such a collective backlash, the thugs retreated from the neighbourhood.

This incident shows that waste-pickers, living at the margins of the society, are capable of being assertive and fighting their own cause by employing a range of negotiation tools. These tools – the threat of police, court, and lawyers from the university – emanates from their participation in the trade union BPSSS. This vignette illustrates that the informal workers need appropriate institutions and frameworks that create conditions in which they can effectively exercise their agency. Moreover, as Elizabeth Hill shows, agency itself is also the creation of these institutions and frameworks.<sup>131</sup>

Although legal institutions and legislative safeguards cannot be panacea for all injustices suffered by informal workers, they are still important and they must involve informal workers through a process of democratic deliberation during the legislative institutionalization of capability-enhancing factors. Changes in governance attitude and democratic culture are preconditions for the law-making process. For this reason, the proposal I offer cannot work in a vacuum. It requires a receptive and open democratic culture that believes in democratic equality in the production process.

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<sup>130</sup> Meeting of the Executive Committee of BPSSS on 12 July 2011 at the Calcutta Samaritans, Kolkata, India.

<sup>131</sup> Elizabeth Hill, *Worker Identity, Agency and Economic Development: Women's empowerment in the Indian informal economy* (New York: Routledge, 2010) at 97-100, 104-112, 116, 131-132.

I use the capabilities approach to explore a framework for labour law for one category of informal workers. Other researchers need to work with other groups of informal workers in different settings in order to ascertain how labour law could be adapted to address their specific needs. A social justice-based conceptualization of labour law inspired by the capability approach might provide an overarching labour law framework for informal employment. However, it is undisputed that labour law cannot satisfactorily function within its traditional scope of an employment relationship if it is to enhance the capabilities of informal workers and provide them with decent work and dignified lives. While the specific model needed for different groups of informal workers in India is an open question, it is clear that a legislative framework developed with the participation of informal workers would not only further the Constitutional guarantee of equality, it would significantly contribute to promote a dignified life for informal workers, which the Constitution of India promises to its people.

## Bibliography

### INTERNATIONAL CONVENTIONS, RECOMMENDATIONS, AND DECLARATIONS

ILO, Unemployment Indemnity (Shipwreck) Convention, 1920.

ILO, No. 29, Forced Labour Convention, 1930.

ILO, No. 87, Freedom of Association and Protection of the Right to Organise Convention, 1948.

ILO, No. 98, Right to Organise and Collective Bargaining Convention, 1949.

ILO, No. 100, Equal Remuneration Convention, 1951.

ILO, No. 105, Abolition of Forced Labour Convention, 1957.

ILO, No. 111, Discrimination (Employment and Occupation) Convention, 1958.

ILO, No. 138, Minimum Age Convention, 1973.

ILO, Labour Statistics Recommendation, 1985.

ILO, Declaration on Fundamental Principles and Rights at Work 1998.

ILO, No. 182, Worst Forms of Child Labour Convention, 1999.

ILO, Declaration on Social Justice for a Fair Globalization, 2008.

ILO, No. 189, Domestic Workers Convention, 2011.

ILO, No. 201, Domestic Workers Recommendation, 2011.

Treaty of Versailles, 1919, Official Bulletin, International Labour Office (Geneva: ILO, 1923).

WTO, Singapore Ministerial Declaration, 1996.

### LEGISLATION

The Indian Trusts Act, 1882.

The Co-operative Societies Act, 1912.

The Charitable and Religious Trusts Act, 1920.

The Trade Unions Act, 1926.

The Industrial Disputes Act, 1947.

The Minimum Wages Act, 1948.

The Factories Act, 1948.

The Employee's State Insurance Act, 1948.

The Constitution of India, 1949.

The Companies Act, 1956.

The Indian Penal Code, 1860.

The Societies Registration Act, 1860.

The Motor Vehicles Act, 1939.

The Maternity Benefit Act, 1961.

The Contract Labour (Regulation and Abolition) Act, 1970.

The Code of Criminal Procedure, 1973.

The Constitution (Forty-second Amendment) Act, 1976.

The Constitution (Forty-fifth Amendments) Bill 1978.

The Kolkata Municipal Corporation Act, 1980.

The Kerala Fishermen's Welfare Fund Act, 1985.

The Environment (Protection) Act, 1986.

The Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993.

The Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996.

The Bio-medical Waste (Management and Handling) Rules, 1998.

The Municipal Solid Wastes (Management and Handling) Rules, 2000.

The National Rural Employment Guarantee Act, 2005.

The Kerala Fishermen's and Allied Workers' Welfare Cess Act, 2007.

The West Bengal Unorganised Sector Workers' Welfare Act, 2007.

The Unorganised Sector Social Security Act, 2008.

#### JURISPRUDENCE

*Akhil Bharatiya Soshit Karamchhari Sangh (Railway) v. Union of India*, (1980) MANU 0058 (SC)

*Bandhua Mukti Morcha v. Union of India*, (1983) MANU 0051 (SC)

*Bangalore Water Supply & Sewerage Board, v. A. Rajappa and Others*, (1978) MANU 0257 (SC)

*Consumer Education and Research Centre v. Union of India*, (1995) MANU 0175 (SC)

*Francis Coralie v. Union Territory of Delhi*, (1981) MANU 0517 (SC)

*His Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala*, (1973) MANU 0445 (SC)

*Indra Sawhney v. Union of India*, (1992) MANU 0665 (SC)

*K. Kunhikoman v. State of Kerala*, (1961) MANU 0095 (SC)

*Kharak Singh v. State of Utter Pradesh*, (1962) MANU 0085 (SC),

*Kirloskar Brothers Ltd. v. Employees' State Insurance Corpn.*, (1996) MANU 0873 (SC)

*M. Chhaganlal v. Greater Bombay Municipality*, (1974) MANU 0052 (SC)

*Minerva Mills Ltd. v. Union of India*, (1980) MANU 0075 (SC)

*Miss. Mohini Jain v. State of Karnataka*, (1992) MANU 0357 (SC)

- Mrs. Maneka Gandhi v. Union of India*, (1978) MANU 0133 (SC)
- Municipal Corporation of the City of Ahmedabad v. Jan Mohammed Usmanbhai*, (1986) MANU 0099 (SC)
- Munn v. Illinois*, 1876 WL 19615 (U.S.III.)
- Olga Tellis v. Bombay Municipal Corporation*, (1985) MANU 0039 (SC)
- P. Rathinam v. Union of India*, (1994) MANU 0433 (SC)
- People's Union for Democratic Rights v. Union of India*, (1982) MANU 0038 (SC)
- Prem Shankar Shukla v. Delhi Administration*, (1980) MANU 0084 (SC)
- Regional Director, Employees State Insurance Corporation v. Suvarna Saw Mills*, 1979 Lab. I.C. 1335 (Karnataka)
- Royal Talkies, Hyderabad v. Employees State Insurance Corporation*, (1978) MANU 0282 (SC)
- Sheela Barse v. State of Maharashtra*, (1987) MANU 0139 (SC)
- Shri Ram Krishna Dalmia v. Justice S.R. Tendolkar*, (1958) MANU 0024 (SC)
- Siddheswar, Hubli v. ESI*, 1998 Lab. I.C. 212 (Orissa)
- Sodan Singh v. New Delhi Municipal Committee*, (1989) MANU 0521 (SC); and its follow up decision (1992) MANU 0489 (SC)
- St. Stephen's College v. The University of Delhi*, (1991) MANU 0319 (SC)
- State of Madhya Pradesh v. Pramod Bhartiya*, (1993) MANU 0060 (SC)
- State of Madras v. Champakam Dorairajan*, (1951) MANU 0007 (SC)
- State of Utter Pradesh v. Jai Bir Singh*, (2005) MANU 0360 (SC)
- State of Utter Pradesh v. J.P. Chaurasia*, (1988) MANU 0502 (SC)
- State of West Bengal v. Anwar Ali Sarkar*, (1952) MANU 0033 (SC)
- Sunil Batra v. Delhi Administration*, (1978) MANU 0184 (SC)
- Vikram Deo Singh Tomar v. State of Bihar*, (1988) MANU 0572 (SC)

*Vishaka v. State of Rajasthan*, (1997) MANU 0786 (SC)

#### MONOGRAPHS

Agarwala, Rina, *From Work to Welfare: Informal Worker's Organizations and the State in India* (PhD Thesis, Faculty of Princeton University, 2006) [unpublished].

Ahn, Pong-Sul ed, *Organizing for Decent Work in the Informal Economy – Strategies, Methods and Practices* (New Delhi: ILO, 2007).

Alexander, John, *Capabilities and Social Justice – The Political Philosophy of Amartya Sen and Martha Nussbaum* (Farnham & Burlington: Ashgate, 2008).

Alkire, Sabina, *Valuing Freedoms – Sen's CA and Poverty Reduction* (New York: Oxford, 2002).

Anker, Richard, *Gender and Jobs – Sex segregation of occupations in the world* (Geneva: ILO, 1998).

Antony, Piush, *Towards Empowerment: Experiences of Organizing Women Workers* (New Delhi: ILO, 2001).

Aristotle, *Nicomachean Ethics, Book I*, 2<sup>nd</sup> ed, translated by Terence Irwin (Indianapolis / Cambridge: Hackett Publishing, 1999).

Austin, Granville, *The Indian Constitution: Cornerstone of a Nation* (Bombay: Oxford University Press, 1976).

Bacchetta, Marc, Ekkehard Ernst & Juana P. Bustamante, *Globalization and Informal Jobs in Developing Countries* (Geneva: WTO & ILO, 2009).

Barnard, Catherine, Simon Deakin & Gillian Morris eds, *The Future of Labour Law – Liber Amicorum Sir Bob Hepple QC* (Portland, Oregon: Hart Publishing, 2004).

Beaud, Michel, *A History of Capitalism 1500-2000* (New York: Monthly Review Press, 2001).

Beneria, Lourdes, *Changing Employment Patterns and the Informalization of Jobs: General Trends and Gender Dimensions* (Geneva: ILO, 2001).

Bhat, Ela R., *We Are Poor but So Many: The Story of Self-Employed Women in India* (New York: Oxford University Press, 2006).

Boeri, Tito et al, *The Role of Unions in the Twenty-First Century – A Report for the Fondazione Rodolfo De Benedetti* (New York: Oxford University Press, 2001).

Breman, Jan, *Footloose labour – Working in India's informal economy* (Cambridge: Cambridge University Press, 1996).

Breman, Jan, *The Making and Unmaking of an Industrial Working Class – Sliding Down the Labour Hierarchy in Ahmedabad, India* (New Delhi: Oxford University Press, 2004).

Chatterjee, Partha, *The Present History of West Bengal – Essays in Political Criticism* (Delhi: Oxford University Press, 1997).

Chen, Martha Alter, Renana Jhabvala & Frances Lund, *Supporting Workers in the Informal Economy*, Working Paper on the Informal Economy, Employment Sector 2002/2 (Geneva: International Labour Office, 2002).

Chikarmane, Poornima & Lakshmi Narayan, *Rising from the Waste – Organising Wastepickers in India, Thailand and the Philippines* (Bangkok: Committee for Asian Women, 2009).

Conaghan, Joanne, Richard Michael Fischl & Karl Klare, *Labour Law in an Era of Globalization – Transformative Practices & Possibilities* (Oxford & New York: Oxford University Press, 2002).

Creswell, John W, *Research Design - Qualitative, Quantitative, and Mixed Methods Approaches* (London: Sage, 2009).

David, Natacha, *Worlds Apart: Women and the Global Economy* (Geneva: ICFTU, 1996).

Davis, Paul & Mark Freedland, *Kahn-Freund's Labour and the Law*, 3<sup>rd</sup> Ed. (London: Stevens & Sons, 1983).

Davies, Paul & Mark Freedland, *Labour Law: Text and Materials* (London: Weidenfeld and Nicolson, 1984).

De Soto, Hernando, *The Other Path – The Invisible Revolution In The Third World* (New York: Harper & Row, 1989).

Deakin, Simon & Gillian S. Morris, *Labour Law*, 4<sup>th</sup>ed (Portland: Hart Publishing, 2005).

Deakin, Simon & Frank Wilkinson, *The Law of the Labour Market – Industrialization, Employment, and Legal Evolution* (Oxford: Oxford University Press, 2005).

Deneulin, Severine, *The Capability Approach and the Praxis of Development* (New York: Palgrave Macmillan, 2006).

Denscombe, Martyn, *The Good Research Guide for small-scale social research projects* (Berkshire: Open University Press, McGraw-Hill, 2007).

DeWalt, Kathleen M. & Billie R. DeWalt, *Participant Observation – A Guide for Fieldworkers* (Walnut Creek: Altamira, 2002).

Dréze, Jean & Amartya Sen, *India Development and Participation* (New Delhi: Oxford University Press, 2002).

Falzon, Christopher, *Foucault and Social Dialogue* (London and New York: Routledge, 1998).

Freeman, Richard B. & James L. Medoff, *What do Unions Do?* (New York: Basic Books, 1984).

Fudge, Judy, Eric Tucker & Leah Vosko, *The Legal Concepts of Employment: Marginalizing Workers* (Ottawa, Ontario: Law Commission of Canada, 2002).

Gajendragadkar, P. B., *The Constitution of India – Its Philosophy and Basic Postulates*, Gandhi Memorial Lectures, University College, Nairobi, First Series (Nairobi: Oxford University Press, 1969).

Gibson-Graham, J.K., *The End of Capitalism (as we knew it) – A Feminist Critique of Political Economy* (Oxford: Blackwell, 1996).

Gibson-Graham, J.K., *Postcapitalist Politics* (Minneapolis & London: University of Minnesota Press, 2006).

Gill, Kaveri, *Of Poverty and Plastic – Scavenging and Scrap Trading Entrepreneurs in India's Urban Informal Economy* (New Delhi: Oxford University Press, 2010).

Gothoskar, Sujata, *New Initiatives in Organizing Strategy in the Informal Economy: A Case Study of Domestic Workers Organizing in India* (Bangkok: Committee for Asian Women, 2005).

Hammersley, Martyn, *The Dilemma of Qualitative Method – Herbert Blumer and the Chicago Tradition* (London and New York: Routledge, 1989).

Harding, Philip & Richard Jenkins, *The Myth of the Hidden Economy – towards a new understanding of informal economic activity* (Philadelphia: Open University Press, 1989).

Hepple, Bob, *Labour Law, Inequality and Global Trade*, Sinzheimer Lecture 2002 (Amsterdam: Hugo Sinzheimer Instituut, 2002).

Hepple, Bob, *Labour Laws and Global Trade* (Oxford and Portland: Hart, 2005).

Héthy, L., *Hungary: Social Dialogue within and outside of the framework of tripartism*, InFocus Programme on Strengthening Social Dialogue, WP. 4 (Geneva: ILO, 2000).

Hill, Elizabeth, *Worker Identity, Agency and Economic Development: Women's empowerment in the Indian informal economy* (New York: Routledge, 2010).

Hughes, Steve & Nigel Haworth, *The International Labour Organisation (ILO)* (New York: Routledge, 2011).

Husmanns, Ralf, *Statistical definition of informal employment: Guidelines endorsed by the Seventeenth International Conference of Labour Statisticians (2003)*, (Geneva: ILO, 2004).

Husmanns, Ralf, *Measuring the informal economy: From employment in the informal sector to informal employment*, Working Paper No. 53, Policy Integration Department, Bureau of Statistics (Geneva: ILO, 2004).

ICFTU, *Building Workers' Human Rights into the Global Trading System* (Geneva: ICFTU, 1999).

ILO, *Freedom of association and collective bargaining* (Geneva: ILO, 1994).

ILO, *Conclusions concerning tripartite consultation at the national level on economic and social policy* (Geneva: ILC, 1996).

ILO, *Women and Men in the Informal Economy: A Statistical Picture* (Geneva: ILO, 2002).

Jose, A. V., *The ILO Declaration on Fundamental Principles and Rights at Work: Role of social partners in South Asia* (Geneva: ILO, IILS, 2002).

Kahn-Freund, Otto, *Labour and the Law*, 2<sup>nd</sup>ed (London: Stevens & Sons, 1972).

Kahn-Freund, Otto, *Labour and the Law*, 2<sup>nd</sup>ed (London: Stevens & Sons, 1977).

Kemp, Tom, *Industrialization in the non-Western World* (New York: Longman, 1983).

Kemp, Tom, *Historical Patterns of Industrialization* (London & New York: Longman, 1993).

Kohli, Atul, *The State and Poverty in India – The Politics of Reform* (Cambridge: Cambridge University Press, 1987).

Kohli, Atul, *Democracy and Discontent – India's Growing Crisis of Governability* (Cambridge: Cambridge University Press, 1990).

- Kohli, Atul, *Democracy and Development in India* (New Delhi: Oxford University Press, 2009).
- Lapierre, Dominique, *The City of Joy* (New York: Warner Books, 1986).
- Luebbert, Gregory M., *Liberalism, Fascism, or Social Democracy* (New York: Oxford University Press, 1991).
- Marjit, Sugata & Saibal Kar, *The Outsiders – Economic Reforms and Informal Labour in a Developing Economy* (New Delhi: Oxford University Press, 2011).
- Marx, Karl, *Capital Vol. III: The Process of Capitalist Production as a Whole*, available at <http://www.marxists.org/archive/marx/works/1894-c3/ch20.htm> (site visited 13 August 2010).
- Mason, Jennifer, *Qualitative Researching* (London: Sage, 2002).
- Maul, Daniel, *Human Rights, Development and Decolonization – The International Labour Organization, 1940-70* (Basingstoke: Palgrave Macmillan & Geneva: ILO, 2012).
- Moorhouse, Geoffrey, *Calcutta: The City Revealed* (New York: Penguin Books, 1984).
- Morse, David A., *The Origin and Evolution of the I.L.O. and Its Role in the World Community* (New York: Cornell University, 1969).
- Namboodiripad, E. M. S., *The Republican Constitution in the Struggle for Socialism*, R.R. Kale Memorial Lecture, 1968, Gokhale Institute of Politics and Economics, Poona (Bombay: Asia Publishing House, 1968).
- Nozick, Robert, *Anarchy, State, And Utopia* (New York: Basic Books, 1974).
- Nussbaum, Martha C., *Women and Human Development – The Capabilities Approach* (Cambridge: Cambridge University Press, 2000).
- Payne, A., *The Global Politics of Unequal Development* (New York: Palgrave Macmillan, 2005).
- Perry, Guillermo E. et al, eds, *Informality: Exit and Exclusion* (Washington DC: The World Bank, 2007).
- Pogge, Thomas, *John Rawls* (New York: Oxford University press, 2007).
- Polanyi, Karl, *The Great Transformation* (Boston: Beacon Press, 1957).

Rawls, John, *A Theory of Justice* (Cambridge: Harvard University Press, 1971).

Reddy, O. Chinnappa, *The Court and the Constitution of India – Summits and Shallows* (New Delhi: Oxford University Press, 2010).

Rodgers, Gerry et al, *The International Labour Organization and the quest for social justice, 1919-2009* (Geneva: ILO, 2009).

Roy, Ananya, *City Requiem, Calcutta – Gender and the Politics of Poverty* (Minneapolis & London: University of Minnesota Press, 2003).

Samaddar, Ranabir, *The Marginal Nation – Transborder Migration from Bangladesh to West Bengal* (New Delhi: Sage, 1999).

Sankaran, Kamala, *Labour Laws in South Asia: The need for an inclusive approach* (Geneva: International Institute for Labour Studies, 2007).

Sarkar, Ashis, *Urban System, Urban Growth and Urbanisation in the 20<sup>th</sup> Century West Bengal* (Delhi: New Academic Publishers, 1998).

Schwartz, Howard & Jerry Jacobs, *Qualitative Sociology – A Method to the Madness* (New York: Free Press, 1979).

Sen, Amartya, *Resources, Values and Development* (Cambridge: Harvard University Press, 1984).

Sen, Amartya, *Commodities and Capabilities* (Amsterdam & New York: North Holland, 1985).

Sen, Amartya, *Hunger and Entitlements* (Helsinki: World Institute for Development Economics Research, 1987).

Sen, Amartya, *Inequality Reexamined* (New York: Russell Sage Foundation/Cambridge: Harvard University Press, 1992).

Sen, Amartya, *Development as Freedom* (New York: Alfred A. Knopf, 1999).

Sen, Amartya, *The Idea of Justice* (Cambridge: Harvard University Press, 2009).

Sen, Anupam, *The state, industrialization and class formations in India – A neo-Marxist perspective on colonialism, underdevelopment and development* (London: Routledge & Kegan Paul, 1982).

Shankar, Shylashri, *Scaling Justice – India's Supreme Court, Anti-Terror Laws, and Social Rights* (New Delhi: Oxford University Press, 2009).

Silverman, David & Amir Marvasti, *Doing Qualitative Research – A Comprehensive Guide* (Thousand Oaks: Sage, 2008).

Singh, M P, V.N. Shukla *Constitution of India*, 10<sup>th</sup> Edition (Lucknow: Eastern Book Company, 2001).

Singleton, Royce A., Jr. & Bruce C. Straits, *Approaches to Social Research* (New York: Oxford University Press, 2005).

Society for Participatory Research In Asia, *People's Autonomy in Government Schemes* (Kolkata: PRIA, 2008).

Standing, Guy, *Beyond the New Paternalism – Basic Security as Equality* (London & New York: Verso, 2002).

Stone, Katherine V. W., *From Widgets to Digits – Employment Regulation for the Changing Workplace* (New York: Cambridge University Press, 2004).

Supiot, Alain et al, *Beyond Employment Changes in Work and the Future of Labour Law in Europe* (Oxford & New York: Oxford University Press, 2001).

Szentes, Tamás, *The Transformation of the World Economy – New Directions and New Interests* (London & New Jersey: Zed Books, 1988).

Unni, Jeemol & Uma Rani, *Insecurities of Informal Workers in Gujarat, India* (Geneva: ILO, 2002).

Wallerstein, Immanuel, *The Modern World-System Capitalist Agriculture and the Origins of the European World-Economy in the Sixteenth Century* (New York and London: Academic Press, 1974).

Yin, R. K., *Case study research: design and methods* (2nd ed.) (Thousand Oaks: Sage Publications, 1994).

## ARTICLES

Agarwala, Ramgopal, Nagesh Kumar & Michelle Riboud, “Reforms, Labour Markets, and Social Security Policy in India: An Introduction” in Ramgopal Agarwala, Nagesh Kumar & Michelle Riboud eds, *Reforms, Labour Markets, and Social Security in India* (New Delhi: Oxford University Press, 2004) 1.

Ahluwalia, Montek Singh, “Economic Reforms in India Since 1991: Has Gradualism Worked?” (2002) 16: 3 *The Journal of Economic Perspectives*, 67.

Ahmed, Iftikhar, “Decent work and human development” (2003) 142: 2 *International Labour Review* 263.

Alexander, John M., “Capabilities, human rights and moral pluralism” (2004) 8: 4 *International Journal of Human Rights* 451.

Alkire, Sabina, “Dimensions of Human Development” (2002) 30: 2 *World Development* 181.

Alkire, Sabina, “Why the Capability Approach?” (2005) 6: 1 *Journal of Human development* 115.

Alston, Philip, “‘Core Labour Standards’ and the Transformation of the International Labour Rights Regime” (2004) 15: 3 *European Journal of International Law* 457.

Anderson, Elizabeth S., “What is the Point of Equality?” (1999) 109: 2 *Ethics* 287.

Anderson, Elizabeth, “Justifying the capabilities approach to justice” in Harry Brighouse & Ingrid Robeyns eds, *Measuring Justice Primary Goods and Capabilities* (Cambridge: Cambridge University Press, 2010) 81.

Anderson, Michael, “India 1858-1930 – The illusion of free labour” in Douglas Hay & Paul Craven eds, *Masters, Servants, and Magistrates in Britain and the Empire, 1562-1955* (Chapel Hill & London: The University of North Carolina Press, 2004) 422.

Anderson, David M., “Kenya, 1895-1939 – Registration and Rough Justice” in Douglas Hay & Paul Craven eds, *Masters, Servants, and Magistrates in Britain and the Empire, 1562-1955* (Chapel Hill & London: The University of North Carolina Press, 2004) 498.

Anker, Richard, et al, “Measuring decent work with statistical indicators” (2003) 142: 2 *International Labour Review* 147.

Arthurs, Harry, “Labour Law After Labour” in Guy Davidov and Brian Langille eds, *The Idea of Labour Law* (New York: Oxford University Press, 2011) 13.

Austin, Granville, “The Expected and the Unintended in Working a Democratic Constitution” in Zoya Hasan, E. Sridharan, & R. Sudarshan eds, *India's Living Constitution – Ideas, Practices, Controversies* (London: Anthem Press, 2005) 319.

Bag, Kheya, “Red Bengal's Rise and Fall” (2011) 70 *New Left Review* 69.

Bagchi, Amiya Kumar, “Studies on the Economy of West Bengal since Independence” (1998) 33: 47/48 *Economic and Political Weekly* 2973.

Ballet, Jerome, Jean-Luc Dubois & Francois-Regis Mahieu, "Responsibility for Each Other's Freedom: Agency as the Source of Collective Capability" (2007) 8: 2 *Journal of Human Development* 185.

Banakar, Reza & Max Travers, "Introduction" in Reza Banakar & Max Travers eds, *An Introduction to Law and Social Theory* (Oxford & Portland, Oregon: Hart, 2002) 1.

Banakar, Reza & Max Travers, "Introduction" in Reza Banakar & Max Travers eds, *Theory and Method in Socio-Legal Research* (Oxford & Portland, Oregon: Hart, 2005) ix.

Banakar, Reza & Max Travers, "Law, Sociology and Method" in Reza Banakar & Max Travers eds, *Theory and Method in Socio-Legal Research* (Oxford & Portland, Oregon: Hart, 2005) 1.

Bardhan, Pranab, "Poverty and Employment Characteristics of Urban Households in West Bengal" (1987) 22: 35 *Economic and Political Weekly*, 1496.

Baxi, Upendra, "The Little Done, the Vast Undone" - Some Reflections on Reading Glanville Austin's *The Indian Constitution*" (1967) 9 *Journal of the Indian Law Institute* 323.

Baxi, Upendra, "The (Im)possibility of Constitutional Justice – Seismmographic Notes on Indian Constitutionalism" in Zoya Hasan, E. Sridharan, & R. Sudarshan eds, *India's Living Constitution – Ideas, Practices, Controversies* (London: Anthem Press, 2005) 31.

Beneria, Lourdes, "Subcontracting and Employment Dynamics in Mexico City" in Alejandro Portes, Manuel Castells & Lauren A. Benton eds, *The Informal Economy – Studies in Advanced and Less developed Countries*, (Baltimore & London: The Johns Hopkins University Press, 1989) 173.

Beneria, Lourdes & Maria Floro, "Distribution, gender, and labor market informalization: A conceptual framework with a focus on homeworkers" in Neema Kudva & Lourdes Baneria eds, *Rethinking Informalization – Poverty, Precarious Jobs and Social Protection* (Cornell University Open Access Repository, 2005) 9.

Bensusan, Graciela, "Labour Law in Latin America – The gap between norms and reality" in Tzehainesh Tekle ed, *Labour Law And Worker Protection In Developing Countries* (Oxford and Portland, Oregon: Hart; Geneva: ILO, 2010) 135.

Benton, Lauren A., "Industrial Subcontracting and the Informal Sector: The Politics of Restructuring in the Madrid Electronics Industry" in Alejandro Portes, Manuel Castells & Lauren A. Benton eds, *The Informal Economy – Studies in Advanced and Less developed Countries*, (Baltimore & London: The Johns Hopkins University Press, 1989) 228.

- Bescond, David, Anne Chataignier & Farhad Mehran, "Seven indicators to measure decent work: An international comparison" (2003) 142: 2 *International Labour Review* 179.
- Bhattacharya, Nikhilesh, Manabendu Chattopadhyay & Ashok Rudra, "Changes in Level of Living in Rural West Bengal: Perceptions of the People" (1987) 22: 48 *Economic and Political Weekly* 2071.
- Blackett, Adelle, "Situated Reflections on International Labour Law, Capabilities, and Decent Work: The Case of Centre *Maraîcher* Eugène Guinois", (2007) *Revue québécoise de droit international (Hors-série)* 223.
- Blackett, Adelle, "Emancipation in the Idea of Labour Law" in Guy Davidov and Brian Langille eds, *The Idea of Labour Law* (New York: Oxford University Press, 2011) 420.
- Bonnet, Florence, Jose B. Figueiredo & Guy Standing, "A family of decent work indexes" (2003) 142: 2 *International Labour Review* 213.
- Bronstein, Arturo, "Labour Law and the Informal Sector" (1999) *Workshop on Regulatory Frameworks and their Economic and Social Impact*, [unpublished paper] Geneva, 4-5 February.
- Browne, Jude, Simon Deakin & Frank Wilkinson, "Capabilities, Social Rights and European Market Integration" in Robert Salais & Robert Villeneuve eds, *Europe and the Politics of Capabilities* (New York: Cambridge University Press, 2004) 205.
- Castells, Manuel & Alejandro Portes, "World Underneath: The Origins, Dynamics, and Effects of the Informal Economy" in Alejandro Portes, Manuel Castells & Lauren A. Benton eds, *The Informal Economy – Studies in Advanced and Less developed Countries*, (Baltimore & London: The Johns Hopkins University Press, 1989) 11.
- Chakrabarty, Bidyut, "The Left Front's 2009 Lok Sabha Poll Debacle in West Bengal, India" (2011) 51: 2 *Asian Survey* 290.
- Chanock, Martin, "South Africa, 1841-1924 – Race, Contract, and Coercion" in Douglas Hay & Paul Craven eds, *Masters, Servants, and Magistrates in Britain and the Empire, 1562-1955* (Chapel Hill & London: The University of North Carolina Press, 2004) 338.
- Chatterjee, Mirai & Jayshree Vyas, "Organising Insurance for Women Workers" in Renana Jhabvala & R. K. A. Subrahmanya eds, *The Unorganised Sector – Work Security and Social Protection* (New Delhi: Sage Publications, 2001) 74.
- Chaturvedi, Bharati, "Santraj Maurya and Lipi in India – Tales of Two Waste Pickers in Delhi, India" in Melanie Samson ed, *Refusing to be Cast Aside: Waste Pickers Organising Around the World* (Cambridge, MA: WEIGO, 2009) 8.

Chen, Martha, Jennefer Sebstad & Lesley O'Connell, "Counting the Invisible Workforce: The Case of Homebased Workers" (1999) 27: 3 *World Development* 603.

Chen, Martha Alter, "Rethinking the informal economy: linkages with the formal economy and the formal regulatory environment" in Basudeb Guha-Khasnabis, Ravi Kanbur & Elinor Ostrom eds, *Linking the Formal and Informal Economy Concepts and Policies* (New York: Oxford University Press, 2006) 75.

Chen, Marty, "Rethinking the informal economy: from enterprise characteristics to employment relations" in Neema Kudva & Lourdes Baneria eds, *Rethinking Informalization – Poverty, Precarious Jobs and Social Protection* (Cornell University Open Access Repository, 2005) 28.

Chikarmane, Poornima & Lakshmi Narayanan, "Transform or Perish: Changing Conceptions of Work in Recycling" in Judy Fudge, Shae McCrystal & Kamala Sankaran eds, *Challenging the Legal Boundaries of Work Regulation* (Oxford & Portland, Oregon: Hart Publishing, 2012) 49.

Christensen, Robert K., "The global path: soft law and non-sovereigns formalizing the potency of the informal sector" in Basudeb Guha-Khasnabis, Ravi Kanbur & Elinor Ostrom eds, *Linking the Formal and Informal Economy Concepts and Policies* (New York: Oxford University Press, 2006) 36.

Cohen, G.A., "Equality of What? On Welfare, Goods and Capabilities" in Martha C. Nussbaum & Amartya Sen eds, *The Quality of Life* (Oxford: Clarendon, 1993) 9.

Collins, Hugh, "Justifications and techniques of Legal Regulation of the Employment Relation" in Hugh Collins, M. Davies & Roger Rideouts eds, *Legal Regulation of the Employment Relation* (London: Kluwer Law International, 2003) 3.

Cox, Robert W., "The Idea of International Labour Regulation" (1953) 67 *International Labour Review* 191.

Cox, Robert W., "Labor and Hegemony" (1977) 31: 3 *International Organization* 385.

Daele, Jasmien Van, "The International Labour Organization (ILO) in Past and Present Research" (2008) 53 *International Review of Social History* 485.

Das, Keshab, "Income and Employment in Informal Manufacturing: A Case Study" in Renana Jhabvala, Ratna M. Sudarshan & Jeemol Unni eds, *Informal Economy Centrestage – New Structures of Employment* (New Delhi: Sage Publications, 2003) 62.

Dasgupta, Biplab, "The 1972 Election in West Bengal" (1972) 7: 16 *Economic and Political Weekly* 804.

- Dash, S, "Human capital as a basis of comparative advantage equations in services outsourcing: A cross country comparative study" (2006) International Conference on Information and Communication Technologies and Development, 165.
- Datta, Pranati, "Push-Pull Factors of Undocumented Migration from Bangladesh to West Bengal: A Perception Study" (2004) 9: 2 The Qualitative Report 335.
- Dave, Janhavi, Manali Shah & Yamini Parikh, "The Self-Employed Women's Association (SEWA) Organising Through Union and Co-operative in India" in Melanie Samson ed, *Refusing to be Cast Aside: Waste Pickers Organising Around the World* (Cambridge, MA: WEIGO, 2009) 27.
- Davidov, Guy, "The (changing?) idea of labour law" (2007) 146: 3-4 International Labour Review 311.
- De Haan, Arjan, "Calcutta's labour migrants: Encounters with modernity" (2003) 37 Contributions to Indian Sociology, 189.
- Deakin, Simon & Jude Browne, "Social Rights and Market Order: Adapting the CA" in Tamara K Hervey & Jeff Kenner eds, *Economic and Social Rights under the EU Charter of Fundamental Rights – A Legal Perspective* (Oxford and Portland, Oregon: Hart, 2003) 27.
- Deakin, Simon, "The Contribution of Labour Law to Economic and Human Development" in Guy Davidov and Brian Langille eds, *The Idea of Labour Law* (New York: Oxford University Press, 2011) 156.
- Deolalikar, Anil B., "Human Development in India: Past Trends and Future Challenges" in Raghendra Jha ed, *The Indian Economy Sixty Years After Independence* (London: Palgrave Macmillan, 2008) 155.
- Dev, S. Mahendra, "Social Security in the Unorganized Sector in India" in Ramgopal Agarwala, Nagesh Kumar & Michelle Riboud eds, *Reforms, Labour Markets, and Social Security in India* (New Delhi: Oxford University Press, 2004) 198.
- Dukes, Ruth, "Constitutionalizing Employment Relations: Sinzheimer, Kahn-Freund, and the Role of Labour Law" (2008) 35 Journal of Law and Society 341.
- Dukes, Ruth, "Hugo Sinzheimer and the Constitutional Function of Labour Law" in Guy Davidov and Brian Langille eds, *The Idea of Labour Law* (New York: Oxford University Press, 2011) 57.
- Dworkin, Ronald, "What is Equality? Part 2: Equality of Resources" (1981) 10: 4 Philosophy and Public Affairs 283.

- Evans, Peter, "Collective Capabilities, Culture, and AmartyaSen's Development as Freedom" (2002) 37: 2 *Studies in Comparative International Development* 54.
- Fashoyin, Tayo, "Tripartite cooperation, social dialogue and national development" (2004) 143: 4 *International Labour Review* 341.
- Fenwick, Colin, Evance Kalula & Ingrid Landau, "Labour Law – A southern African perspective" in Tzehainesh Tekle ed, *Labour Law And Worker Protection In Developing Countries* (Oxford and Portland, Oregon: Hart; Geneva: ILO, 2010) 175.
- Fields, Gary S., "Decent work and development policies" (2003) 142: 2 *Intl. Lab. Rev.* 239.
- Foster, Andrew D. & Mark R. Rosenzweig, "Comparative Advantage, Information and the Allocation of Workers to Tasks: Evidence from an Agricultural Labour Market" (1996) 63: 3 *The Review of Economic Studies*, 347.
- Fudge, Judy, "The New Discourse of Labor Rights" (2007) 29 *Comparative Labor Law and Policy Journal* 29.
- Fudge, Judy, "Labour as a 'Fictive Commodity': Radically Reconceptualizing Labour Law" in Guy Davidov and Brian Langilleeds, *The Idea of Labour Law* (New York: Oxford University Press, 2011) 120.
- Fudge, Judy, "Blurring Legal Boundaries" in Judy Fudge, Shae McCrystal & Kamala Sankaran eds, *Challenging the Legal Boundaries of Work Regulation* (Oxford & Portland, Oregon: Hart Publishing, 2012) 1.
- Gangoli, Geetanjali, "Sex Work, Poverty and Migration in Eastern India" in Sadhna Arya & Anupama Roy eds, *Poverty, Gender and Migration* (New Delhi, Thousand Oaks & London: Sage Publications, 2006) 214.
- Gerxhani, Klarita, "The Informal Sector in Developed and Less Developed Countries: A Literature Survey" (2004) 120: 3/4 *Public Choice* 267.
- Ghai, Dharam, "Decent work: Universality and diversity" in Dharam Ghai ed, *Decent Work: Objectives and Strategies* (Geneva: ILS, ILO, 2006) 1.
- Ghosh, Madhusudan, "Agricultural Development, Agrarian Structure and Rural Poverty in West Bengal" (1998) 33: 47/48 *Economic and Political Weekly* 2987.
- Ginneken, Wouter van, "Social Protection for the Informal Sector in India" in Ramgopal Agarwala, Nagesh Kumar & Michelle Riboud eds, *Reforms, Labour Markets, and Social Security in India* (New Delhi: Oxford University Press, 2004) 186.

- Giovanola, Benedetta, "Personhood and Human Richness: Good and Well-Being in the Capability Approach and Beyond" (2005) LXIII: 2 *Review of Social Economy* 249.
- Goldin, Adrian, "Global Conceptualizations and Local Constructions of the Idea of Labour Law" in Guy Davidov and Brian Langille eds, *The Idea of Labour Law* (New York: Oxford University Press, 2011) 69.
- Grindle, Merilee S., "Agrarian Class Structures and State Policies: Past, Present and Future" (1993) 28: 1 *Latin American Research Review* 174.
- Guha-Khasnabis, Basudeb, Ravi Kanbur & Elinor Ostrom, "Beyond formality and informality" in Basudeb Guha-Khasnabis, Ravi Kanbur & Elinor Ostrom eds, *Linking the Formal and Informal Economy Concepts and Policies* (New York: Oxford University Press, 2006) 1.
- Gumbrell-McCormick, Rebecca, "European trade unions and 'atypical' workers" (2011) 42: 3 *Industrial Relations Journal* 293.
- Guruswamy, Mohan, Kamal Sharma & Jeevan Prakash Mohanty, "Economic Growth and Development in West Bengal: Reality versus Perception" (2005) 40: 21 *Economic and Political Weekly* 2151.
- Halliday, Fred, "The pertinence of imperialism" in Mark Rupert & Hazel Smith, eds, *Historical Materialism and Globalization* (London: Routledge, 2002) 75.
- Harris, John R & Michael P Todaro, "Migration, Unemployment and Development: A Two-Sector Analysis" (1970) 60: 1 *The American Economic Review* 126.
- Harriss-White, Babara, "Globalization, The Financial Crisis and Petty Production in India's Socially Regulated Informal Economy" (2010) 1: 1 *Global Labour Journal* 152.
- Harriss-White, Barbara, "Globalization, the Financial Crisis and Petty Commodity Production in India's Socially Regulated Informal Economy" in Paul Bowles & John Harriss eds, *Globalization and Labour in China and India – Impacts and Responses* (New York: Palgrave Macmillan, 2010) 131.
- Harriss-White, Barbara & Anushree Sinha, "Introduction" in Barbara Harriss-White & Anushree Sinha eds, *Trade Liberalization and India's Informal Economy* (New Delhi: Oxford University Press, 2007) 1.
- Harriss-White, Barbara, "Work and Wellbeing in Informal Economies: The Regulative Roles of Institutions of Identity and the State" (2010) 38: 2 *World Development* 170.
- Hart, Keith, "Informal Income Opportunities and Urban Employment in Ghana" (1973) 11: 1 *The Journal of Modern African Studies* 61.

Hart, Keith, "Bureaucratic form and the informal economy" in Basudeb Guha-Khasnabis, Ravi Kanbur & Elinor Ostrom eds, *Linking the Formal and Informal Economy Concepts and Policies* (New York: Oxford University Press, 2006) 23.

Harvey, David, "From Globalization to the New Imperialism" in R. Appelbaum & W. I. Robinson eds, *Critical Globalization Studies* (New York: Routledge, 2005) 91.

Harvey, David, "Neo-liberalism and the restoration of class power" in David Harvey, *Spaces of Global Capitalism: towards a Theory of Uneven Geographical Development*, (London: Verso, 2006) 9.

Haworth, Nigel & Stephen Hughes, "Trade and International Labour Standards: Issues and Debates Over a Social Clause" (1997) 39: 2 *Journal of Industrial Relations* 179.

Heintz, James & Robert Pollin, "Informalization, economic growth, and the challenge of creating viable labor standards in developing countries" in Neema Kudva & Lourdes Baneria eds, *Rethinking Informalization – Poverty, Precarious Jobs and Social Protection* (Cornell University Open Access Repository, 2005) 44.

Helfer, Laurence R., "Understanding Change in International Organizations: Globalization and Innovation in the ILO", (2006) 59 *Vanderbilt Law Review*, 649.

Hepple, Bob, "Introduction" in Bob Hepple ed, *The Making of Labour Law in Europe – A Comparative Study of Nine Countries Up To 1945* (London: Mansell, 1986) 1.

Hepple, Bob, "The Future of Labour Law" (1995) 24: 4 *Industrial Law Journal* 303.

Hepple, Bob, "Rights at work" in Dharam Ghai ed, *Decent Work: Objectives and Strategies* (Geneva: ILS, ILO, 2006) 33.

Hensman, Rohini, "Labour and Globalization: Union Responses in India" in Paul Bowles & John Harriss eds, *Globalization and Labour in China and India – Impacts and Responses* (New York: Palgrave Macmillan, 2010) 189.

Hill, Elizabeth, "Women in the Indian Informal Economy: Collective Strategies for Work Life Improvement and Development" (2001) 15: 3 *Work, Employment & Society* 443.

Huysman, Marijk, "Waste picking as a survival strategy for women in Indian cities" (1994) 6: 2 *Environment and Urbanization* 155.

Hyde, Alan, "What is Labour Law" in Guy Davidov & Brian Langille eds, *Boundaries and Frontiers of Labour Law* (Portland: Hart Publishing, 2006) 37.

Hyde, Alan, "The Idea of the Idea of Labour Law: A Parable" in Guy Davidov & Brian Langille eds, *The Idea of Labour Law* (Oxford & New York: Oxford University press, 2011) 88.

- Ibrahim, Solava S., "From Individual to Collective Capabilities: The Capability Approach as a Conceptual Framework for Self-help" (2006) 7: 3 *Journal of Human Development* 397.
- Jha, Raghendra, "The Indian Economy: Current Performance and Short-Term Prospects" in Raghendra Jha ed, *The Indian Economy Sixty Years After Independence*, (London: Palgrave Macmillan, 2008) 20.
- Jhabvala, Renana, "Participatory Approaches: Emerging Trend in Social Security" in Renana Jhabvala & R. K. A. Subrahmanya eds, *The Unorganised Sector – Work Security and Social Protection* (New Delhi: Sage Publications, 2001) 30.
- KKPKP Central Secretariat, "The SWACHH National Alliance of Waste Pickers, India" in Melanie Samson ed, *Refusing to be Cast Aside: Waste Pickers Organising Around the World* (Cambridge, MA: WEIGO, 2009) 37.
- Kannan, K.P. & T.S. Papola, "Workers in the informal sector: Initiatives by India's National Commission for Enterprises in the Unorganized Sector (NCEUS)" (2007) 146: 3-4 *International Labour Review* 321.
- Kanwar, J. S., S. M. Virmani & S. K. Das, "Farming Systems Research in India – A Historical-Perspective" (1992) 28: 1 *Experimental Agriculture*, 1.
- Kapoor, Aditi, "The SEWA way: Shaping another future for informal labour" (2007) 39 *Futures* 554.
- Karat, Prakash, "On Democratic Centralism" (2010) XXVI: 1 *The Marxist* 3.
- Khan, Mohd. Afaq, "India's comparative advantage in business process outsourcing" (2004) 1: 2 *Aim Explore*, 33.
- Khosla, Madhav, "Making social rights conditional: Lessons from India" (2010) 8: 4 *I.CON* 739.
- Kolben, Kevin, "A Development Approach to Trade and Labor Regimes" (2010) 45: 2 *Wake Forest Law Review* 355.
- Kucera, David & Leanne Roncolato, "Informal employment: Two contested policy issues" (2008) 147:4 *International Labour Review* 321.
- Kudva, Neema & Lourdes Baneria, "Introduction" in Neema Kudva & Lourdes Baneria eds, *Rethinking Informalization – Poverty, Precarious Jobs and Social Protection* (Cornell University Open Access Repository, 2005) 6.
- Kuruvilla, Sarosh, "Social dialogue for decent work" in Dharam Ghai ed, *Decent Work: Objectives and Strategies* (Geneva: ILS, ILO, 2006) 175.

Lalitha, N., “Unorganised Manufacturing and the Gross Domestic Product” in Renana Jhabvala, Ratna M. Sudarshan & Jeemol Unni eds, *Informal Economy Centrestage – New Structures of Employment* (New Delhi: Sage Publications, 2003) 157.

Langille, Brian A, “Core Labour Rights – The True Story (Reply to Alston)” (2005) 16: 3 *European Journal of International Law* 409.

Langille, Brian, “Labour Law's Back Pages” in Guy Davidov & Brian Langille eds, *Boundaries and Frontiers of Labour Law* (Portland: Hart Publishing, 2006) 13.

Langille, Brian, “Labour Law's Theory of Justice” in Guy Davidov & Brian Langille eds, *The Idea of Labour Law* (Oxford & New York: Oxford University press, 2011) 101.

Lewis, W.A., “Economic Development with Unlimited Supplies of Labour” (1954) 22:2 *The Manchester School* 139.

Low, Linda & T C Aw “The Human Development Index Revisited” (1997) *Singapore Management Review* 1.

Ludden, David, “The Formation of Modern Agrarian Economies in South India” in Binay Bhushan Chaudhuri ed, *Economic History Of India From Eighteenth To Twentieth Century* (New Delhi: Centre for Studies in Civilizations, 2005) 1.

Marshall, Shelley, (undated) “Main Findings Concerning the Role of Labour Law in Promoting Decent Work” in *Promoting Decent Work: The Role of Labour Law* (in file with author).

Maupain, Francis, “New Foundation or New Façade? The ILO and the 2008 Declaration on Social Justice for a Fair Globalization” (2009) 20: 3 *EJIL* 823.

McGillivray, Mark & Howard White, “Measuring Development? The UNDP's Human Development Index” (1993) 5: 2 *Journal of International Development* 183.

McNally, David, “The Colour of Money: Race, Gender, and the Many Oppressions of Global Capital” in David McNally ed, *Another World is Possible: Globalization and Anti-Capitalism*, revised edition (Winnipeg: Arbeiter Ring Publishing, 2006) 137.

Meknassi, Rachid Filali, “The effectiveness of labour law and decent work aspirations in the developing countries – A framework for analysis” in Tzehainesh Tekle ed, *Labour Law And Worker Protection In Developing Countries* (Oxford and Portland, Oregon: Hart; Geneva: ILO, 2010) 51.

Mitchell, Richard, “Introduction: A New Scope and a New Task for Labour Law?” in Richard Mitchell ed, *Redefining Labour Law – New Perspectives on the Future of*

*Teaching and Research* (Melbourne: Centre for Employment and Labour Relations Law, Occasional Monograph Series No. 3, 1995) vii.

Mitchell, Richard & Christopher Arup, "Labour Law and Labour Market Regulation" in Christopher Arup et al eds, *Labour Law and Labour Market Regulation: Essays on the Construction, Constitution and Regulation of Labour Markets and Work Relationships* (Sydney: Federation Press, 2006) 3.

Mohapatra, Prabhu P., "Assam and the West Indies, 1860-1920 – Immobilizing Plantation Labour" in Douglas Hay & Paul Craven eds, *Masters, Servants, and Magistrates in Britain and the Empire, 1562-1955* (Chapel Hill & London: The University of North Carolina Press, 2004) 455.

Mukherji, Saugata, "Evolution of the Non-Agrarian Formal Sector of the Indian Economy Through the Nineteenth and Twentieth Century" in Binay Bhushan Chaudhuri ed, *Economic History Of India From Eighteenth To Twentieth Century* (New Delhi: Centre for Studies in Civilizations, 2005) 356.

Mukhopadhyay, Ishita, "Calcutta's Informal Sector: Changing Pattern of Labour Use" (1998) 33: 47/48 *Economic and Political Weekly* 3075.

Narayana, M. R., "Formal and informal enterprises: concept, definition, and measurement issues in India" in Basudeb Guha-Khasnobis, Ravi Kanbur & Elinor Ostrom eds, *Linking the Formal and Informal Economy Concepts and Policies* (New York: Oxford University Press, 2006) 93.

Noorbakhsh, Farhad, "The Human Development Index: Some Technical Issues and Alternative Indices" (1998) 10 *Journal of International Development* 589.

Nussbaum, Martha, "Nature, Function and Capability: Aristotle on Political Distribution", (1987) WIDER Working Papers, WP 31, December 1987, World Institute for Development Economics Research of the United Nations University.

Nussbaum, Martha C., "Capabilities as Fundamental Entitlements: Sen and Social Justice" (2003) 9: 2/3 *Feminist Economics* 33.

Nussbaum, Martha, "Violence on the Left – Nandigram and the Communists of West Bengal" (2008) *Dissent* 27.

Paul, Shutapa, "East Bengal in West Bengal", *India Today* (24 January 2011).

Perelman, Michael, "The History of Capitalism" in Alfredo Saad-Filho eds, *Anti-Capitalism* (London: Pluto Press, 2003) 119.

"Perspectives: Towards a policy framework for decent work" (2002) 141: 1-2 *International Labour Review* 161.

- Petit, Philip, "Freedom in the Spirit of Sen" in Christopher W Morris ed, *Amartya Sen* (New York: Cambridge University Press, 2010) 91.
- Portes, Alejandro & Lauren Benton, "Industrial Development and Labor Absorption: A Reinterpretation" (1984) 10: 4 *Population and Development Review* 589.
- Radovanovic, Bojana, "Human Development Index as a Measure of Human Development" (2011) *FilozofijaiDrustvo* 193.
- Ramm, Thilo, "Epilogue: The New Ordering of Labour Law 1918-45" in Bob Hepple ed, *The Making of Labour Law in Europe – A Comparative Study of Nine Countries Up To 1945* (London: Mansell, 1986) 277.
- Rani, Uma & Jeemol Unni, "Do Economic Reforms Influence Home-Based Work? Evidence from India", (2009) 15: 3 *Feminist Economics* 191.
- Ranis, Gustav, Frances Stewart & Emma Samman, "Human Development: Beyond the Human Development Index" (2006) 7: 3 *Journal of Human Development* 323.
- Rathbone, Richard, "West Africa, 1874-1948 – Employment Legislation in a Nonsettler Peasant Economy" in Douglas Hay & Paul Craven eds, *Masters, Servants, and Magistrates in Britain and the Empire, 1562-1955* (Chapel Hill & London: The University of North Carolina Press, 2004) 481.
- Rawal, Vikas & Madhura Swaminathan, "Changing Trajectories: Agricultural Growth in West Bengal, 1950 to 1996" (1998) 33: 40 *Economic and Political Weekly* 2595.
- Robeyns, Ingrid, "Sen's Capability Approach and Gender Inequality: Selecting Relevant Capabilities" (2003) 9: 2-3 *Feminist Economics* 61.
- Robeyns, Ingrid, "The Capability Approach: a theoretical survey" (2005) 6: 1 *Journal of Human Development* 93.
- Rodgers, Gerry, "The Goal of Decent Work" (2008) 39: 2 *IDS Bulletin* 63.
- Routh, Supriya, "Globalizing Labor Standards: The Developed-Developing Divide" (2010) 2: 1 *Jindal Global Law Review*, 153.
- Sachs, Ignacy, "Inclusive development and decent work for all" (2004) 143: 1-2 *International Labour Review* 161.
- Salais, Robert & Robert Villeneuve, "Introduction: Europe and the politics of capabilities" in Robert Salais & Robert Villeneuve eds, *Europe and the Politics of Capabilities* (New York: Cambridge University Press, 2004) 1.

Salais, Robert, “Incorporating the CA into social and employment policies” in Robert Salais & Robert Villeneuve eds, *Europe and the Politics of Capabilities* (New York: Cambridge University Press, 2004) 287.

Samson, Melanie, “Chapter 4: Formal Integration into Municipal Waste Management Systems” in Melanie Samson ed, *Refusing to be Cast Aside: Waste Pickers Organising Around the World* (Cambridge, MA: WEIGO, 2009) 50.

Samson, Melanie, “Chapter 5: Using the Law” in Melanie Samson ed, *Refusing to be Cast Aside: Waste Pickers Organising Around the World* (Cambridge, MA: WEIGO, 2009) 60.

Sankaran, Kamala, “Protecting the Worker in the Informal Economy: The Role of Labour law” in Guy Davidov & Brian Langille eds, *Boundaries and Frontiers of Labour Law* (Portland: Hart Publishing, 2006) 205.

Sankaran, Kamala, “Labour laws in South Asia – The need for an inclusive approach” in Tzehainesh Tekle ed, *Labour Law And Worker Protection In Developing Countries* (Oxford and Portland, Oregon: Hart; Geneva: ILO, 2010) 225.

Sankaran, Kamala, “Informal Employment and the Challenges for Labour Law” in Guy Davidov & Brian Langille eds, *The Idea of Labour Law* (Oxford & New York: Oxford University press, 2011) 223.

Sanyal, Kalyan & Rajesh Bhattacharya, “Beyond the Factory: Globalization, Informalization of Production and the Changing Locations of Labour” in Paul Bowles & John Harriss eds, *Globalization and Labour in China and India – Impacts and Responses* (New York: Palgrave Macmillan, 2010) 151.

Sassen-Koob, Saskia, “New York City’s Informal Economy”, in Alejandro Portes, Manuel Castells & Lauren A. Benton eds, *The Informal Economy – Studies in Advanced and Less developed Countries*, (Baltimore & London: The Johns Hopkins University Press, 1989) 60.

Sen, Amartya, “Equality of What?” The Tanner Lecture on Human Values, delivered at Stanford University, May 22, 1979 in *The Tanner Lectures On Human Values, Vol. I* (Salt Lake City: University of Utah Press/Cambridge, London, Melbourne and Sydney: Cambridge University Press, 1980).

Sen, Amartya, “Well-Being, Agency and Freedom: The Dewey Lectures 1984” (1985) 82: 4 *Journal of Philosophy* 169.

Sen, Amartya, “Freedom of Choice: Concepts and Content” (1988) 32 *European Economic Review* 269.

Sen, Amartya, "Capability and Well-Being" in Martha Nussbaum & Amartya Sen, eds, *The Quality of Life* (Oxford: Oxford University Press, 1993) 30.

Sen, Amartya, "Work and rights" (2000) 139: 2 *International Labour Review* 119.

Sen, Amartya, "Response to commentaries" (2002) 37: 2 *Studies in Comparative International Development*, 78.

Sen, Amartya, "Human Rights and Capabilities" (2005) 6: 2 *Journal of Human development* 151.

Sen, Amartya, "Human Rights and the Limits of Law" (2006) 27 *Cardozo Law Rev* 2913.

Sen, Amartya, "The place of capability in a theory of justice" in Harry Brighouse & Ingrid Robeyns eds, *Measuring Justice Primary Goods and Capabilities* (Cambridge: Cambridge University Press, 2010) 239.

Sen Gupta, Prasanta, "Politics in West Bengal: The Left Front versus the Congress (I)" (1989) 29: 9 *Asian Survey* 883.

Servais, Jean-Michel, "Globalization and decent work policy: Reflections upon a new legal approach" (2004) 143: 1-2 *International Labour Review* 185.

Sharma, Alok N., "Employment Generation Policy and Social Safety Nets in India" in Ramgopal Agarwala, Nagesh Kumar & Michelle Riboud eds, *Reforms, Labour Markets, and Social Security in India* (New Delhi: Oxford University Press, 2004) 236.

Shekar, Nalini, "Suman More – KKPKP, Pune, India" in Melanie Samson ed, *Refusing to be Cast Aside: Waste Pickers Organising Around the World* (Cambridge, MA: WEIGO, 2009) 11.

Sicular, Daniel T., "Pockets of Peasants in Indonesian Cities: The Case of Scavengers" (1991) 19: 2/3 *World Development*, 137.

Siggel, Eckhard, "The Indian informal sector: The impact of globalization and reform" (2010) 149: 1 *International Labour Review* 93.

Sindzingre, Alice, "The relevance of the concepts of formality and informality: a theoretical appraisal" in Basudeb Guha-Khasnobis, Ravi Kanbur & Elinor Ostrom eds, *Linking the Formal and Informal Economy Concepts and Policies* (New York: Oxford University Press, 2006) 59.

Singh, Arbind & Rakesh Saran, "NIDAN Swachdhara Private Ltd. Forming a Company with Waste Pickers in India" in Melanie Samson ed, *Refusing to be Cast Aside: Waste Pickers Organising Around the World* (Cambridge, MA: WEIGO, 2009) 17.

Singh, M. P., “The Statics and the Dynamics of the Fundamental Rights and the Directive Principles – A Human Rights Perspective” (2003) 5 Supreme Court Cases (Journal) 1.

Smit, Nicola & Elmarie Fourie, “Extending Protection to Atypical Workers, Including Workers in the Informal Economy, in Developing Countries” (2010) 26: 1 International Journal of Comparative Labor Law & Industrial Relations 43.

Somavia, Juan, “Promoting the MDGs – The Role of Employment and Decent Work” (2007) 4 UN Chronicle 28.

Spector, Horacio, “Philosophical Foundations of Labor Law” (2006) 33 Florida State University Law Review 1119.

Srivastava, S. C., “Development and disparity: agriculture in North East India” (1998) LXXIX: 313 Indian Journal of Economics, 195.

Standing, Guy, “From People’s Security Surveys to a Decent Work Index” (2002) 141: 4 International Labour Review 441.

Standing, Guy, “The ILO: An Agency for Globalization?” (2008) 39: 3 Development and Change 355.

Stepick, Alex, “Miami’s Two Informal Sectors” in Alejandro Portes, Manuel Castells & Lauren A. Benton eds, *The Informal Economy – Studies in Advanced and Less developed Countries*, (Baltimore & London: The Johns Hopkins University Press, 1989) 111.

Stewart, Frances, “Groups and Capabilities” (2005) 6: 2 Journal of Human Development 185.

Subrahmanya, R. K. A. & Renana Jhabvala, “Meeting Basic Needs: The Unorganised Sector and Social Security” in Renana Jhabvala & R. K. A. Subrahmanya eds, *The Unorganised Sector – Work Security and Social Protection* (New Delhi: Sage Publications, 2001) 17.

Subrahmanya, R. K. A., “Strategies for Protective Social Security” in Renana Jhabvala & R. K. A. Subrahmanya eds, *The Unorganised Sector – Work Security and Social Protection* (New Delhi: Sage Publications, 2001) 38.

Subrahmanya, R. K. A., “Support for the Unorganised Sector: Existing Social Security Measures” in Renana Jhabvala & R. K. A. Subrahmanya eds, *The Unorganised Sector – Work Security and Social Protection* (New Delhi: Sage Publications, 2001) 45.

Subrahmanya, R. K. A., “Welfare Funds: An Indian Model for Workers in the Unorganised Sector” in Renana Jhabvala & R. K. A. Subrahmanya eds, *The Unorganised Sector – Work Security and Social Protection* (New Delhi: Sage Publications, 2001) 65.

Sudarshan, Ratna M. & Jeemol Unni, "Measuring the Informal Economy" in Renana Jhabvala, Ratna M. Sudarshan & Jeemol Unni eds, *Informal Economy Centrestage – New Structures of Employment* (New Delhi: Sage Publications, 2003) 19.

Supiot, Alain, "Perspectives on work: Introduction" (1996) 135: 6 *International Labour Review* 603.

Swaminathan, Mina, "Worker, Mother or Both: Maternity and Child Care Services for Women in the Unorganised Sector" in Renana Jhabvala & R. K. A. Subrahmanya eds, *The Unorganised Sector – Work Security and Social Protection* (New Delhi: Sage Publications, 2001) 122.

Tekle, Tzehainesh, "Labour law and worker protection in the South: An evolving tension between models and reality" in Tzehainesh Tekle ed, *Labour Law And Worker Protection In Developing Countries* (Oxford and Portland, Oregon: Hart; Geneva: ILO, 2010) 3.

Trebilcock, Anne, "Using Development Approaches To Address The Challenge Of The Informal Economy For Labour Law" in Guy Davidov & Brian Langille eds, *Boundaries And Frontiers Of Labour Law* (Oxford: Hart Publishing, 2006) 63.

Tripp, Aili Mari, "Creating Collective Capabilities: Women, Agency and the Politics of Representation" (2010) 19: 1 *Columbia Journal of Gender and Law* 219.

Unni, Jeemol, "Gender and Informality in Labour Market in South Asia" (2001) 36: 26 *Economic and Political Weekly*, 2360.

Unni, Jeemol & Namrata Bali, "Subcontracted Women Workers in the Garment Industry in India" in R Balakrishnan ed, *The Hidden Assembly Line: Gender Dynamics of subcontracted Work in a Global Economy* (Bloomfield, Connecticut: Kumarian Press, 2002) 115.

Unni, Jeemol & Uma Rani, "Employment and Income in the Informal Economy: A Micro-Perspective" in Renana Jhabvala, Ratna M. Sudarshan & Jeemol Unni eds, *Informal Economy Centrestage – New Structures of Employment* (New Delhi: Sage Publications, 2003) 39.

Vaidyanathan, A., "The Pursuit of Social Justice" in Zoya Hasan, E. Sridharan, & R. Sudarshan eds, *India's Living Constitution – Ideas, Practices, Controversies* (London: Anthem Press, 2005) 284.

Valticos, Nicolas, "Fifty years of standard-setting activities by the International Labour Organisation" (1996) 135: 3-4 *International Labour Review* 393.

Vosko, Leah, "'Decent Work': The Shifting Role of the ILO and the Struggle for Global Social Justice" (2002) 19: 2 *Global Social Policy* 19.

Wallerstein, Immanuel, “The Rise and Future Demise of the World Capitalist System: Concepts for Comparative Analysis” (1974) 16: 4 *Comparative Studies in Society and History* 387.

Weiss, Manfred, “Re-Inventing Labour Law?” in Guy Davidov and Brian Langille eds, *The Idea of Labour Law* (New York: Oxford University Press, 2011) 43.

Wilson, David C., Costas Velis & Chris Cheeseman, “Role of informal sector recycling in waste management in developing countries” (2006) 30 *Habitat International* 797.

Wisskirchen, Alfred, “The standard-setting and monitoring activity of the ILO: Legal questions and practical experience”, (2005) 144: 3 *International Labour Review* 253.

Yhdego, Michael, “Scavenging solid wastes in Dar es Salaam, Tanzania” (1991) 9 *Waste Management and Research*, 259.

#### REPORTS & ELECTRONIC RESOURCES

“About the Informal Economy – Definitions and Theories”, *Women in Informal Employment: Globalizing and Organizing*, available at [http://www.wiego.org/about\\_ie/definitionsAndTheories.php](http://www.wiego.org/about_ie/definitionsAndTheories.php) (site visited 22 June 2010).

Banerjee, Sharmistha et al, *A Report on Rapid Assessment Survey of Homeless Population within Kolkata Municipal Corporation Area* (Kolkata: Calcutta Samaritans, Undated).

Becker, Kristina Flodman, “The Informal Economy”, *Sida Fact Finding Study*, March 2004 at 21, available at <http://rru.worldbank.org/Documents/PapersLinks/Sida.pdf> (site visited 20 July 2010).

Bhalla, Sheila, *Definitional and Statistical Issues Relating to Workers in Informal Employment*, Working Paper No. 3, National Commission for Enterprises in the Unorganised Sector (New Delhi: NCEUS, 2008).

Blaxall, John, “India's Self Employed Women's Association (SEWA) – Empowerment through Mobilization of Poor Women on a Large Scale”, available at <http://info.worldbank.org/etools/docs/reducingpoverty/case/79/fullcase/India%20SEWA%20Full%20Case.pdf> (site visited 6 June 2012).

Bose, Antara, “Rag-pickers take to reading, saving – Interactive session motivates underprivileged children to join schools”, *The Telegraph* (22 August 2009) available at [http://www.telegraphindia.com/1090822/jsp/jharkhand/story\\_11394087.jsp](http://www.telegraphindia.com/1090822/jsp/jharkhand/story_11394087.jsp) (site visited 22 February 2012).

Bureau of International Labor Affairs, United States Department of Labor, “ILO Standards”, available at <http://www.dol.gov/ilab/programs/oir/PC-ILO-page2.htm> (30 March 2012).

“Cabinet okays fund for unorganized sector”, The Times of India, 29 July 2011, available at [http://articles.timesofindia.indiatimes.com/2011-07-29/india/29828840\\_1\\_unorganized-sector-workers-national-social-security-fund](http://articles.timesofindia.indiatimes.com/2011-07-29/india/29828840_1_unorganized-sector-workers-national-social-security-fund) (site visited 29 January 2012).

Chakraborty, Ajanta, “Rehab plan for city’s ragpicker community”, The Times of India (13 August 2010) available at [http://articles.timesofindia.indiatimes.com/2010-08-13/kolkata/28304234\\_1\\_rag-pickers-solid-waste-urban-development](http://articles.timesofindia.indiatimes.com/2010-08-13/kolkata/28304234_1_rag-pickers-solid-waste-urban-development) (site visited 22 February 2012).

Chapter 8, Para 8.1, The Ministry of Labour Annual Report 2008-2009 (Chapter 8: Unorganised Labour), available at <http://labour.nic.in/annrep/annrep0809/Chapter-8.pdf> (site visited 17th December 2009).

*Charter of the United Nations, 1945*, available at <http://treaties.un.org/doc/Publication/CTC/uncharter.pdf> (site visited 22 April 2012).

Chen, Martha Alter, “The Informal Economy: Definitions, Theories and Policies” (2012) WIEGO Working Paper No. 1, available at [http://wiego.org/sites/wiego.org/files/publications/files/Chen\\_WIEGO\\_WP1.pdf](http://wiego.org/sites/wiego.org/files/publications/files/Chen_WIEGO_WP1.pdf) (site visited 2 November 2012).

Chikarmane, Poornima & Laxmi Narayan, “Organising the Unorganised: A Case Study of the Kagad Kach Patra Kashtakari Panchayat” (Trade Union of Waste-pickers), available at [http://www.wiego.org/program\\_areas/org\\_rep/case-kkpdp.pdf](http://www.wiego.org/program_areas/org_rep/case-kkpdp.pdf) (visited on 23rd April 2010).

Chikarmane, Poornima, Medha Deshpande & Lakshmi Narayan, “Untitled” at 13, 17, 27, available at <http://ilo-mirror.library.cornell.edu/public/english/region/asro/newdelhi/download/puneabst.pdf> (site visited 20 May 2012).

Chikarmane, Poornima, “Policy Outline”, *Workshop to Discuss Policy on Community-based and Decentralised Integrated Sustainable Solid Waste Management in the Country*, July 22-23, 2008, available at [http://wiego.org/sites/wiego.org/files/resources/files/wp\\_consultation\\_report.pdf](http://wiego.org/sites/wiego.org/files/resources/files/wp_consultation_report.pdf) (site visited 16 June 2012).

Clark, David A., “The Capability Approach: Its Development, Critiques and Recent Advances”, GPRG-WPS-032, Global Poverty Research Group, available at <http://www.gprg.org/pubs/workingpapers/pdfs/gprg-wps-032.pdf> (Site visited 26 Dec 2010).

*Constituent Assembly of India Debates* (Proceedings), Vol. II, No. 3, 22 January, 1947, available at <http://164.100.47.132/lssnew/constituent/vol2p3.html> (site visited 5 March 2012).

Constitution of the International Labour Organization, available at <http://www.ilo.org/ilolex/english/constq.htm> (site visited 22 April 2012).

Contribution of the Unorganised Sector to GDP Report of the Sub Committee of a NCEUS Task Force, Working Paper No. 2, June 2008, National Commission for Enterprises in the Unorganised Sector (New Delhi: NCEUS, 2008), available at [http://nceus.gov.in/Final\\_Booklet\\_Working\\_Paper\\_2.pdf](http://nceus.gov.in/Final_Booklet_Working_Paper_2.pdf) (site visited 22 June 2010).

“Decent work agenda”, available at <http://www.ilo.org/global/about-the-ilo/decent-work-agenda/lang--en/index.htm> (site visited 26 May 2012).

Fifteenth International Conference of Labour Statisticians, Geneva 19-28 January 1993 (ICLS/15/D.6(Rev.1)), Resolution II: Resolution concerning statistics of employment in the informal sector (Geneva: ILO, 1993).

Government of India, “India and the ILO”, available at <http://labour.nic.in/ilas/indiaandilo.htm> (site visited 30 March 2012).

Government of India, *Resolution No. 5(2)/2004-ICC* of 20<sup>th</sup> September 2004.

Government of India, “Area, Population, Decennial Growth Rate and Density for 2001 and 2011 at a glance for West Bengal and the Districts, Provisional Population Totals for West Bengal”, *Census of India 2011*, Ministry of Home Affairs, Government of India, available at [http://www.censusindia.gov.in/2011-prov-results/prov\\_data\\_products\\_wb.html](http://www.censusindia.gov.in/2011-prov-results/prov_data_products_wb.html) (site visited 3 February 2012).

Government of India, “Statement 1, Ranking of Districts by Population size in 2001 and 2011, Provisional Population Totals for West Bengal”, *Census of India 2011*, Ministry of Home Affairs, Government of India, available at [http://www.censusindia.gov.in/2011-prov-results/prov\\_data\\_products\\_wb.html](http://www.censusindia.gov.in/2011-prov-results/prov_data_products_wb.html) (site visited 3 February 2012).

Government of West Bengal, *Labour Department Resolution Nos. 180-IR dated 24/01/2001 and 305-IR* of 19/02/2001.

Government of West Bengal, “Annexure-A”, Vide Clause I of the *State Assisted Scheme of Provident Fund for Unorganised Workers in West Bengal (SASPFUW)* under *Labour Department Resolution No. 180-IR* of 24/01/2001.

Government of West Bengal, Labour Department, *Resolution No. 658-LW/2B-02/07* of 23/08/2007.

Government of West Bengal, Labour Department, *Notification No. 1025-IR* of 06/11/2009.

Government of West Bengal, Labour Department, *Resolution No. 907-IR/EIL/1-A-4/10* of 13/08/2010.

Government of West Bengal, *Labour in West Bengal 2010 – Annual Report* (Kolkata: Govt. of WB, undated).

Government of West Bengal, *Social Security for the Working Class and Left-Front Government (Shramik-shrenir Samajik Suraksha O Bam-Front Sarkar)* (Kolkata: Govt. of WB, 2010) [English title offered by author].

Government of West Bengal, *The West Bengal Unorganised Sector Workers Health Security Scheme (WBUSWHS)*, Labour Department, *Government of West Bengal Resolution No. 34-IR, IR/MISC-06/10* of 05/01/2011.

Himanshu, “Poverty’s Definitional Woes”, 27 May, 2010, Livemint.com & The Wall Street Journal, available at <http://www.livemint.com/2010/05/27001014/Poverty8217s-definitional-w.html> (site visited 21 June, 2010).

Human Development Report 2009, “India – The Human Development Index – going beyond income”, available at [http://hdrstats.undp.org/en/countries/country\\_fact\\_sheets/cty\\_fs\\_IND.html](http://hdrstats.undp.org/en/countries/country_fact_sheets/cty_fs_IND.html) (site visited 21 June 2010).

Human Development Report 2009, “Overcoming barriers: Human mobility and development”, (UNDP, New York, 2009), available at [http://hdr.undp.org/en/media/HDR\\_2009\\_EN\\_Complete.pdf](http://hdr.undp.org/en/media/HDR_2009_EN_Complete.pdf) (site visited 21 June 2010).

Human Development Report 2005, “International cooperation at a crossroads – Aid, trade and security in an unequal world”, available at [http://hdr.undp.org/en/media/HDR05\\_complete.pdf](http://hdr.undp.org/en/media/HDR05_complete.pdf) (site visited 21 June, 2010).

ILO, *Decent work agenda – Promoting Decent work for all*, available at <http://www.ilo.org/global/about-the-ilo/decent-work-agenda/lang--en/index.htm> (site visited 1 Dec, 2010).

ILO, *Declaration concerning the aims and purposes of the International Labour Organisation*, available at <http://www.ilo.org/ilolex/english/constq.htm> (site visited 22 April 2012).

ILO, *Mission and objectives*, available at <http://www.ilo.org/global/about-the-ilo/mission-and-objectives/lang--en/index.htm> (site visited 4 August 2012).

ILO, *Programmes and projects*, available at <http://www.ilo.org/global/programmes-and-projects/lang--en/index.htm> (site visited 22 April 2012).

ILO, *Social Dialogue*, available at <http://www.ilo.org/global/about-the-ilo/decent-work-agenda/social-dialogue/lang--en/index.htm> (site visited 20 May 2012).

ILO, *Social Dialogue Sector*, available at <http://www.ilo.org/public/english/dialogue/> (site visited 4 August 2012).

ILO, *InFocus Programme on Strengthening Social Dialogue*, Social Dialogue Sector (Geneva: ILO, undated).

ILO, *ILO History*, available at <http://www.ilo.org/public/english/about/history.htm> (site visited 14 Sep 2011).

ILO, Report VII, *Consideration of a possible Declaration of principles of the International Labour Organization concerning fundamental rights and its appropriate follow-up mechanism*, 86<sup>th</sup> Session, Geneva, June 1998, available at <http://www.ilo.org/public/english/standards/relm/ilc/ilc86/rep-vii.htm> (site visited 20 September 2011).

ILO, *Declaration on Fundamental Principles and Rights at Work and its Follow-up*, available at <http://www.ilo.org/declaration/thedeclaration/textdeclaration/lang--en/index.htm> (site visited 20 May 2012).

ILO, *Ratifications of the Fundamental human rights Conventions by country*, ILOLEX, available at <http://www.ilo.org/ilolex/english/docs/declworld.htm> (site visited 30 March 2012).

ILO, *The US: A Leading Role in the ILO*, available at <http://www.ilo.org/washington/ilo-and-the-united-states/the-usa-leading-role-in-the-ilo/lang--en/index.htm> (site visited 30 March 2012).

ILO, *United States, List of Ratifications of International Labour Conventions, International Labour Standards*, available at <http://webfusion.ilo.org/public/applis/appl-byCtry.cfm?lang=EN&CTYCHOICE=0610> (site visited 30 March 2012).

ILO, *Employment, Incomes and Equality – a strategy for increasing productive employment in Kenya*, Report of an Inter-Agency Team Financed by the United Nations Development Programme and Organised by the International Labour Office (Geneva: ILO, 1972).

ILO, *The dilemma of the informal sector*, Report of the Director-General, International Labour Conference, 78<sup>th</sup> Session (Geneva: ILO, 1991).

ILO, *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, available at [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/normativeinstrument/wcms\\_087562.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/normativeinstrument/wcms_087562.pdf) (site visited 5 June 2012).

ILO, *ILO Transition Team*, A message from Mr. Juan Somavia, Director-General-elect to all ILO officials at headquarters and in the field, dated: 11 December 1998, available at the ILO Archives.

*Preparing a harmonious and productive transition*, Director-General's announcements, Circular No. 555, International Labour Office, 8<sup>th</sup> December 1998.

ILO, *Decent Work*, Report of the Director-General, International Labour Conference, 87<sup>th</sup> Session, June 1999 (Geneva: ILO, 1999), available at <http://www.ilo.org/public/libdoc/ilo/P/09605/09605%281999-87%29.pdf> (20 May 2012).

ILO, *Reducing the Decent Work Deficit: A Global Challenge*, Report of the Director-General, International Labour Conference, 89<sup>th</sup> Session, 2001 (Geneva: ILO, 2001), available at <http://www.ilo.org/public/portugue/region/eurpro/lisbon/pdf/rep-i-a.pdf> (site visited 20 may 2012).

ILO, *Decent work and the informal economy*, International Labour Conference, 90<sup>th</sup> Session, 2002 (Geneva: International Labour Office, 2002), available at <http://www.ilo.org/public/english/standards/reim/ilc/ilc90/pdf/rep-vi.pdf> (site visited 20 July 2010).

ILO, "Measurement of Decent Work", Discussion paper for the Tripartite Meeting of Experts on the Measurement of Decent Work, 8-10 September 2008, TMEMDW/2008 at Paragraph 12 p 4 (Geneva: ILO, 2008), available at [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/meetingdocument/wcms\\_100335.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---stat/documents/meetingdocument/wcms_100335.pdf) (site visited 19 November 2011).

ILO, *Tripartite Meeting of Experts on the Measurement of Decent Work*, 8 to 10 September 2008 (Geneva: ILO), available at [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/meetingdocument/wcms\\_099764.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/meetingdocument/wcms_099764.pdf) (site visited 19 November 2011).

"India Pilot Project – Law & Informality", Women in Informal Employment: Globalizing and Organizing, available at [http://wiego.org/informal\\_economy\\_law/india-pilot-project](http://wiego.org/informal_economy_law/india-pilot-project) (site visited 16 June 2012).

Jha, Praveen, "Globalization and Labour in India: The Emerging Challenges", available at [http://www.nottingham.ac.uk/shared/shared\\_scpolitics/documents/gwcprojectPapers/India.pdf](http://www.nottingham.ac.uk/shared/shared_scpolitics/documents/gwcprojectPapers/India.pdf) (site visited 16 June 2012).

Kagad Kach Patra Kashtakari Panchayat (KKPKP), available at <http://www.wastepickerscollective.org/> (site visited 7 June 2012).

Kolkata Municipal Corporation (KMC), *Basic Statistics of Kolkata*, available at <https://www.kmcgov.in/KMCPortal/jsp/KolkataStatistics.jsp> (site visited 10 December 2011).

Kundu, Nitai, “The Case of Kolkata, India”, available at [http://www.ucl.ac.uk/dpu-projects/Global\\_Report/pdfs/Kolkata.pdf](http://www.ucl.ac.uk/dpu-projects/Global_Report/pdfs/Kolkata.pdf) (site visited 11 June 2012).

“Legal Empowerment and the informal economy – SEWA Experience”, paper presented at the Regional Dialogue on Legal Empowerment for the Poor, Bangkok, Thailand, 3-5 March, available at <http://www.snap-undp.org/lepknowledgebank/Public%20Document%20Library/SEWA%20-%20Legal%20Empowerment%20and%20the%20informal%20economy.pdf> (site visited 18<sup>th</sup> December 2009).

Medina, Martin, “Waste Picker Cooperatives in Developing Countries”, El Colegio de la Frontera Norte, Mexico, available at <http://wiego.org/sites/wiego.org/files/publications/files/Medina-wastepickers.pdf> (site visited 23 May 2012).

NCEUS, *Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector*, National Commission for Enterprises in the Unorganised Sector’s (NCEUS) (New Delhi: NCEUS, 2007), available at [http://nceus.gov.in/Condition\\_of\\_workers\\_sep\\_2007.pdf](http://nceus.gov.in/Condition_of_workers_sep_2007.pdf) (site visited 21 June 2010).

NCEUS, *Report on Definitional and Statistical Issues Relating to Informal Economy*, National Commission for Enterprises in the Unorganised Sector (New Delhi: NCEUS, 2008).

NCEUS, *The Challenge of Employment in India – An Informal Economy Perspective*, Volume 1 Main Report (New Delhi: NCEUS, 2009).

Nidan, “Activities, Empowering the Informal Workers and Children”, available at [http://www.nidan.in/otherpage.php?page\\_code\\_no=3](http://www.nidan.in/otherpage.php?page_code_no=3) (site visited 16 January 2012).

Ofreneo, Rene, *Informal Sector: Labour Laws And Industrial Relations, Interdepartmental Project On The Urban Informal Sector – Philippines*, Assessment Report Series No. 6 (Manila: ILO, 1994).

OneWorld South Asia, available at <http://southasia.oneworld.net/todayshadlines/planning-commission-accepts-37-pc-live-below-poverty-line> (site visited 21 June, 2010).

*Open House Discussion on Deemed Homeless*, AWWRI Project of NUJS Legal Aid Society & Center for Human Rights, National Conference on Place of Deemed Homeless in Good Governance and Inclusive Growth in India, January 27-29, 2012, WB NUJS Campus (in file with author).

*Party Constitution of the Communist Party of India (Marxist)*, available at <http://www.cpim.org/content/party-constitution#Principles%20of%20Democratic%20Centralism> (site visited 12 June 2012).

Paul, Prasanta, “Pujas bring bonanza for Bengal ragpickers”, A Dalit-Bahujan Media, Dr, Babasaheb Ambedkar and his People (undated) available at <http://www.ambedkar.org/News/Pujasbring.htm> (site visited 22 February 2012)

“Ragpickers to help recycle waste”, The Times of India (11 May 2002) available at [http://articles.timesofindia.indiatimes.com/2002-05-11/kolkata/27142733\\_1\\_solid-waste-ragpickers-recyclable-material](http://articles.timesofindia.indiatimes.com/2002-05-11/kolkata/27142733_1_solid-waste-ragpickers-recyclable-material) (site visited 22 February 2012).

“Ragpickers, NGOs to help collect household plastic waste”, The Hindu Business Line (1 May 2004), available at <http://www.thehindubusinessline.in/2004/05/01/stories/2004050101611900.htm> (site visited 22 February 2012).

*Rashtriya Swastha Bima Yojana* website at <http://www.rsby.gov.in/index.aspx> (site visited 12 June 2012).

“Reich Urges Adherence to “Core” Labor Standards (Reconciliation of trade, labor rules needed”, available at [http://www.usembassy-israel.org.il/publish/press/labor/archive/june/dl1\\_6-12.htm](http://www.usembassy-israel.org.il/publish/press/labor/archive/june/dl1_6-12.htm) (site visited 30 March 2012).

*Report of the Expert Group to Review the methodology for Estimation of Poverty*, Government of India, Planning Commission, 2009, available at [http://www.planningcommission.nic.in/reports/genrep/rep\\_pov.pdf](http://www.planningcommission.nic.in/reports/genrep/rep_pov.pdf) (site visited 21 June, 2010).

Reserve Bank of India, *Internal Working Group to Review the Recommendations of the NCEUS Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector* (Mumbai: Reserve Bank of India, 2008).

“Revised Office proposal for the measurement of decent work based on guidance received at the TME on the Measurement of Decent Work” (to be read in conjunction with the Discussion Paper and the detailed comments made by experts as reflected in the Chairperson’s report), available at [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/meetingdocument/wcms\\_115402.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---integration/documents/meetingdocument/wcms_115402.pdf) (site visited 19 November 2011).

Routh, Supriya et al, *Situational Analysis of Ragpickers in Kolkata* (Kolkata: Calcutta Samaritans, 2009).

Saith, Ruhi, “Capabilities: the Concept and its Operationalization” (2001) Working Paper Number 66, QEHWPS66, University of Oxford, available at <http://www3.qeh.ox.ac.uk/pdf/qehwp/qehwps66.pdf> (site visited 11 June 2012).

Sankaran, Kamala, Shalini Sinha & Roopa Madhav, “Domestic Workers – Background Document”, WIEGO Law Pilot Project on the Informal Economy, available at [http://wiego.org/sites/wiego.org/files/resources/files/dw\\_background\\_note.pdf](http://wiego.org/sites/wiego.org/files/resources/files/dw_background_note.pdf) (site visited 16 June 2012).

Sankaran, Kamala, Shalini Sinha & Roopa Madhav, “Waste Pickers Background Note”, *WIEGO Law Pilot Project on the Informal Economy*, available at [http://wiego.org/sites/wiego.org/files/resources/files/wp\\_background\\_note.pdf](http://wiego.org/sites/wiego.org/files/resources/files/wp_background_note.pdf) (site visited 16 June 2012).

Sankaran, Kamala, Shalini Sinha & Roopa Madhav, “Concept Note – National Consultation of Waste Pickers”, July 22-23, 2008, KKPKP and WIEGO Pilot Project, available at [http://wiego.org/sites/wiego.org/files/resources/files/wp\\_consultation\\_concept\\_note.pdf](http://wiego.org/sites/wiego.org/files/resources/files/wp_consultation_concept_note.pdf) (site visited 16 June 2012).

Sankaran, Kamala, “Informal Economy, Own-account Workers and the Law: An Overview”, WIEGO Law Pilot Project on the Informal Economy, available at [http://wiego.org/sites/wiego.org/files/resources/files/iei\\_background\\_paper\\_oaw\\_and\\_la\\_w.pdf](http://wiego.org/sites/wiego.org/files/resources/files/iei_background_paper_oaw_and_la_w.pdf) (site visited 24 February 2012).

“Scavengers to Managers”, available at [http://www.chintan-india.org/initiatives\\_scavengers\\_to\\_managers.htm](http://www.chintan-india.org/initiatives_scavengers_to_managers.htm) (site visited 16 January 2012).

Self Employed Women's Association (SEWA), at <http://www.sewa.org/> (site visited 5 January 2012).

SEWA, “SEWA's Structure”, available at [http://www.sewa.org/About\\_Us\\_Structure.asp](http://www.sewa.org/About_Us_Structure.asp) (site visited 7 June 2012).

SEWA, “Sewa Services”, available at [http://www.sewa.org/Sewa\\_Services.asp](http://www.sewa.org/Sewa_Services.asp) (site visited 5 January 2012).

Somavia, Juan, “Decent Work in the Global Economy”, Vigyan Bhawan, New Delhi, 18 February 2000, available at <http://www.ilo.org/public/english/bureau/dgo/speeches/somavia/2000/delhi.htm> (site visited: 25 March 2012).

“State Assisted Scheme of Provident Fund for Unorganised Workers in West Bengal” (SASPFUW), Labour Department, *Resolution Nos. 180-IR* of 24/01/2001, and *305-IR* of 19/02/2001 of the Government of West Bengal.

“Study to determine the role of rag pickers – Outsourcing and innovation mantra for solid waste management in urban centres”, *The Telegraph* (29 December 2010) available at [http://www.telegraphindia.com/1101229/jsp/bihar/story\\_13362268.jsp](http://www.telegraphindia.com/1101229/jsp/bihar/story_13362268.jsp) (site visited 22 February 2012).

The Calcutta Samaritans, available at <http://thecalcuttasamaritans.org/contact.htm> (site visited 21 February 2012).

The Calcutta Samaritans, *Projects*, available at <http://thecalcuttasamaritans.org/project.htm> (site visited 21 February 2012).

The Chintan Environmental Research and Action Group, at <http://www.chintan-india.org/> (site visited 20 May 2012).

“The Terms of Reference”, Chapter-I, *Report of the National Commission on Labour* (New Delhi: Government of India, 2002), available at <http://labour.nic.in/lcomm2/2nlc-pdfs/Chap1-2.pdf> (site visited 28 May 2012).

“Trash Talk: Gaining value from waste, as it relates to the global poor”, *The 2012 Yunus Challenge Waste: Put it to use*, available at [http://web.mit.edu/idi/yunus\\_2012/Yunus\\_2012.pdf](http://web.mit.edu/idi/yunus_2012/Yunus_2012.pdf) (site visited 23 May 2012).

Trebilcock, Anne, “Decent Work and the Informal Economy”, Discussion Paper No. 2005/04, January 2005, available at <http://62.237.131.23/publications/dps/dps2005/dp2005%2004%20Trebilcock.pdf> (site visited 20 July 2010).

United Nations Development Programme (UNDP), available at <http://www.undp.org/content/undp/en/home.html> (site visited 24 September 2010).

UNDP, “Human Development Index”, available at <http://hdr.undp.org/en/statistics/hdi/> (site visited 11 August 2012).

UNDP, “International Human Development Indicators”, available at <http://hdrstats.undp.org/en/indicators/default.html> (site visited 11 August).

United Nations, “Structure and Organization”, available at <http://www.un.org/en/aboutun/structure/index.shtml> (site visited 22 April 2012).

United Nations, *Report of the World Summit for Social Development*, World Summit for Social Development, Copenhagen, Denmark, 6-12 March 1995, available at <http://daccess-dds->

ny.un.org/doc/UNDOC/GEN/N95/116/51/PDF/N9511651.pdf?OpenElement (site visited 30 March 2012).

United States Council for International Business, “Issue Analysis: US Ratification of ILO Core Labor Standards”, April 2007, available at [http://www.uscib.org/docs/US\\_Ratification\\_of\\_ILO\\_Core\\_Conventions.pdf](http://www.uscib.org/docs/US_Ratification_of_ILO_Core_Conventions.pdf) (site visited 30 March 2012).

WB NUJS, Legal Aid Society – *Brief Report of Activities Undertaken over the Period from July, 2011 to January, 2012.*

“Who we are”, ActionAid, available at <http://www.actionaid.org/india/who-we-are> (site visited 23 May 2012).

Women in Informal Employment: Globalizing & Organizing (WIEGO), available at <http://wiego.org> (site visited 20 October 2010).

WIEGO, *Workshop to Discuss Policy on Community-based and Decentralised Integrated Sustainable Solid Waste Management in the Country*, July 22-23, 2008, available at [http://wiego.org/sites/wiego.org/files/resources/files/wp\\_consultation\\_report.pdf](http://wiego.org/sites/wiego.org/files/resources/files/wp_consultation_report.pdf) (site visited 16 June 2012).

*Working out of Poverty – Report of the Director General*, International Labour Conference, 91<sup>st</sup> Session (Geneva: ILO, 2003), available at <http://www.ilo.org/wcmsp5/groups/public/---dgreports/---dcomm/documents/publication/kd00116.pdf> (site visited 20 July 2010).

## Appendix A

### PARTICIPANT DETAILS OF THE FIELDWORK CONDUCTED IN FURTHERANCE OF THE STUDY

SITE FOR THE FIELDWORK: KOLKATA & DELHI, INDIA; GENEVA, SWITZERLAND.

Total number of participants interviewed during the study = 116

Waste-pickers Interviewed: 75 (24 Male; 51 Female)

Intermediaries Interviewed: 6 (4 Male; 2 Female)

Government Officials Interviewed: 9

Present and former Elected Representatives interviewed: 5

Union Leaders and Organisers Interviewed: 11

Scholars: 7

ILO Officials: 3

### WORKERS (WASTE-PICKERS)

#### Kestopur Khal, Kolkata, India – 13-15 April, 2011

1. Male Waste-picker; 45 years.
2. Female Waste-picker; 36 years.
3. Male Waste-picker; 29 years.
4. Male Waste-picker; 40 years.
5. Female Waste-picker; 32 years.

#### Golfgreen, Kolkata, India – 29-30 April, 2011

6. Female Waste-picker; 66 years.
7. Male Waste-picker; 53 years.
8. Male Waste-picker; 34 years.
9. Female Waste-picker; 30 years.
10. Male Waste-picker; 60 years.
11. Male Waste-picker; 45 years.
12. Male Waste-picker; 20 years.
13. Male Waste-picker; 35 years.
14. Male Waste-picker; 45 years.

#### Rajabazar, Kolkata, India (2 locations) – 5-11 May, 2011

15. Male Waste-picker; 52 years.
16. Male Waste-picker; 19 years.
17. Female Waste-picker; 40 years.

18. Female Waste-picker; 35 years.
19. Female Waste-picker; 28 years.
20. Female Waste-picker; 32 years.
21. Female Waste-picker; 46 years.
22. Female Waste-picker; 22 years.
23. Female Waste-picker; 26 years.
24. Female Waste-picker; 28 years.
25. Female Waste-picker; 64 years.
26. Male Waste-picker; 55 years.
27. Female Waste-picker; 35 years.

Tollygunge, Kolkata, India – May 10, 2011

28. Female Waste-picker; 21 years.
29. Female Waste-picker; 55 years.
30. Female Waste-picker; 22 years.
31. Female Waste-picker; 34 years.
32. Female Waste-picker; 63 years.
33. Male Waste-picker; 25 years.
34. Male Waste-picker; 35 years.
35. Male Waste-picker; 28 years.
36. Male Waste-picker; 29 years.

TALA Park, Kolkata, India – 12-15 May, 2011

37. Female Waste-picker; 30 years.
38. Female Waste-picker; 35 years.
39. Female Waste-picker; 26 years.
40. Female Waste-picker; 20 years.
41. Female Waste-picker; 20 years.
42. Female Waste-picker; 25 years.
43. Female Waste-picker; 21 years.
44. Female Waste-picker; 19 years.
45. Female Waste-picker; 40 years.
46. Female Waste-picker; 32 years.
47. Female Waste-picker; 42 years.

BNR, Kolkata, India – 12-15 May, 2011

48. Female Waste-picker; 35 years.
49. Male Waste-picker; 57 years.
50. Female Waste-picker; 31 years.
51. Female Waste-picker; 65 years.
52. Male Waste-picker; 50 years.
53. Female Waste-picker; 50 years.
54. Female Waste-picker; 35 years.

Beadon Square, Kolkata, India – 1-2 June, 2011

- 55. Male Waste-picker; 30 years.
- 56. Female Waste-picker; 29 years.
- 57. Female Waste-picker; 26 years.
- 58. Female Waste-picker; 18 years.
- 59. Female Waste-picker; 30 years.
- 60. Male Waste-picker; 40 years.
- 61. Male Waste-picker; 35 years.
- 62. Female Waste-picker; 26 years.

Aajkaal, Kolkata, India – 1-5 June, 2011

- 63. Female Waste-picker; 70 years.
- 64. Female Waste-picker; 31 years.
- 65. Female Waste-picker; 30 years.
- 66. Female Waste-picker; 32 years.
- 67. Male Waste-picker; 42 years.
- 68. Female Waste-picker; 35 years.
- 69. Female Waste-picker; 46 years.

Sealdah, Kolkata, India – 1-5 June, 2011

- 70. Female Waste-picker; 43 years.
- 71. Female Waste-picker; 45 years.
- 72. Female Waste-picker; 26 years.
- 73. Female Waste-picker; 20 years.

Dhapa Dumping Ground, Kolkata, India, 2 June, 2011

- 74. Male Waste-picker; 32 years.
- 75. Female Waste-picker; 28 years.

INTERMEDIARIES / MIDDLE-PERSON

- 1. Sheikh Jaggu (Male; 49 years; Golfgreen, Kolkata, India) – interviewed on 29 April, 2011.
- 2. Shankar (Male; 58 years; Lake Gardens, Kolkata, India) – interviewed on 30 April, 2011.
- 3. Munna Sheikh (Male; 60 years; Rajabazar, Kolkata, India) – interviewed on 11 May, 2011.
- 4. Banu Biwi (Female; 40 years; Rajabazar, Kolkata, India) – interviewed on 11 May, 2011.
- 5. Vinod Kumar Mali (Male; 50 years; Beadon Square, Kolkata, India) – interviewed on 2 June, 2011.

6. Hayatan Bewa (Female; 42 years; Sealdah, Kolkata, India) – interviewed on 3 June, 2011.

#### THE WEST BENGAL GOVERNMENT OFFICIALS

1. Subhashish Chatterjee (Executive Engineer, Solid Waste Management, Kolkata Municipal Corporation) – interviewed on 19 April 2011 at his office at the Kolkata Municipal Corporation.

2. Saidul Islam (Joint Commissioner, Govt. of West Bengal) – interviewed on 22 April at his office at the Kolkata Municipal Corporation.

3. XXX (name withheld upon request) (Assistant Labour Commissioner, Govt. of West Bengal) - interviewed on 9 June 2011 at the New State Secretariat Building in Kolkata, India.

4. Tirthankar Sengupta (Deputy Labour Commissioner/Additional CEO, Govt. of West Bengal) – interviewed on 9 June 2011 at the New State Secretariat Building in Kolkata, India.

5. Bitan Dey (Labour Department Official, Govt. of West Bengal; actual designation not disclosed) – interviewed on 9 and 28 June 2011 at the New State Secretariat Building in Kolkata, India.

6. Kallol Dutt (Labour Department Official, Govt. of West Bengal; actual designation not disclosed) – interviewed on 10 June 2011 at the New State Secretariat Building in Kolkata, India.

7. Sudipta Samanta (Senior Assistant Labour Commissioner, Govt. of West Bengal) – interviewed on 10 June 2011 at the New State Secretariat Building in Kolkata, India.

8. Aziz Rasool (Additional Labour Commissioner, Govt. of West Bengal) – interviewed on 9 June 2011 at the New State Secretariat Building in Kolkata, India.

9. Partha Sarathi Chakraborty (Deputy Labour Commissioner, Govt. of West Bengal) – interviewed on 28 June 2011 at the New State Secretariat Building in Kolkata, India.

#### INTERNATIONAL LABOUR ORGANIZATION (ILO) OFFICIALS

1. Coen Kompier (International labour Office, New Delhi, India) – interviewed on 22 June 2011 at the ILO Office (India Habitat Centre) in New Delhi, India.

2. ILO Official (International labour Office, Geneva, Switzerland) – interviewed on 21 October 2011 at the ILO Headquarters in Geneva, Switzerland.

3. ILO Official (International Labour Office, Geneva, Switzerland) – interviewed on 24 October 2011 at the ILO Headquarters in Geneva, Switzerland.

### ELECTED REPRESENTATIVES

#### A. Ministers and Former Ministers (Labour) (the State of West Bengal, India)

1. Purnendu Basu (Minister-in-Charge, Labour Department, Govt. of West Bengal) – interviewed on 29 June 2011 at the Writers' Building in Kolkata, India.
2. Anadi Sahoo (Former Minister-in-Charge, Labour Department, Govt. of West Bengal; Centre of Indian Trade Unions) – interviewed on 20 May 2011 at the Communist Party of India (Marxist) Local Office in Sealdah, Kolkata, India.
3. Pradip Bhattacharya (Former Minister-in-Charge, Labour Department, Govt. of West Bengal; Indian National Trade Union Congress) – interviewed on 2 June 2011, at the Indian National Trade Union Congress Office, Kolkata, India.

#### B. Mayor-in-Councils (Kolkata Municipality)

1. Debashish Kumar (Mayor-in-Council, Parks, Gardens and Sports, Kolkata Municipality) – interviewed on 7 June 2011, at his office at the Kolkata Municipal Corporation, Kolkata, India.
2. Debabrata Mazumdar (Mayor-in-Council, Solid Waste Management, Kolkata Municipality) – interviewed on 4 July 2011 at his office at the Kolkata Municipal Corporation, Kolkata, India.

### UNION LEADERS & ORGANIZERS

1. Mrinal Das (Secretary, Centre of Indian Trade Unions) – interviewed on 1 June 2011, at the Centre of Indian Trade Unions Office, Kolkata, India.
2. Surojit Neogi (Action Aid) – interviewed on 11 May 2011, at his office in Lake Gardens, Kolkata, India.
3. Debojyoti (campaign coordinator, Calcutta Samaritans) – interacted several times during April to July, 2011, in Kolkata, India.
4. Avijit Mukherjee (field supervisor, Calcutta Samaritans) – interacted several times during April to July, 2011, in Kolkata, India.
5. Azad (local community leader/President, *Kolkata Nabajagaran Mancha*) – interacted several times during April to July, 2011, in Kolkata, India.

6. Sudipta (Calcutta Samaritans) – interacted several times during April to July, 2011, in Kolkata, India.
7. Pranabesh (former organiser – Calcutta Samaritans) – interacted several times during April to July, 2011, in Kolkata, India.
8. Kajal (Calcutta Samaritans) – interacted several times during April to July, 2011, in Kolkata, India.
9. Pratim Roba (organiser, Calcutta Samaritans) – interacted several times during April to July, 2011, in Kolkata, India.
10. Reshmi Ganguly (organiser, Calcutta Samaritans) – interacted several times during April to July, 2011, in Kolkata, India.
11. Sabir Ahmed (Project Coordinator Bangladesh, *Groupe development*; organiser) – interacted several times during April to July, 2011, in Kolkata, India.

#### SCHOLARS

1. Kamala Sankaran (Professor, Legal Scholar, Delhi University) – interviewed on 20 June 2011 at her office at the Faculty of Law, University of Delhi, Delhi, India.
2. Kaveri Gill (International Development Research Centre, New Delhi Office) – interviewed on 22 June 2011 at her International Development Research Centre office, New Delhi, India.
3. Dhruvajyoti Ghosh (Ecologist) – interacted several times during April to July, 2011, in Kolkata, India.
4. Surojit Mukhopadhyay (Sociologist, and Registrar of the WB NUJS, Kolkata, India) – interacted several times during April to July, 2011, in Kolkata, India.
5. Mahendra Pal Singh (Constitutional Scholar, and Vice Chancellor of the WB NUJS, Kolkata, India) – interacted several times during April to July, 2011, in Kolkata, India.
6. Ruchira Goswami (Sociologist, and Assistant Professor at the WB NUJS, Kolkata, India) – interacted several times during April to July, 2011, in Kolkata, India.
7. Nandan Nawn (Economist, and Assistant Professor at the WB NUJS, Kolkata, India) – interacted several times during April to July, 2011, in Kolkata, India.

## Appendix B

### Questionnaire guiding Interview of Waste-Pickers, Intermediaries, Union Organizers, and Government Officials and Ministers

Survey Method: Interviewing / Focus Group Discussion / Participant Observation

Observation Tools: Audio Recording and Photograph

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#### Group I: WASTE-PICKERS

##### Part A.

1. Location of the Study Area:
2. Overall Environment:

##### Part B (General – for all Waste-pickers to be interviewed): Situational Analysis

- |  |  |
|--|--|
| <ol style="list-style-type: none"> <li>3. Age:</li> <li>4. Housing (Residence and Nature of Houses):</li> <li>5. Work Specific Issues:           <ol style="list-style-type: none"> <li>a. What is the nature of your work?</li> <li>b. Are you employed by one or more employers to collect waste?</li> <li>c. Are you free to work as and when you like, or you are compelled to work for definite period everyday?</li> <li>d. Do you receive a fixed regular wage for your work? If not, how do you get return from your work of waste-picking?</li> <li>e. How much do you earn everyday for your work?</li> <li>f. Do you negotiate with the intermediary/employer for better wages or other benefits?</li> <li>g. What are the benefits and problems of working as a waste-picker?</li> <li>h. What employment hazards do you face at work?</li> <li>i. Are you part of any union or organization?</li> <li>j. Are you recognised as a worker?</li> <li>k. Where do you go if you face any problem related to work?</li> <li>l. Does the government or the political parties listen to your grievances?</li> <li>m. What can improve the work of waste-picking for you?</li> <li>n. Do you want to continue working as a waste-picker?</li> <li>o. What are the other alternative avenues of work that you can consider doing?</li> </ol> </li> <li>6. Occupation: Are all in the family working – what is the nature of the different kinds of work?</li> <li>7. Financial Security: Do you have a regular source of income? What do you do during any emergency (e.g., health, accident etc.)? Is there anyone who can</li> </ol> | <ol style="list-style-type: none"> <li>2. Gender:</li> </ol> |
|--|--|

- support you financially during any emergency?
8. Duration of service/occupation: Since when have you been working as a waste-picker?
  9. Period of residence: Were you born and grew up in this locality? If not, where are you from and since when have you been residing here?
  10. Religion and Caste (if applicable):
  11. Family: How many family members do you have? Are they dependent on your income?
  12. Education of the family and specifically of the children: Did you have formal education (attendance in a school)? Do your children have formal education?
  13. Overall Health of the Family and benefit of any free Healthcare and Medication: Do you have any chronic health problem? Do you and your family receive free healthcare and medical benefits (either from the government or the NGOs/Unions)?
  14. Sanitation of the Family / Area: Do you have adequate Drinking Water? Do you have adequate sanitation facility? Do you have pay for these amenities?
  15. Benefit of any Social Security Programme: Do you receive any kind of government or private income support or other assistance?
  16. Attitude of police: What is the attitude of the law enforcement officials towards your work?
  17. Threat of Eviction: Are you under continuous threat of eviction from your present residence (slum etc.)?
  18. Possession of any kind of Identity Proof: Do you possess any identification issued from the government or an NGO (e.g., Voter Identity Card, Ration card)?
  19. Help from Political Parties: Do you receive any kind of assistance from the political parties?
  20. Cooperation by localities: What is the attitude of the people where you collect your waste?
  21. Initiative taken by the Government or Non-Government Organizations: Are you helped by the government officials or NGO members in any manner whatsoever?
  22. Idea of Rights possessed: Do you know if your work is legal or illegal? Are you aware of any benefits or privileges that you are entitled to as a worker?

Part C (Gender Specific: only for women waste-pickers): Situational Analysis

23. Income:
  - a. Purpose of the income?
  - b. Is the income given to the male head of the family?
  - c. Where does the male member work?
24. Harassment during waste collection: Do you face any inconvenience or harassment during waste collection?
25. Sexual exploitation: Do you face sexual aggression at work (especially from the law enforcement officers)?
26. Other hazards at Work: Any other work related hazards that you may want to share?
27. General hour of activity: When during the day do you work? Who does the

- household work, and maintenance of children etc.?
28. Attitude of police: What is the law enforcement officials' attitude towards your work? Do you have to bribe police to conduct your work?
  29. Financial Security (by own income or the family income): Do other family members work?
  30. Medication and Sanitation:
    - a. Did you visit hospital during your pregnancy (if applicable)?
    - b. Do you avail free medication distributed by the government hospitals?
    - c. Do you go for health check up if you feel unwell?
    - d. Do you have a private and secure sanitation facility including a bathing place?

#### Part D: Issues relating to Choice / Agency / Capabilities

31. Why are you in the waste-picking business?
32. Why did you decide to migrate to Kolkata (if the interviewee is not born and brought up in that locality)?
33. Was it your decision to migrate from your original place? Or, it was because of marriage or any other reason?
34. What do/did your parents do/did? Could they afford your education? Did they send you to school?
35. Do you send your children to school? Do you go to school (if applicable)?
36. Can you afford not to work?
37. Would you better do any other work if you could choose? What would that be?

#### Group II: INTERMEDIARIES

1. Location of the Study Area:
2. Overall Environment:
3. Age:
4. Gender:
5. Housing (Residence and Nature of Houses):
6. Religion and Caste (if applicable):
7. Family: How many family members do you have? Are they dependent on your income?
8. Education of the family and specifically of the children: Did you have formal education (attendance in a school)? Do your children have formal education?
9. Where do you fit in the overall scheme of the recycling industry?
10. Do you employ the waste-pickers to collect waste in the sense that they receive regular income from you and collect definite amount of recyclable waste everyday?
11. Do you buy waste from any waste-picker who is willing to sell you?
12. How often do you buy waste from the waste-pickers (everyday, alternate days, every week)?
13. Do you support the waste-pickers during any emergency?
14. Do you advance them any payment? How are they supposed to repay your debt?
15. Where/who do you sell your waste to?

16. How are you compensated by them? Do you have secure regular income, or it all depends upon the waste that you can supply?
17. Where do you live? Do you own a house and transport?
18. Do you have to make any payment to the government to conduct your business? What advantages you receive from such payment?

### Group III: UNION LEADERS/ORGANIZERS

1. Name of the Union/Organization that you are part of?
2. What is the status of your organization: Registered Trade Union; Registered Society; Trust; anything else? Do you receive grant from private bodies?
3. How many members do you have? How many women, men and children? Do you have membership fees?
4. When did you join this union/organization? Since when are you in a leadership position?
5. Who do you represent? Does your union/organization exclusively represent any definite group of workers?
6. What is your strategy of organization? How are you able to reach out to informal workers (waste-pickers in particular) and convince them to become members?
7. What is the waste-picker's incentive in participation in your organization? What are the membership benefits and privileges that the workers are entitled to?
8. What is your role with respect to the following issues?
  - a. Education of workers and their children?
  - b. Nutrition of workers and their children?
  - c. Health of workers and their children?
  - d. Sanitation of workers and their children?
9. Do you provide your members with emergency assistance (income etc.) during illness or accident?
10. What are the major issues that your organization is concerned with?
11. Do you lobby with the government? What are the issues that you have lobbied with the government? Have you attained any success with respect to these issues?
12. Can you give me concrete examples of your success in lobbying in improving the lives of the waste-pickers?
13. Do you hold regular meetings of members?
14. Do you conduct awareness/educational camps/classes?
15. Do you have facilities such as crèches/childcare?
16. What are the major concerns that the waste-pickers have? What problems do they encounter in their work?
17. What is the government attitude with respect to the waste-pickers?
18. Do they (waste-pickers) receive any government benefit? Are there any non-government benefits for these workers?
19. Do you negotiate/lobby with other individuals (e.g., Intermediaries) or private bodies (e.g., recycling firms/NGOs)?
20. What do you think are the significant strategies to improve the plight of the waste-pickers?

21. What is the role of the various social and political institutions (for example: family, kinship relation, property rights, legal order, NGOs, political parties, media, and government) in ameliorating the conditions of the waste-pickers?
22. Do you think (labour) laws can help improve the conditions of these waste-pickers? Do you think that (labour) laws are problematic and costly, and are inefficient in improving the plight of these waste-pickers?
23. What changes will you suggest in the *modus operandi* of the waste-picking activity so that the conditions of the waste-pickers are improved?

#### Group IV: MINISTERS/GOVERNMENT OFFICIALS

1. What government department are you in?
2. Since when do you work in/head this department?
3. What is the scope of work of your department?
4. Are you aware of any law, policy or scheme that is applicable to waste-pickers as a group?
5. What are the different Welfare Schemes that you plan/formulate/execute? Who are the targets of these schemes?
6. What is the extent of success of these different schemes? Are these Schemes executed properly so that the actual target population derives the benefits?
7. Do you have specific policies for informal workers in general and waste-pickers in particular?
8. What is the present government's approach towards informal workers in general and waste-pickers in particular?
9. Is there any attempt to integrate the waste-pickers in the mainstream recycling industry (whether government or private) (such as, making the waste-pickers work for the municipality's waste disposal workforce)?
10. What is the government's/your department's role with respect to the following issues?
  - a. Education of waste-pickers (or other informal workers) and their children?
  - b. Nutrition of waste-pickers (or other informal workers) and their children?
  - c. Health of waste-pickers (or other informal workers) and their children?
  - d. Sanitation of waste-pickers (or other informal workers) and their children?
11. What do you think can improve the conditions of the waste-pickers in Delhi/Kolkata?
12. What are the drawbacks (if any) of the existing government policies? How can it be improved?
13. Do you think (labour) laws can help improve the conditions of these waste-pickers? Do you think that (labour) laws are problematic and costly, and are inefficient in improving the plight of these waste-pickers?
14. What changes will you suggest in the *modus operandi* of the waste-picking activity so that the conditions of the waste-pickers are improved?

## **Appendix C1**

### SAMPLE PARTICIPANT INFORMED CONSENT FORM (WASTE-PICKERS)

You are invited to participate in a study entitled *Informal Workers in India: What Decent Work Entails* that is being conducted by me, Supriya Routh.

I, Supriya Routh, am a graduate student (PhD Student) in the department of Law at the University of Victoria and you may contact me if you have further questions by E-mail: [srouth@uvic.ca](mailto:srouth@uvic.ca) or [supriyonujs@gmail.com](mailto:supriyonujs@gmail.com).

As a graduate student, I am required to conduct research as part of the requirements for a degree of Doctor of Laws (PhD). It is being conducted under the supervision of Professor Judy Fudge (Faculty of Law), Professor William Carroll (Department of Sociology) and Professor Andrew Harding (Faculty of Law). You may contact my principal supervisor, Professor Judy Fudge at (250) 721-8168, or by e-mail at [jafudge@uvic.ca](mailto:jafudge@uvic.ca).

This research is being funded by University of Victoria Graduate Studies, and the Inter-University Research Network on Work and Globalization (CRIMT).

#### **What is the study about**

The study that I am conducting for my PhD research is about the work and lives of the waste-pickers in India. Waste-pickers in India are mostly self-employed – they do not have a definite employer. After a day's collection of solid waste, waste-pickers sell their collection to a middleman. This middleman negotiates the terms and conditions of the transaction, including determining the price of the collect. The money earned by a waste-picker is barely enough to sustain herself, and her family. Moreover, in majority of the cases, they do not have any social protection from the government. Sometimes, the nominal social protection that is available to them is not because of the fact of their work, but because of their citizenship. Overall, waste-pickers live and work under precarious conditions.

My study is about these people who are engaged in the activity of waste-picking. I want to know about the actual working and living conditions of waste-pickers in the study-locality. My objective is to find out (through my study) if the working conditions and living standards of waste-pickers in India could be improved by enabling waste-pickers to freely talk to the government, NGOs, media, political parties, etc.

#### **Importance of this Research**

The study is important because it envisages improving the conditions of life of a definite category of informal workers, viz. waste-pickers. While, no immediate benefit might occur to the waste-pickers studied, in the long term there is a possibility that my research

will help in policy formulation in the direction towards improving the conditions of the waste-pickers.

### **How can you help**

You can help in my research by participating in my study. Your participation is central to the entire study, because it is your life and work that I will be documenting. Apart from you, I will also document reflections from other individuals who are directly and indirectly involved in your work and your lives.

### **Participants Selection**

Since the study is an in-depth study of the waste-picking activity and its relation to the other institutions and processes, participants are selected on the basis of their direct or indirect relationship to the informal activity (waste-picking) in question. Participants for the study could principally be divided under four broad groups: waste-pickers, intermediaries, government officials and union organizers.

### **Waste-pickers' Participation**

You are being invited to participate in this study because the study revolves around your lives and your work. Your work life is the principal focus of the study. The study is an in-depth fact finding project that seeks to find out about your work; the benefits you derive from your work; the risks involved with your work; your organization; strategies for survival/success in your work; your perception of policies that can improve your work-life situation. I am particularly interested in finding out the ways in which you think your lives could be improved. What role do you think unionization can play in providing you with an effective social dialogue mechanism? Do you think that social dialogue can improve your working conditions and living standards?

### **What is involved**

If you agree to voluntarily participate in this research, your participation will include meeting with me for an interview lasting approximately for 1 to 2 hours, during which I will ask you a series of questions about your involvement in and knowledge of the processes related to the waste-picking activity. The interview would be scheduled at a time that is convenient to you and would be carried out at your place of employment or at a mutually agreed location.

At the commencement of the interview, I will seek your permission to use an audio-tape device to record your responses. Subsequently, I may contact you again for a follow up interview and/or to ask you to review any specific information or quotations that I would like to attribute specifically to you in my PhD dissertation and/or article/book/monogram.

### **Inconvenience**

Participation in this study may cause some inconvenience to you. This includes the time required to participate in the initial interview or any follow up interviews should they be required. During the interview I will also ask you questions about your family, your health, education, sanitation etc. However, you can refuse to answer any question that you do not feel comfortable answering.

**Risks**

You might be emotionally stressed to answer some of my questions. But, I must mention that you are always free not to answer any question, or withdraw from the interview altogether anytime if you feel uncomfortable sharing information about your life and your work. Your withdrawal will have no affect on the token compensation that I propose to pay you if you agree to participate in the study.

**Benefits**

The potential benefits of your participation in this research would be that you will have the opportunity to contribute in the knowledge creation with respect to the informal activity of waste-picking, with a view to improve the living standards and working conditions of the workers involved in waste-picking activity. The purpose of the study is to understand the lives of the waste-pickers and their interaction with different social and political institutions of the society. This understanding will help identify the sites of legal and regulatory intervention to improve the lives of the waste-pickers.

It is hoped that the knowledge created through your participation will be used in the policy-making process by the government and other development organizations in furtherance of amelioration of the conditions of the informal workers in general, and waste-pickers in particular.

As participants in this knowledge creating mission, you may not derive any immediate direct benefit from the process. However, you will be instrumental in shaping the research, which will establish your intellectual relation with the researcher and the University of Victoria. You will also be contributing in the welfare of the society in a long standing and intellectual manner.

**Compensation** (only for waste-picker participants)

As a way to compensate you for any inconvenience related to your participation (especially with respect to the time devoted for interview), you will be given a compensation of \$ 1 for the interview time you spend with me. You can decline to participate in the study if you think that the \$ 1 compensation is not appropriate for the time you spend for the interview. I will give you the token compensation at the very beginning of our conversation. If during the conversation you withdraw from the interview, you will not be required to return the token compensation.

**Voluntary Participation**

Your participation in this research must be completely voluntary. If you do decide to participate, you may withdraw at any time without any consequences or any explanation. If you do withdraw from the study your data will not be used or will be used only if you give your permission.

**Researcher's Relationship with Participants**

The researcher does not have any relationship with the participants in the nature of teacher/student, therapist/client, or supervisor/employee. Thus, there is no possibility of influencing the participants' decision to participate.

**On-going Consent**

To make sure that you continue to consent to participate in this research, I will ask you to sign the consent form each time I meet with you and I will ensure that you are aware of your right to decline further participation at any time.

**Anonymity (use of pseudonyms)**

Your interview (and our conversation) will remain completely confidential. I will not be using your name in my study. Your interview will remain either anonymous or pseudonymous.

**Confidentiality**

Confidentiality of the data will be protected by ensuring that the audio tapes, transcripts and interview notes are stored in a secured location such as a locked cabinet and/or password protected electronic files on my personal computer. No one apart from me shall have any access to the data generated through your interview.

**Dissemination of Results**

It is anticipated that the results of this study will be shared with others in the following ways: dissertation and/or published articles or a monogram, presentations at scholarly meetings.

**Commercial Use of Results**

There will not be any commercial use of the results.

**Disposal of Data**

Data from this study will be destroyed upon the completion of the PhD dissertation and publishing of the book monogram based on the PhD project in question. At that time, the audio recordings will be destroyed at a safe disposal facility, the paper copies of transcripts and interview notes will be shredded and the electronic files will be backed up on CD ROMS and permanently deleted from my computer.

**Contacts**

Individuals that may be contacted regarding this study include Mr. Routh, the principal investigator, and the project supervisor, Prof. Judy Fudge. Contact information for both has been provided on page one of this consent form. In addition, you may verify the ethical approval of this study, or raise any concerns you might have, by contacting the Human Research Ethics Office at the University of Victoria (250-472-4545 or ethics@uvic.ca).

Your signature below indicates that you understand the above conditions of participation in this study and that you have had the opportunity to have your questions answered by the researcher.

\_\_\_\_\_ (Participant to provide initials)

\_\_\_\_\_  
*Name of Participant*

\_\_\_\_\_  
*Signature*

\_\_\_\_\_  
*Date*

## Appendix C2

### SAMPLE PARTICIPANT RECRUITMENT FORM (WASTE-PICKERS)

#### Invitation to Participate in Case study for the Project: Informal Workers in India: What Decent Work Entails

I am a PhD candidate of law at the Faculty of Law, University of Victoria, BC, Canada. My PhD research topic is tentatively titled: Informal Workers in India: What Decent Work Entails.

As part of my PhD degree programme thesis writing, I will be studying working and living conditions of waste-pickers, such as yourself. I want to conduct such study to find out how you perform your work, and what are the benefits that you derive from your work. I would also want to know as to how your work influences your life. I want to know about your life, your education, health, your family, residence to understand why you are engaged in waste-picking, and how does waste-picking help in your subsistence.

My purpose is to find out how your working conditions can be improved. I am specifically interested to know of any organizational activity that you are involved in with respect to your work. I want to know any interaction that you had (or have) with the government, political parties, NGOs or any other body or organization. I want to know how you think that your working conditions (and living standards) could be improved.

My study might not ensure any immediate benefit for you. However, in the long run, I hope to be able to influence policy-makers through my study. For now, I can only compensate for your time for the interview in the nature of 1 USD (for a maximum of 2 hrs. of interviewing). I must also mention that I will pay you the money at the beginning of our conversation. If during the conversation you feel uncomfortable to answer any question, you are at a freedom not to answer such question. If, during the interview, you feel uneasy about the whole interview, you are free to leave the interview – you can inform me whether you want part of your interview to be used in my study or not. Under any one of these circumstances of your withdrawal from the interview, you do not have to return your token compensation.

I must also inform you that I will be asking you questions about your life, health, residence, police harassment etc. While you are free not to answer any such question, I must let you know that I will not be using your name or identity in my report (study). During our conversation I will also ensure that there is no one around us to listen to our conversation. Data I collect from the interview will be used only by me and I will be the sole custodian of such data – I will never allow anyone else to access to such data.

I want to use a Digital Audio Recorder to record our conversation. The use of audio recorder is only to ensure that I properly capture our conversation without missing any part of the same. However, if you feel uncomfortable with the use of an audio recorder, I will take written notes in lieu of an audio recorder. I will read and explain the mandatory Consent Form to you before I begin my conversation with you. If after considering the pros and cons of the interview as provided in the Consent Form, you think that you are ready to allow me interview you, I will record your consent.

I shall be very glad if you allow me to interview you. You will be helping me in completing my studies. I will also understand, however, if you refuse to such interviewing. I thank you in anticipation.

Best regards,  
Supriya Routh  
PhD Candidate,  
Faculty of Law,  
University of Victoria,  
BC, Canada.