

# Informal Workers' Aggregation and Law

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*In India, more than ninety percent of the workforce is informal. In spite of this enormous percentage of informal workers, these workers remain invisible to law and policy circles. One of the reasons for such exclusion and invisibility is the absence of unionism involving informal workers. In order to overcome this invisibility, informal workers are increasingly organizing into associations that are different from traditional trade unions. These organizations devise their strategies and their legal statuses in view of the atypical characteristics of informal activities. In this Article, I document some of these organizations of self-employed informal workers in India – their characteristics and functions. On this basis, I contend that these organizations offer a model for collective action by informal workers. I argue that these associations are a sui generis organization of informal workers, and could become a precursor to solidarity-based collective initiatives by informal workers globally. In the backdrop to this proposition, I analyze the role of law in promoting such aggregation of informal workers in furtherance of their collective action. I argue that while organizations of informal workers in India employ the existing legal framework to the best of their advantage, the law fails to recognize some of their status as workers, thereby creating hurdles towards informal workers' collective action.*

A small farmer works on her own farm. In tough times, she also works on other farms as a laborer. When the agriculture season is over, she goes to the forest to collect gum and other forest produce. Year round, she produces embroidered items either at a piece rate for a contractor or for sale to a trader who comes to her village to buy goods. Now, how should her trade be categorized? Does she belong to the agricultural sector, the factory sector, or the home-based work sector? Should she be categorized as a farmer or a farm worker? Is she self-employed or is she a piece-rate worker? Because her situation cannot be defined and contained neatly in a box, she has no work status and her right to representation in a union is unrealized. She is denied access to financial services or training to upgrade her skills. The tyranny of having to belong to a well-defined “category” has condemned her to having no “identity.”

— Ela R Bhatt<sup>1</sup>

## INTRODUCTION

In the last few decades India has attained significant global prominence because of its remarkable economic development, second only to China.<sup>2</sup> Scholars note that after opening

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<sup>1</sup> ELA R. BHATT, WE ARE POOR BUT SO MANY: THE STORY OF SELF-EMPLOYED WOMEN IN INDIA 17 (2006).

<sup>2</sup> DANCING WITH GIANTS: CHINA, INDIA, AND THE GLOBAL ECONOMY (L. Alan Winters & Shahid Yusuf eds., 2007); Kaushik Basu & Annemie Maertens, *The Pattern and Causes of Economic Growth*

up its economy India has consistently experienced a high growth of gross domestic product (GDP).<sup>3</sup> Some, however, question this liberalization-induced economic growth, contending that India's economic growth considerably preceded the opening of its market to global competition.<sup>4</sup> Nonetheless, they admit that economic growth might have accelerated in the post-liberalization era.<sup>5</sup> In any case, irrespective of whether or not India's economic growth is solely a result of trade liberalization, scholars are unanimous that the country has remarkably failed to convert the economic growth into human development of its population.<sup>6</sup> Both enthusiasts and sceptics of the liberalization-induced growth concur that poverty has either increased, remained stagnant, or on the most positive evaluation, marginally decreased in India in the post-liberalization era.<sup>7</sup>

While on the one hand, liberalization of the economy has failed to have any visible impact on poverty reduction, on the other, liberalization-induced structural adjustments have adversely impacted the livelihoods of a significant number of the working population.<sup>8</sup> In order to compete in the newly opened up economy, businesses and industries increasingly started to move their activities from the formally regulated domain to the informal unregulated sphere.<sup>9</sup> In order to minimize production costs and maximize profits, businesses tended to either subcontract their production or engage informal workers.<sup>10</sup> Such a tendency

in India, 23 OXFORD REV. ECON. POL'Y 143 (2007); V. Bhaskar & Bishnupriya Gupta, *India's Development in the Era of Growth*, 23 OXFORD REV. ECON. POL'Y 135 (2007).

<sup>3</sup> Montek S. Ahluwalia, *Economic Reforms in India Since 1991: Has Gradualism Worked*, 16 J. ECON. PERSP. 67 (2002); Raghbendra Jha, *Economic Reforms and Human Development Indicators in India*, 3 ASIAN ECON. POL'Y REV. 290 (2008).

<sup>4</sup> Basu & Maertens, *supra* note 2; Deepak Nayyar, *India's Unfinished Journey Transforming Growth into Development*, 40 MOD. ASIAN STUD. 797 (2006).

<sup>5</sup> Basu & Maertens, *supra* note 2; Nayyar, *supra* note 4, at 812.

<sup>6</sup> Bhaskar & Gupta, *supra* note 2; Jha, *supra* note 3; Nayyar, *supra* note 4.

<sup>7</sup> Bhaskar & Gupta, *supra* note 2; Jha, *supra* note 3; Nayyar, *supra* note 4, at 818-22; Prabhat Patnaik, *The Context and Consequences of Economic Liberalization in India*, 6 J. INT'L TRADE & ECON. DEV. 165 (1997).

<sup>8</sup> RINA AGARWALA, *INFORMAL LABOR, FORMAL POLITICS, AND DIGNIFIED DISCONTENT IN INDIA* 3 (2013); Rina Agarwala, *Reshaping the Social Contract: Emerging Relations Between the State and Informal Labor in India*, 37 THEORY & SOC'Y 375, 382 (2008); Barbara Harriss-White & Anushree Sinha, *Introduction*, in *TRADE LIBERALIZATION AND INDIA'S INFORMAL ECONOMY* 1, 5-11 (Barbara Harriss-White & Anushree Sinha eds., 2007); Basu & Maertens, *supra* note 2, at 163; Eckhard Siggel, *The Indian Informal Sector: The Impact of Globalization and Reform*, 149 INT'L LAB. REV. 93 (2010).

<sup>9</sup> AGARWALA, *supra* note 8, at 2, 40-41; Agarwala, *supra* note 8, at 389; Basu & Maertens, *supra* note 2; Manuel Castells & Alejandro Portes, *World Underneath: The Origins, Dynamics, and Effects of the Informal Economy*, in *THE INFORMAL ECONOMY — STUDIES IN ADVANCED AND LESS DEVELOPED COUNTRIES* 11, 12-15, 26-31 (Alejandro Portes, Manuel Castells & Lauren A. Benton eds., 1989); Siggel, *supra* note 8.

<sup>10</sup> Agarwala, *supra* note 8, at 382, 389; Lauren A. Benton, *Industrial Subcontracting and the Informal Sector: The Politics of Restructuring in the Madrid Electronics Industry*, in *THE INFORMAL ECONOMY*, *supra* note 9, at 228; Castells & Portes, *supra* note 9; Supriya Routh, *Building Informal Workers Agenda: Imagining 'Informal Employment' in Conceptual Resolution of 'Informality'*, 2 GLOBAL LAB. J. 208 (2011).

increased a pool of workers who remained excluded from the state's monitoring or regulatory mechanism.<sup>11</sup>

Informal workers are workers who do not conform to the model of traditional industrial citizenship, which is characterized by employment in a long-term relationship with comprehensive benefits emanating from the relationship. As part of this *form* of industrial citizenship, while the employer is the principal entity responsible for the workers' wellbeing, the state monitors the relationship and regulates it to conform to its politics. As contrasted to this so-called formal model of industrial workers, the terminology *informal* is used as a catch-all phrase in order to indicate the range of workers engaged in activities that do not characterize the form (as mentioned in Ela R. Bhatt's quote at the beginning). Since regulatory principles are based on this formal model — in India, as elsewhere — the laws promoting workers' welfare structurally exclude informal workers. While there are generic laws, such as the prohibition of child labor or promotion of maternity benefits, which should be applicable to all workers, their implementation mechanisms are essentially formulated with the formal model in mind, thereby failing to integrate informal workers at the enforcement level. Therefore, from a legal point of view, at a general level of conceptualization, it is reasonable to underline that informal workers are workers who are excluded from the state's monitoring and regulatory purview.

Informal workers may be both waged workers and self-employed workers. However, the natures of their employment and activity are significantly different from the typical waged or self-employed worker. For example, although domestic workers and workers employed in small establishments are engaged in employment relationships, their employment is mostly undocumented, they are likely to have multiple employers, they are unlikely to receive statutory minimum wages, and they are generally excluded from claims, which waged workers can reasonably make against their employers. Oftentimes, illegal practices, such as the employment of child labor, are rampant in these employment relationships. The convoluted nature of informal waged employment also makes it difficult to establish an employment relationship between the workers and the employer.

Street vendors and waste pickers, on the other hand, are self-employed informal workers. Their self-employment too differs from the traditional self-employed workers such as lawyers, doctors, consultants, or freelance professionals. Informal self-employed workers generally are neither documented nor regulated, they are not registered with any professional agency, they are unlikely to pay professional taxes, and their interactions with the state and its agencies oftentimes pulls in opposite directions. These self-employed informal workers

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<sup>11</sup> AGARWALA, *supra* note 8; Agarwala, *supra* note 8, at 382; Routh, *supra* note 10, at 215-16.

sometimes operate at the borders of legality/illegality because of their unauthorized use of public spaces and government services.<sup>12</sup> It is worthwhile to note here that the categories of self-employment and waged work — in the context of informal workers — are not rigid categories: a waged domestic worker can decide to become a self-employed waste picker with ease. This movement from one category to another is the fact of informality.

In the Indian context, the exclusion of informal workers from the scope of the state's welfare commitment stands in stark contrast to the constitutional principles, which delineate specific provisions on workers' welfare.<sup>13</sup> In spite of the constitutional safeguards, the condition of informal workers remains precarious.<sup>14</sup> The Constitution of India provides for the right to unionization, freedom of speech and expression, the right against forced labor, the right against child labor, the right to a worthy livelihood, equal pay for equal work, the right to decent work, and the right to appropriate conditions of work, among others.<sup>15</sup> Thus, the Constitution aims at promoting a well-rounded dignified human life for workers.<sup>16</sup> According to Granville Austin, the Indian Constitution contains a "statement of . . . social revolution," which aims to promote positive freedom of the masses.<sup>17</sup> However, in spite of the promise, the constitutional guarantees have been unable to promote an overall dignified life for the people of India, including informal workers.<sup>18</sup>

While the Constitution of India envisaged that specific legislative safeguards would have to be developed for specific categories of workers,<sup>19</sup> legislative policy has remained

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<sup>12</sup> For example, waste pickers — a category of informal workers that I will extensively refer to in this Article — are considered unauthorized intruders on public land, municipal receptacles, and garbage dumping places. While municipalities have their own staff, who are legally authorized to access solid waste from public places for waste recycling and composting purposes, waste pickers — whose waste collection is often tolerated, even though they are not authorized to access public solid waste — make use of the waste for their livelihood. The municipal employees are formal government employees with service-related benefits; waste pickers, to the contrary, are self-employed workers whose principal source of income is the selling of recyclable waste to the recycling industry. Thus, while recycling might be undertaken by both self-employed and waged workers, it is only when it is done by undocumented and unmonitored self-employed workers, whose livelihood depends on recycling, that it qualifies as *informal*.

<sup>13</sup> INDIA CONST. pts. III-IV.

<sup>14</sup> NCEUS, REPORT ON CONDITIONS OF WORK AND PROMOTION OF LIVELIHOODS IN THE UNORGANISED SECTOR (2007) [hereinafter NCEUS, UNORGANISED SECTOR 2007]; NCEUS, REPORT ON DEFINITIONAL AND STATISTICAL ISSUES RELATING TO INFORMAL ECONOMY (2008) [hereinafter NCEUS, INFORMAL ECONOMY 2008].

<sup>15</sup> INDIA CONST. pts. III-IV.

<sup>16</sup> *Bandhua Mukti Morcha v. Union of India*, (1984) AIR SCJ 802 (India).

<sup>17</sup> GRANVILLE AUSTIN, *THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION* 51 (1976).

<sup>18</sup> See *Sodan Singh v. New Delhi Municipal Committee*, (1989) AIR SC 1988 ¶ 4; see also Upendra Baxi, *The (Im)possibility of Constitutional Justice — Seismographic Notes on Indian Constitutionalism*, in *INDIA'S LIVING CONSTITUTION — IDEAS, PRACTICES, CONTROVERSIES* 31, 43-46 (Zoya Hasan, E. Sridharan & R. Sudarshan eds., 2005).

<sup>19</sup> INDIA CONST. arts. 43, 43A.

oblivious to the vulnerable plight of informal workers.<sup>20</sup> Such vulnerability and marginalization is a result of the absence of informal workers from policy circles.<sup>21</sup> In India, more than ninety percent of the workforce is informal.<sup>22</sup> One of the reasons for such exclusion and invisibility seems to be the absence of trade unionism involving informal workers.<sup>23</sup> According to one account, only about eight percent of informal workers, who are not engaged in agricultural and related activities, are organized in unions.<sup>24</sup> Traditional trade unions have largely failed to integrate informal workers into their membership fold.<sup>25</sup> However, there are a few exceptions to this trend in certain sectors such as the construction industry and the *bidi* (hand-made cigarettes) industry. Rina Agarwala has documented some of the unionization initiatives of informal workers in the abovementioned industries.<sup>26</sup> She notes that some federations of trade unions in India have been successful in organizing informal workers in these industries, and that these trade unions of informal workers are, in fact, rewriting the state-labor relations and evolving new unionization strategies that make claims directly against the state rather than an employer.<sup>27</sup>

While Agarwala's study offers us important insights into the organizational strategies of informal workers, her account remains incomplete. Agarwala's study is concerned only with industry-specific informal workers. Her chosen industries — construction and *bidi* manufacturing — are characterized by specific workplaces and waged workers, and include both formal and informal workers. Furthermore, her study analyzes *trade* unionism amongst informal workers. Accordingly, it fails to account for those informal workers who regularly shift from one work to another, those who work for multiple employers in different jobs, workers who do not have a specific workplace, and self-employed workers (such as street vendors and waste pickers). Moreover, since her focus is on unionism in two specific

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<sup>20</sup> NCEUS, UNORGANISED SECTOR 2007, *supra* note 13, at 163-64, 284-87; Rohini Hensman, *Labour and Globalization: Union Responses in India*, in GLOBALIZATION AND LABOUR IN CHINA AND INDIA: IMPACTS AND RESPONSES 189 (Paul Bowles & John Harriss eds., 2010).

<sup>21</sup> AGARWALA, *supra* note 8, at 21.

<sup>22</sup> NCEUS, INFORMAL ECONOMY 2008, *supra* note 13, at 44.

<sup>23</sup> BHATT, *supra* note 1.

<sup>24</sup> Agarwala, *supra* note 8, at 383. While on one hand, it is difficult to ascertain the exact extent of the engagement of informal workers either in agricultural or in non-agricultural activities, on the other, there is also an absence of reliable data on the union density amongst informal workers. According to the latest government statistics, approximately eighty percent of informal workers do not have an organization in their respective activities. See NAT'L SAMPLE SURVEY OFFICE, MINISTRY OF STATISTICS & PROGRAMME IMPLEMENTATION, NSS REPORT NO. 557, 68TH ROUND: INFORMAL SECTOR AND CONDITIONS OF EMPLOYMENT IN INDIA, at vi-vii, 25, 90 (2014), [http://mospi.nic.in/Mospi\\_New/upload/nss\\_report\\_557\\_26aug14.pdf](http://mospi.nic.in/Mospi_New/upload/nss_report_557_26aug14.pdf) .

<sup>25</sup> AGARWALA, *supra* note 8, at 3.

<sup>26</sup> *Id.*; Agarwala, *supra* note 8.

<sup>27</sup> Agarwala, *supra* note 8; AGARWALA, *supra* note 8, at 6.

industries, she leaves out a range of other organizing strategies (not necessarily trade unionism) undertaken by a variety of informal workers.<sup>28</sup>

Informal workers are increasingly organizing into innovative associations that are different from traditional trade unions, which Agarwala overlooks. These organizations devise their strategies and their legal statuses in view of the atypical characteristics of informal activities. Informal workers may be waged workers, self-employed workers, subject to multiple intertwined employment-like relationships, with or without a workplace, isolated, and dispersed. In view of this wide range of attributes, informal workers' organizations legally take shape in the form of trade unions, cooperative societies, charitable trusts, registered societies, and even companies. These organizations also employ a range of strategies that are not typical of traditional trade unions. In her study, Agarwala points out how trade unions of informal workers engage with the institutions of the state.<sup>29</sup> While negotiation with the state is an important function of informal workers' organizations, they also make use of the market, undertake welfare functions, and effectively engage with the civil society. Informal workers' organizations therefore cannot be seen only through a state-labor lens, but offer a more complex scenario of how informal workers strategize to ameliorate their conditions.

In this Article, I document some of these organizations of informal workers, their characteristics, and functions. On this basis, I contend that these organizations offer a new model for collective action by informal workers. The organizational model I discuss could become a precursor to solidarity-based initiatives by informal workers globally. I argue that these associations of informal workers are a *sui generis* organization of informal workers. Even though some of them are registered as trade unions, characteristically they differ from trade unions in the traditional sense of the term. I term these organizations of informal workers, *workers' aggregations*.

The Article is divided into four Parts. In the following Part I, I briefly outline the trade union movement in India and the exclusion of informal workers from it. In Part II, I describe the formation and functions of three selected organizations of informal workers in India. In Part III, drawing on my discussion of the characteristics of these organizations, I conceptualize a *sui generis* form of organization of informal workers, which I term workers' aggregation. In Part IV, I discuss how the informal workers' aggregations in India are making innovative use of the existing legislative framework in furtherance of their objectives. I argue that in spite of a legislative framework that is generally conducive to the unique organizational initiative of informal workers, the non-recognition of certain categories of

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<sup>28</sup> AGARWALA, *supra* note 8, at 10-13.

<sup>29</sup> *Id.*; Agarwala, *supra* note 8.

informal workers under law poses a challenge to the promotion of effective collective action by informal workers. In the last Part I provide a brief conclusion.

### I. TRADE UNIONISM IN INDIA AND INFORMAL WORKERS

In India, workers' resistance to employers, with the outside support of progressive individuals, took shape immediately after the large-scale infrastructural and industrial initiatives undertaken by the British during the 1850s.<sup>30</sup> While the first workers' organization was formed by cotton mill workers in 1890 in Bombay, a formal trade union was not established in India until 1918. By 1929, though, trade unions were prevalent across all industries in the country.<sup>31</sup>

Established in 1920, the ideologically communist-dominated All India Trade Union Congress (AITUC) was the first national federation of trade unions in India, which then split several times due to political divergences in the post-independence era.<sup>32</sup> In 1947, the ruling party, Congress-I, introduced its own trade union, the Indian National Trade Union Congress (INTUC), in order to receive working class support for government policies.<sup>33</sup> This initiative established a double link between the government and the unions (one through the party and the other through the government executive).

Because of the trade unions' dependence on the government and political parties, the industrial relations in India have been a state-centric phenomenon.<sup>34</sup> The government(s) retains the power to interfere and shape industrial relations. Except in some states, trade unions in India are not legally recognized as bargaining agents. Such non-recognition of trade unions allows the government(s) to privilege one trade union over the other, thereby diminishing the scope of effective collective bargaining.<sup>35</sup> Moreover, the government(s) has legally safeguarded monopoly over the industrial dispute resolution mechanism, which hardly allows any scope for collective bargaining and consequent agreement.<sup>36</sup> Collective bargaining is, therefore, severely restricted in India because of the legislative framework and government

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<sup>30</sup> ROHINI HENSMAN, *WORKERS, UNIONS, AND GLOBAL CAPITALISM — LESSONS FROM INDIA* 94-95 (2011).

<sup>31</sup> *Id.* at 105-06.

<sup>32</sup> Subhashini Ali, *Indians on Strike — Caste and Class in the Indian Trade Union Movement*, NEW LAB. F., Spring 2011, at 33, 33-34; Anannya Bhattacharjee & Fred Azcarate, *India's New Unionism*, NEW LAB. F., Fall 2006, at 64, 64-65 (2006); Sharit K. Bhowmik, *Understanding Labour Dynamics in India*, 40 S. AFR. REV. SOC. 47, 51-53 (2009).

<sup>33</sup> Bhowmik, *supra* note 32, at 51-52.

<sup>34</sup> T.S. Papola, *The Place of Collective Bargaining in Industrial Relations Policy in India*, 10 J. INDUS. REL. 25 (1968); Anil K. Sen Gupta & P.K. Sett, *Industrial Relations Law, Employment Security and Collective Bargaining in India: Myths, Realities and Hopes*, 31 INDUS. REL. J. 144 (2000).

<sup>35</sup> Sen Gupta & Sett, *supra* note 34.

<sup>36</sup> According to the Industrial Disputes Act, 1947, No. 14, Acts of Parliament, 1947, ch. III (India), if and when an appropriate government perceives that an industrial dispute exists or is expected to exist soon, it can *suo moto* refer the dispute to the dispute resolution authorities established under the law.

interference in industrial relations.<sup>37</sup> The upside of the system is that the trade unions have direct access to political parties and sometimes the government, which ensures their visibility if not their influence.

However, the power and effectiveness of trade unionism in India — which penetrated only a small percentage of formal workers — substantially declined after 1991.<sup>38</sup> In 1991 the government of India promoted the large-scale opening of the Indian economy. Trade unions were perceived as inhibiting factors towards the liberalization of the economy.<sup>39</sup> Both the central as well as the state governments made reforms that would substantially reduce the trade unions' already deplorable bargaining power, along with many measures intended to help employers operate in a flexible labor market.<sup>40</sup> Even though there is no conclusive evidence that trade union density in India has declined in the post neo-liberalization period, some authors argue that indeed it has.<sup>41</sup>

Government promotion of flexibilization resulted in the increase of informal workers *vis-à-vis* the formal ones, which in turn catalyzed the deterioration of the trade union movement.<sup>42</sup> The movement remained concentrated mainly in the formal sector — especially the public sector — and was unable to penetrate the informal economy. The flexibilization increased the already wide array of informal workers to an enormous level: 92.38% of workers in India are informal workers, as compared to 7.46% formal workers (latest data 2004-2005).<sup>43</sup>

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<sup>37</sup> Papola, *supra* note 33; Sen Gupta & Sett, *supra* note 33.

<sup>38</sup> Arjan de Haan & Samita Sen, *Working Class Struggles, Labour Elites, and Closed Shops — The Lessons from India's Trade Unions and Experiences of Organisation*, in MEMBERSHIP-BASED ORGANIZATIONS OF THE POOR 65, 75-78 (Martha Chen, Renana Jhabvala, Ravi Kanbur & Carol Richards eds., 2007); Sarosh Kuruvilla & Christopher L. Erickson, *Change and Transformation in Asian Industrial Relations*, 41 INDUS. REL. 171 (2002); E.M. Rao, *The Rise and Fall of Indian Trade Unions: A Legislative and Judicial Perspective*, 42 INDIAN J. INDUS. REL. 678 (2007).

<sup>39</sup> Kuruvilla & Erickson, *supra* note 38.

<sup>40</sup> Sarosh Kuruvilla, Subesh Das, Hyunji Kwon & Soonwon Kwon, *Trade Union Growth and Decline in Asia*, 40 BRIT. J. INDUS. REL. 431 (2002); Rao, *supra* note 37; Kesar Singh Bhangoo, *Trade Unions in Globalised Economy of India*, 41 INDIAN J. INDUS. REL. 397 (2006).

<sup>41</sup> AGARWALA, *supra* note 8; K.R. Shyam Sundar, *From Politics of Fragmentation to Politics of Expansion and Integration*, in TRADE UNIONS IN ASIA — AN ECONOMIC AND SOCIOLOGICAL ANALYSIS 157 (John Benson & Ying Zhu eds., 2008).

<sup>42</sup> Biswajit Ghosh, *Economic Reforms and Trade Unionism in India — A Macro View*, 43 INDIAN J. INDUS. REL. 355 (2008) (showing that government laws and policies are responsible for the decline in employment and consequently in the trade union movement in the organized sector; organized sector employment has come down from 282.85 lakh (1 Lakh = 100,000) in 1997 to 264.43 lakh in 2004 — over the last decade 8.34 lakh workers have lost their jobs in the organized sector); *see also* HENSMAN, *supra* note 30, at 104-05.

<sup>43</sup> NCEUS, *INFORMAL ECONOMY 2008*, *supra* note 13, at 44.

In spite of this substantial increase of informal workers in India, trade unions generally have failed to integrate informal workers into their membership fold.<sup>44</sup> While traditional trade unions in India initially helped unskilled workers and their families, their attitude towards informal workers as equal members has been largely repulsive.<sup>45</sup> This may explain why they failed to recognize that organizing informal workers requires strategies that are different than those needed for organizing formal workers.<sup>46</sup> This attitude largely emanates from an unwillingness to see informal workers as full participants in industrial citizenship like the formal workers,<sup>47</sup> and has bred insensitivity towards the needs of informal workers.<sup>48</sup> It is only recently that some of the traditional trade unions have woken up to the challenge of organizing informal workers, as Agarwala shows in her study.<sup>49</sup> Agarwala notes that traditional trade union federations, in particular that of a communist political orientation, have been successful in organizing informal workers.<sup>50</sup>

However, while unionizing informal workers, these traditionally formal workers' trade unions adopt a different strategy than the one adopted for formal workers.<sup>51</sup> In her study, Agarwala shows that unlike the formal workers, informal workers' trade unions make claims directly against the state rather than an employer, even when they have an employer.<sup>52</sup> She further argues that informal workers base this claim on their citizenship rather than their employment relationship or their worker status.<sup>53</sup> Agarwala also describes that while informal workers in the construction and the *bidi* industries are organized in their respective workplaces, their workplaces may be varied, ranging from their construction sites to their respective homes. This means that the traditional strategy of specific workplace-based organizing followed generally by the formal workers needs to be modified in favor of a more flexible and pluralistic understanding of workplaces for organizing informal workers. Furthermore, she contends that trade unionism of informal workers in India, by making direct claims against the state, excludes employers from the bargaining purview.

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<sup>44</sup> Martha Chen et al., *Membership-Based Organizations of the Poor — Concepts, Experience and Policy*, in MEMBERSHIP-BASED ORGANIZATIONS OF THE POOR, *supra* note 38, at 3, 8; Haan & Sen, *supra* note 38, at 75-78, 80; Sundar, *supra* note 41, at 160-62.

<sup>45</sup> AGARWALA, *supra* note 8, at 3; Haan & Sen, *supra* note 38, at 65-66; Sharit K. Bhowmik, *Co-operatives and the emancipation of the marginalized*, in MEMBERSHIP-BASED ORGANIZATIONS OF THE POOR, *supra* note 38, at 124.

<sup>46</sup> Chen et al., *supra* note 44, at 8; Haan & Sen, *supra* note 38, at 80.

<sup>47</sup> See generally Lorenzo Frangi & Supriya Routh, *From Employee to Homo Faber? Considerations About Union Renewal and Informal Workers in Brazil and India*, 21 JUST LAB.: CAN. J. WORK & SOC'Y, 42 (2014).

<sup>48</sup> *Id.*

<sup>49</sup> Chen et al., *supra* note 44, at 8; Sundar, *supra* note 41, at 161, 170-72.

<sup>50</sup> AGARWALA, *supra* note 8, at 60; Agarwala, *supra* note 8, at 383, 387.

<sup>51</sup> Agarwala, *supra* note 8, at 388, 396-98.

<sup>52</sup> AGARWALA, *supra* note 8, at 45; Agarwala, *supra* note 8, at 378, 393-96.

<sup>53</sup> Agarwala, *supra* note 8, at 378, 392-94.

What Agarwala terms an emerging state-labor relationship involving informal workers in India, others consider as part of a social-movement unionism signifying a broadening of trade union agendas.<sup>54</sup> As part of this social-movement unionism, labor is renewing its relation with the state, in the sense that they hold the state accountable to them and compel the state to enact legislation for them.<sup>55</sup> There are, however, differences in detail in the way Agarwala conceptualizes trade unionism of informal workers and social-movement unionism. While both of these conceptualizations are concerned with labor's direct claim against the state, the difference between the two is that in Agarwala's conception, the workers' claim is based on their citizenship status, whereas social-movement unionism sometimes aspires to integrate employers too in the negotiation process. By integrating employers into the negotiation process, social-movement unionism also includes the traditional employer-employee negotiation as part of the movement. Thus, while social-movement unionism retains the employer-employee perspective even when negotiating with the state, the informal workers' trade unionism, as Agarwala understands it, rules out any such perspective.

While Agarwala's study is important in conceptualizing models and strategies of informal workers' trade unionism, her study is limited to the experiences in two sectors, albeit very important ones. The two sectors that Agarwala studies are also privileged in the sense that both of those have (sector-) specific welfare legislation, which is not the case with the range of other informal activities. Her sector-specific study is not concerned with one of the fundamental features characterizing informal workers, i.e., they change their works and affiliations on a regular basis (as indicated by Ela Bhatt, quoted at the beginning of this Article).<sup>56</sup> Such shifts from one kind of work to another also mean that the work-based status of informal workers also keeps changing. Accordingly, an informal worker could be a waged worker one day, a self-employed worker on another, engaged in multiple employment-like relationships on yet another day, and sometimes engaged in trade relationships that are difficult to define. In fact, several of these work-related statuses could apply to an informal worker on a single day. For these different categories of informal workers, trade unionism is not only a distant idea but also an impossible proposition if unionizing strategies are focused on workplace(s) and employees. Agarwala recognizes this difficulty, pointing out that it is only a small minority of informal workers who are engaged in unionism in India. That collective action through organizational initiatives is generally scarce amongst informal

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<sup>54</sup> AGARWALA, *supra* note 8, at 204-05; HENSMAN, *supra* note 28, at 89.

<sup>55</sup> HENSMAN, *supra* note 30, at 90.

<sup>56</sup> BHATT, *supra* note 1.

workers in India has also been noted by the high-powered National Commission for Enterprises in the Unorganised Sector (NCEUS).<sup>57</sup>

Because of the scarcity of collective organization amongst informal workers in India, despite constituting the significant majority of the workforce in the country, they remain invisible to the policy lens. The 2007 NCEUS Report notes that informal workers in India remain largely absent from policy circles.<sup>58</sup> Bhatt notes that this invisibility may be attributed in part to the insignificance of trade unionism involving informal workers.<sup>59</sup> However, this scarcity of unionism does not mean that the informal workers are completely *unorganized*. In fact, though still the minority, many informal workers in India have organized themselves into a range of associations. Agarwala documents how industry-specific informal workers are organizing through the traditional trade union path. Admittedly however, such union initiatives are only marginal amongst informal workers in India.

## II. ORGANIZATION OF INFORMAL WORKERS

Because of the limited efforts to integrate informal workers by the biggest party-linked trade unions, newer modes of organizations employing innovative organizational strategies amongst informal workers in India are emerging.<sup>60</sup> Many informal workers in India have organized themselves into trade unions, cooperative societies, and charitable trusts in order to promote their interests. A discussion of these varieties of organizing mechanisms is absent from Agarwala's frame of reference.<sup>61</sup> While following her larger agenda of identifying the organizing initiative of informal workers and newer strategies of such organizations, in this Part I discuss organizational initiatives of informal workers that are neither industry-based nor supported by traditional trade union federations. In my discussion, apart from the strategies of state negotiation, I identify other strategies where these organizations successfully use the market, undertake welfare provisioning, and engage in civil society activism. I have chosen the following organizations of informal workers because these are not connected to traditional trade unions (i.e., federations of trade unions), and they are representative of newer models of organization that employ a range of strategies apart from bargaining with the state or the employer. Finally, as opposed to Agarwala's emphasis on informal workers in employment

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<sup>57</sup> See generally NCEUS, UNORGANISED SECTOR 2007, *supra* note 13. see also NCEUS, INFORMAL ECONOMY 2008, *supra* note 13.

<sup>58</sup> NCEUS, UNORGANISED SECTOR 2007, *supra* note 13, at 37, 50, 75-76, 79-80, 165, 196, 356.

<sup>59</sup> BHATT, *supra* note 1.

<sup>60</sup> AGARWALA, *supra* note 8, at 203; Edward Webster, *Organizing in the Informal Economy: Ela Bhatt and the Self-Employed Women's Association of India*, 44 LAB., CAP. & SOC. 98, 101-02, 109-14 (2011).

<sup>61</sup> AGARWALA, *supra* note 8, at 10-13.

relationships,<sup>62</sup> my primary focus is on self-employed informal workers. I discuss three organizational initiatives of informal self-employed workers at different locations in India, pointing to two aspects of such organization — the formation process and the functions. I do so in order to indicate that these organizations are *sui generis* organizations and different from traditional trade unions.

### A. The Self Employed Women's Association

The Self Employed Women's Association (SEWA) is one of the biggest trade unions in India and a well-known organization of informal workers.<sup>63</sup> Registered in 1972, SEWA is an organization of self-employed poor women workers<sup>64</sup> that 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>65</sup> The initial and principal impetus for the formation of this trade union of informal self-employed women workers<sup>66</sup> came from an elite professional, Ela R. Bhatt, who did not share the socioeconomic and cultural background of the self-employed workers — admittedly an outsider, at least during the initial days of the formation of the trade union.<sup>67</sup> At that time, other influential trade union leaders, in their individual capacities, also supported Bhatt in her endeavor.<sup>68</sup> Bhatt then established contacts and forged partnerships with some of the (future) stakeholders of the trade union, that is, the self-employed workers.<sup>69</sup> Initially, she also received active assistance from the trade union of formal workers, the Textile Labour Association (TLA).<sup>70</sup> She also integrated banks in her organizational initiative, which was the backdrop to setting up the SEWA Bank for the self-employed workers.<sup>71</sup>

Highly educated professional individuals and the connections and resources they offer have always been vital to the organizational experience of the SEWA.<sup>72</sup> Networking

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<sup>62</sup> AGARWALA, *supra* note 8, at 56.

<sup>63</sup> SELF EMPLOYED WOMEN'S ASSOCIATION (SEWA), <http://www.sewa.org/> (last visited Jan. 5, 2015); see Aditi Kapoor, *The SEWA Way: Shaping Another Future for Informal Labour*, 39 FUTURES 554, 555 (2007).

<sup>64</sup> SEWA, *supra* note 63; Kapoor, *supra* note 63, at 560.

<sup>65</sup> SEWA, *supra* note 63; ELIZABETH HILL, WORKER IDENTITY, AGENCY AND ECONOMIC DEVELOPMENT: WOMEN'S EMPOWERMENT IN THE INDIAN INFORMAL ECONOMY 46-47 (2010).

<sup>66</sup> When we consider self-employment in the context of informal workers, we have to be mindful of the regular movement between self-employment and wage work by informal workers.

<sup>67</sup> BHATT, *supra* note 1, at 3-5, 8-9.

<sup>68</sup> *Id.* at 9-10.

<sup>69</sup> *Id.* at 10-12, 50.

<sup>70</sup> *Id.* at 50, 67. The TLA was the parent trade union from which the SEWA was born, but the SEWA later severed its links with the TLA.

<sup>71</sup> *Id.* at 12, 99.

<sup>72</sup> *Id.* at 12-13, 16, 126, 214. The SEWA always had (and still has) highly educated committed members on its rolls. The SEWA's professional members and outsider friends hold degrees from universities such as Harvard, Yale, Oxford, and Johns Hopkins. These educated professionals would

with government officials, journalists, researchers, and academics was instrumental in advancing the agendas of the SEWA during its foundational period.<sup>73</sup> Within three years of its formation, the union began networking internationally. Bhatt along with a Wall Street banker, Michaela Walsh, and a Ghanaian businesswoman, Esther Ocloo, established a network called the Women's World Banking, in order to facilitate credit access for women.<sup>74</sup> Walsh was particularly instrumental in establishing the network.<sup>75</sup>

The SEWA networks permeated political, ideological, and geographical borders.<sup>76</sup> The union successfully lobbied important political leaders, including ministers, in order to promote the interests of its members.<sup>77</sup> It has also established close links with the government, including implementing government programs such as the one on workers' education.<sup>78</sup> The union was also allowed to accompany labor officers of the government during the inspection process, thereby *de facto* enforcing labor laws in their areas of influence.<sup>79</sup> International organizations such as the International Labour Organization (ILO) too contributed towards the agenda of the SEWA.<sup>80</sup> The SEWA also integrated nongovernmental organizations in furtherance of its initiatives and forged nationwide and international alliances of NGOs and trade unions of informal workers.<sup>81</sup> However, at its core, the SEWA is an organization of informal self-employed women workers where decision-making is the prerogative of these workers.<sup>82</sup> The governance of the union is carried on by a mix of professional cadres and worker-members.<sup>83</sup>

The SEWA is different from the traditional concept of a trade union.<sup>84</sup> It offers specialist skills such as legal advocacy, financial and vocational training, organization and policy orientation to its members.<sup>85</sup> Despite being a trade union, the SEWA undertakes these initiatives through the approximately ninety registered trade and service cooperatives that it

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often speak on behalf of the self-employed worker members of the union, when these workers were unable to speak for themselves.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 13.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.* at 15-16, 98, 212-13.

<sup>77</sup> *Id.* at 66.

<sup>78</sup> *Id.* at 71, 98.

<sup>79</sup> *Id.* at 76.

<sup>80</sup> *Id.* at 74-75.

<sup>81</sup> *Id.* at 98-213.

<sup>82</sup> *Id.* at 70.

<sup>83</sup> John Blaxall, *India's Self Employed Women's Association (SEWA) — Empowerment Through Mobilization of Poor Women on a Large Scale* (2004), [http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2004/12/08/000090341\\_20041208114537/Rendered/PDF/308300IN0SEWA01see0also0307591.pdf](http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2004/12/08/000090341_20041208114537/Rendered/PDF/308300IN0SEWA01see0also0307591.pdf).

<sup>84</sup> HILL, *supra* note 65, at 75.

<sup>85</sup> BHATT, *supra* note 1; HILL, *supra* note 64, at 75-76; SEWA, *supra* note 63.

has established for its members.<sup>86</sup> The *Swashrayi Mahila Sewa Sahakari Bank* (SEWA Bank) is the largest cooperative of SEWA members with 93,000 savings accounts, and is run by the members themselves.<sup>87</sup> The SEWA Bank was established in reaction to the attitude of the mainstream banking sector towards the workers.<sup>88</sup> Even though the government encouraged banking with the poor workers, banks would refuse to transact with the illiterate informal workers.<sup>89</sup> The SEWA Bank improvised photo identity cards as a substitute for signature by the workers in order to integrate illiterate informal workers within its fold.<sup>90</sup>

The SEWA's healthcare initiative, which is also run by the members, is a combination of health education and curative care.<sup>91</sup> The SEWA's childcare initiatives are run by local cooperatives and other organizations. The SEWA initiated its integrated insurance scheme in 1992 with the help of the national insurance companies.<sup>92</sup> It also provides legal services including legal education and legal assistance to its members during litigation through its legal advisory center. The SEWA Academy promotes its members' education and capacity-building. The SEWA established the Mahila Housing SEWA Trust in 1994 in order to improve housing and infrastructural conditions of women engaged in informal economic activities.

The SEWA also lobbies the government on several issues that are central to the working lives of informal workers.<sup>93</sup> Additionally, it resorts to direct struggle and agitation against myriad forms of discrimination against women informal workers.<sup>94</sup> Moreover, at a fundamental level, the SEWA unionization provides the much needed legitimation and recognition of informal workers and their activities.<sup>95</sup> Based on her study of the SEWA unionization, Elizabeth Hill argues that by organizing the most vulnerable, marginalized and impoverished women workers, the SEWA addresses their inherent insecurity, hesitation, fear, exclusion, anxiety, and oppression.<sup>96</sup>

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<sup>86</sup> BHATT, *supra* note 1, at 16-17, 53-54, 99-122; Janhavi Dave et al., *The Self-Employed Women's Association (SEWA) Organising Through Union and Co-operative in India*, in REFUSING TO BE CAST ASIDE: WASTE PICKERS ORGANISING AROUND THE WORLD 27 (Melanie Samson ed., 2009).

<sup>87</sup> BHATT, *supra* note 1, at 99-122.

<sup>88</sup> *Id.* at 99-106, 119-20.

<sup>89</sup> *Id.* at 41.

<sup>90</sup> *Id.* at 102-03.

<sup>91</sup> *Sewa Services — Health Care*, SELF EMPLOYED WOMEN'S ASSOCIATION, [http://www.sewa.org/Services\\_Health\\_Care.asp](http://www.sewa.org/Services_Health_Care.asp) (last visited Jan. 5, 2014).

<sup>92</sup> *Id.*; Wouter van Ginneken, *Social Protection for the Informal Sector in India*, in REFORMS, LABOUR MARKETS, AND SOCIAL SECURITY IN INDIA 186, 192-93 (Ramgopal Agarwala, Nagesh Kumar & Michelle Riboud eds., 2004); Mirai Chatterjee & Jayshree Vyas, *Organising Insurance for Women Workers*, in THE UNORGANISED SECTOR — WORK SECURITY AND SOCIAL PROTECTION 74, 74 (Renana Jhabvala & R.K.A. Subrahmanya eds., 2001).

<sup>93</sup> BHATT, *supra* note 1, at 70; HILL, *supra* note 65, at 76-77, 139-42; Dave et al, *supra* note 86, at 32.

<sup>94</sup> BHATT, *supra* note 1; HILL, *supra* note 65, at 76-77, 89-93.

<sup>95</sup> HILL, *supra* note 65, at 76-83.

<sup>96</sup> *Id.* at 98.

## B. The Kagad Kach Patra Kashtakari Panchayat

While the 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>97</sup> The KKPKP registered itself as a trade union in 1993.<sup>98</sup> Unlike the SEWA, the KKPKP admits both men and women members.<sup>99</sup> In its early days, the KKPKP developed much like the SEWA. The principal idea and impetus for the formation of an organization of informal waste-pickers in Pune, Maharashtra, came from two university professors, who were implementing the National Adult Education Programme for child waste-pickers during the early 1990s.<sup>100</sup> The professors first campaigned for child education and source segregation of recyclable waste; they reached out to adult waste-pickers and proposed that their children be educated, and had identity cards issued to adult waste-pickers by their university in order to enable them to smoothly carry on their work.<sup>101</sup>

Having established their camaraderie with the waste-pickers, the two professors came in contact with Baba Adhav, an experienced trade union leader and president of a trade union of head-loaders (manual workers).<sup>102</sup> Adhav emphasized the importance of organizing the waste-pickers as a trade union, and was actively instrumental during the formation of the KKPKP. The activist-professors and the waste-pickers with whom they established a “close and enduring reciprocal relationship” reached out to the larger waste-picker community in the city of Pune in order to convince them to organize as a trade union.<sup>103</sup> It was through a convention, organized by Adhav, the activist-professors, and other individuals, that the trade union of waste-pickers, the KKPKP, was born in 1993. Thus, the formation of the organization of waste-pickers was a result of networking and close collaboration between different organizations (including a university), responsible and committed individuals, and the waste-pickers themselves.

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

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<sup>97</sup> KAGAD KACH PATRA KASHTAKARI PANCHAYAT (KKPKP), <http://www.wastepickerscollective.org/> (last visited June 7, 2014).

<sup>98</sup> PIUSH ANTONY, TOWARDS EMPOWERMENT: EXPERIENCES OF ORGANIZING WOMEN WORKERS 17 (2001).

<sup>99</sup> Poornima Chikarmane & Laxmi Narayan, *Organising the Unorganised: A Case Study of the Kagad Kach Patra Kashtakari Panchayat (Trade Union of Waste-pickers)*, [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) (last visited June 7, 2014).

<sup>100</sup> *Id.*; Snehal Sonawane, *Rescuing Rag-Pickers*, TIMES INDIA, Aug. 31, 2007, <http://timesofindia.indiatimes.com/india/Rescuing-rag-pickers/articleshow/2324932.cms>.

<sup>101</sup> Chikarmane & Narayan, *supra* note 99.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

respected as workers.<sup>104</sup> The KKPKP works on the same principles as the SEWA. While on the one hand the KKPKP organizes to provide for socioeconomic benefits to its members, on the other, it mobilizes its members for direct political action and lobbying. At yet another level, the union also uses the market efficiently by engaging in the waste-recycling business.

The KKPKP has institutionalized socioeconomic promotion programs for its members and has instituted credit cooperatives, group insurance, and a cooperative store for its members.<sup>105</sup> The KKPKP has also promoted self-help groups for its members.<sup>106</sup> In 1995 the KKPKP established a cooperative shop for waste trade run by its members. Twenty to thirty members are engaged in the shop that sells waste for recycling. This cooperative enterprise (i.e., the “waste shop”) arranges for provision of paid leave, provident funds, bonuses, and other social security benefits to the workers engaged in the shop. Additionally, in collaboration with the Life Insurance Corporation in India, the KKPKP has arranged for a contributory group insurance program, whereby its members are insured against disability, accidental death, and natural death.

The KKPKP undertakes educational and literacy programs.<sup>107</sup> It has launched awareness initiatives on issues such as child labor, discrimination against girls, domestic violence, and child marriage; the union also pressures its members to refrain from child marriage. The KKPKP also organizes direct action and protest marches against the government. From 1999 onwards, the KKPKP has been organizing annual protest rallies with its members. It 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>108</sup>

The trade union not only protests against the government, but also participates in issue-based collaboration with the government. On the basis of the KKPKP’s negotiations, the Pune Municipality (i.e., where the KKPKP is based) developed a medical insurance program for waste-pickers.<sup>109</sup> The KKPKP also partnered with the Pune Municipality in order to establish a door-to-door waste collection initiative by the waste-pickers from the municipal residents and commercial establishments.<sup>110</sup> The advantage of this mechanism is that while on the one hand, the waste pickers earn by removing the waste of these residents and offices, on

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<sup>104</sup> ANTONY, *supra* note 98, at 17-18; Nalini Shekar, *Suman More — KKPKP, Pune, India, in REFUSING TO BE CAST ASIDE*, *supra* note 86, at 11.

<sup>105</sup> Chikarmane & Narayan, *supra* note 99; ANTONY, *supra* note 98, at 63.

<sup>106</sup> ANTONY, *supra* note 98, at 63-64.

<sup>107</sup> *Id.* at 62-64, 66.

<sup>108</sup> Unprotected Manual Workers (Regulation of Employment and Welfare) Act, 1969, No. 30, Acts of Parliament, 1969 (India).

<sup>109</sup> Chikarmane & Narayan, *supra* note 99, at 2.

<sup>110</sup> *Id.* at 18-20.

the other, they also earn from selling the recyclable waste to the recycling agents. The KKPKP's innovation in involving the local government as a partner in this initiative is pioneering in the country.<sup>111</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>112</sup> The KKPKP also acts as the secretariat for an alliance of several waste-pickers' organizations from different states in India, named the SWACHH National Alliance of Waste Pickers (SWACHH).<sup>113</sup> The SWACHH currently has twenty-four organizations working with issues involving waste-pickers. The alliance developed a national policy on solid-waste management, and proposes to lobby government(s) in order to implement its policy proposal.

### C. The Barjya Punarbyawaharikaran Shilpa Shramik Sangathan

I have elsewhere documented an organizational initiative of informal waste-pickers in Kolkata, India, called the *Barjya Punarbyawaharikaran Shilpa Shramik Sangathan* (BPSSS), in which I actively participated.<sup>114</sup> As articulated with regard to the Kolkata organization, the genesis of the trade union initiative of informal waste-pickers was of a strategic and functional character similar to that of both the SEWA and the KKPKP. The primary impetus for the formation of the trade union in this case also came from two university professors, acting upon the advice of the ILO officials based in Delhi, India. However, since the professors did not have an effective grassroots connection with informal waste-pickers, they proposed and advocated the union's formation to an NGO — the *Calcutta Samaritans*. Their objective was to integrate the NGO as a promoter of the trade union because the NGO already engaged a large number of waste-pickers in Kolkata in their programs.

Since 1971, the *Calcutta Samaritans* has been engaging with the waste-pickers and other homeless workers in Kolkata.<sup>115</sup> In this respect, the NGO's campaign included a survey of the homeless population in the city of Kolkata, advocacy for the inclusion of the homeless

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<sup>111</sup> For a more detailed description of activities by waste-pickers' organizations, see SUPRIYA ROUTH, ENHANCING CAPABILITIES THROUGH LABOUR LAW: INFORMAL WORKERS IN INDIA 80-84 (2014).

<sup>112</sup> *Id.*

<sup>113</sup> KKPKP Central Secretariat, *The SWACHH National Alliance of Waste Pickers, India*, in REFUSING TO BE CAST ASIDE, *supra* note 86, at 37.

<sup>114</sup> ROUTH, *supra* note 111. This study of the organization of informal workers was conducted in the urban area of Kolkata during March to July, 2011. An earlier study in the same region with the same group of workers was undertaken in 2009. I employed a qualitative method of data collection for the case study. The study was principally based on semi-structured interviews supplemented by participant observation. For a more detailed analysis of this empirical study, see *id.*

<sup>115</sup> See ROUTH, *supra* note 111, at 232.

population as beneficiaries of government-sponsored schemes, and a report on the situational analysis of waste-pickers in the city.<sup>116</sup> Once they supported the idea of a trade union for waste-pickers, the *Calcutta Samaritans* reached out to their waste-picker constituency in order to encourage them to form a trade union. The idea was well received by the waste-pickers in Kolkata and they decided to participate in the trade union initiative.<sup>117</sup>

Apart from the NGO, several other entities and individuals, including the legal aid society of the WB National University of Juridical Sciences, were integrated into the initiative, thereby contributing to the visibility, legitimacy, and bargaining strength of the union. This larger social participation, with the active involvement of the waste-pickers, generates power and opportunity for the latter, who are otherwise the most marginalized of all informal workers, as is clear from their exclusion even from the informal worker-specific law and policy of the country.<sup>118</sup>

Compared to the SEWA or the KKP KP, the BPSSS is a very young initiative of informal workers. Even though it was established only in 2011, there are indications that some of its early initiatives are moving in the same direction as the SEWA or the KKP KP. After the formation of the BPSSS, the abovementioned legal aid society adopted the union as one of its projects.<sup>119</sup> The legal aid society not only agreed to help the trade union in its membership drive, but also undertook to offer legal assistance to the trade union members and literacy training to their children.<sup>120</sup> Additionally, the BPSSS has received some funding from external sources. The trade union members have decided to use this funding in furtherance of group medical insurance for the union members.<sup>121</sup> Apart from these initiatives, what is important in these agendas is that within a very short span of time, the BPSSS was able to achieve some visibility to the advantage of its members, which is one of the central objectives of informal workers' organizations.

The organizations discussed above, then, all have a core constituency of informal workers. However, their structure includes entities and individuals outside their core constituency. These organizations network with a range of institutions and individuals in order to promote the interests of their core constituency. They also adopt a collaborative (but uncompromising) approach towards government institutions. The characteristics and functioning of these organizations indicate that even though they are registered as trade unions, they are *not* really *trade unions* in the traditional understanding of the concept. While

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<sup>116</sup> *Id.*

<sup>117</sup> *Id.* at 232-37.

<sup>118</sup> *See generally id.* at 190-95, 216-18.

<sup>119</sup> *Id.* at 232-37.

<sup>120</sup> *Id.*

<sup>121</sup> Information obtained through personal meetings with the BPSSS members and the Calcutta Samaritans officials on 9 October, 2012 in Kolkata, India.

their structure partly resembles trade unions and some of their activities are traditionally associated with trade union activities, these organizations of informal workers are *sui generis* associations, as I argue in the following Part.

### III. AN IDEA OF WORKERS' AGGREGATION

In a personal correspondence, Frederick Engels noted:

Since the Dock Strike[,] Tussy has [been] organising Trades Unions and supporting strikes . . . . These new Trades Unions of *unskilled* men and women are totally different from the old organisations of the working-class aristocracy [i.e., traditional trade unions] and cannot fall into the same conservative ways; they are too *poor*, too *shaky*, too much composed of *unstable* elements, for anyone of these unskilled people *may change his trade any day*. And they are organised under quite different circumstances — all the leading men and women are Socialists and Socialist agitators too.<sup>122</sup>

The idea of *trade union* pertains to a specific trade, craft, or skill.<sup>123</sup> Traditionally, trade unions are combinations of workers employed in a common trade, organizing themselves against repression by employers and the state.<sup>124</sup> Such occupation-based organizations — representing a class — against employers still characterize modern trade unions.<sup>125</sup> The sense of hostility underlying the genesis of trade unions explains why they are constituted as an oppositional force not only against employers, but sometimes also against the capitalist production process.<sup>126</sup> Accordingly, it is not surprising that Engels did not consider associations of unskilled and unstable workers, who can offer only weak opposition and may change their trade any day, as trade unions. Taking Engels's reflection as a jumping off point, in this Part, I compare the informal workers' organizations described earlier with the traditional conceptualization of trade unions and self-employed traders' guilds in order to ascertain whether the former take any of these forms. I then offer an idea of informal workers' aggregation.

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<sup>122</sup> Frederick Engels, *Engels [Letter] to Laura Lafargue, London, 17 October 1889, Letters — 1889*, in FREDERICK ENGELS LETTERS (JANUARY 1887 TO JULY 1890), 48 COLLECTED WORKS OF MARX AND ENGELS 390 (1976) (emphasis added).

<sup>123</sup> RICHARD HYMAN, UNDERSTANDING EUROPEAN TRADE UNIONISM: BETWEEN MARKET, CLASS AND SOCIETY 2 (2001).

<sup>124</sup> HYMAN, *supra* note 123, at 2, 30, 66.

<sup>125</sup> *Id.* at 30, 68; MARTIN UPCHURCH ET AL., THE CRISIS OF SOCIAL DEMOCRATIC TRADE UNIONISM IN WESTERN EUROPE: THE SEARCH FOR ALTERNATIVES 2-3 (2009).

<sup>126</sup> HYMAN, *supra* note 123, at 2.

### A. Trade Unions and Informal Workers' Organizations

The industrial proletariat stereotype that shaped the idea of the trade union is a misfit for the circumstances of informal workers.<sup>127</sup> Informal workers are not attached to one occupational identity, but move from one work to another; the nature of their work does not allow them to come together in a definite workplace; they are generally disorganized, and oftentimes remain without work; their worker identity is malleable; sometimes they are employed by an employer, at other times they are self-employed, and at yet other times they work for multiple individuals, none of whom may be identified as the employer; and their concerns are more about immediate subsistence, rather than the wellbeing of the society at large.

Because of the nature of their activities and their *modus operandi*, it becomes difficult for informal workers to organize as traditional trade unions in order to negotiate with several entities — not necessarily limited to an employer or the state — that are contributory to their marginalized status. In view of their limited power and capacity, it is necessary for informal workers to integrate powerful and influential segments of society into their movement. If informal workers' conditions need to be improved (which is the objective of their organizations), the involvement with a range of social-cultural-political-economic issues is absolutely necessary.<sup>128</sup>

From such a point of view, outsiders have an important role to play in informal workers' organizations. Even though their influence on the Indian trade union movement cannot be conclusively ascertained, outsiders, that is, people outside trade unions or non-workers in a particular industry, were always part of the Indian trade union movement.<sup>129</sup> Similarly, for the organizations of informal workers, as noted above, the primary impetus and initiative to organize came from *outsiders* who were not informal workers themselves. The outsiders play an identifiably vital role in establishing the avenues of power and influence of the organizations. Considering the nature of the marginalization that informal workers sustain, this power and influence is the most significant aspect of their organizations.

Even though outsiders have been engaged in both traditional trade union activities as well as informal workers' organizations, the nature and role of outsiders differ for these two categories of workers' organizations. Traditionally, outsiders to specific trade unions were members of political parties and part and parcel of the overall political process in the country — they were only outsiders to specific industries and trade unions. These outsiders, who were generally political leaders affiliated with political parties, would organize workers at specific workplaces. They would be involved in organizing industry-specific workers across the states

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<sup>127</sup> *Id.* at 34-35.

<sup>128</sup> BHATT, *supra* note 1, at 25.

<sup>129</sup> HENSMAN, *supra* note 30, at 69-70, 80; Haan & Sen, *supra* note 38.

and affiliating them with their parent federation (of trade unions). On the one hand, much less effort was required to organize workplace-based formal workers, but on the other, the outsiders' main interest was in strengthening their political movement through trade union affiliations. Engaging in the everyday functioning of the trade unions was not on their agenda. Involvement of outsiders, therefore, brought political strength to trade unionism.

However, outsiders who become involved in the organizations of informal workers, as indicated above, generally do not have a particular political affiliation. Nor is their involvement with a view to affiliate specific organizations with a larger political body. Moreover, even though these outsiders cannot rely on a specific workplace-based strategy to organize workers (because of the dispersed nature of informal work), the principal idea to organize emanates from them — initially without any substantial support from the concerned workers themselves. Moreover, outsider members of informal workers' organizations bring in resources for the organizations, which are used in furtherance of developing their insurance and welfare programs. Since these outsiders do not *per se* bring in political strength, informal workers' organizations have to network with other organizations in order to generate political power.

Informal workers' organizations are not only different insofar as the role of outsiders is concerned, but also differ from traditional trade unions in their function. Trade unions in India have historically employed political means, such as bargaining and strikes, in order to negotiate with or embarrass the political party in power.<sup>130</sup> Adversarial confrontation with employers is still the dominant strategy adopted by Indian trade unions.<sup>131</sup> However, while the traditional trade unions sustain adversarial strategies,<sup>132</sup> organizations of informal workers oftentimes adopt a more cooperative approach towards the state and employers.

The traditional idea of trade unionism as an adversarial, politically charged and oppositional movement is only incidental, but not central, to the informal workers' collective movements, because these organizations not only agitate against the state, but also collaborate with the state on several issues. For example, as discussed in Part II, even though the SEWA occasionally agitates against the government, it was also an implementing agency for the government program on workers' education. The SEWA also assists labor inspectors during the legally mandated inspection process. It also lobbies the government and individual ministers to promote its members' interest. Likewise, the KKPKP, despite holding regular protest rallies against the government, sits on several government committees concerning a

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<sup>130</sup> HENSMAN, *supra* note 30, at 157, 165; Sundar, *supra* note 41.

<sup>131</sup> HENSMAN, *supra* note 30, at 164.

<sup>132</sup> *Id.* at 165; Sundar, *supra* note 41.

range of issues. Additionally, the KKPKP also collaborates with the government in instituting door-to-door collection contracts and group insurance for waste-pickers.

Additionally, organizations of informal workers also support their members through various socioeconomic initiatives. While the SEWA extends services such as legal advocacy, training and literacy, banking, healthcare, childcare, insurance, and affordable housing to its members, the KKPKP issues identity cards, secures credit, offers insurance, and arranges educational facilities and awareness initiatives for its members. Although the BPSSS is a new organization, it has already initiated a drive to offer group insurance to its members. These initiatives have been devised with a view to promoting all-round improvement in workers' conditions.

Moreover, these organizations either promote or themselves undertake businesses on behalf of their members. For instance, the SEWA bank not only offers banking facilities to the informal workers, but also promotes the livelihoods of several of its members by integrating many of them in the running of the bank. The KKPKP, on the other hand, has established a waste-shop in order to promote its members' trade in waste recycling. Instead of having to range across the city to sell what they collect, KKPKP members can sell their recyclable waste directly from the union-managed shop. These initiatives of the organizations are aimed at directly promoting the livelihoods of their members; as a result of these initiatives, the informal worker-members of these organizations — who are mainly self-employed — enjoy some semblance of security in their livelihoods.

Organizations of self-employed individuals are not historically unprecedented. Historically, craft workers have organized in order to promote their individual and trade interests. Such organizations sought to promote the overall interests of the craft members, including with initiatives on insurance and welfare. Considering the initiatives undertaken by the organizations of self-employed informal workers, there is a possibility, not least because of this historical similarity, that they could be conflated with traders' associations.<sup>133</sup> In view of such a possibility, it is useful to briefly consider whether the informal self-employed workers' organizations mentioned above resemble the guilds or guild-like structures of the pre-industrial revolution era. If they do, it might be worthwhile, then, to consider whether the historical craft organization of guilds could serve as a model for these organizations of informal self-employed workers.

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<sup>133</sup> A.C.L. Davies, *'Half a Person': A Legal Perspective on Organizing and Representing 'Non-Standard' Workers*, in *VOICES AT WORK: CONTINUITY AND CHANGE IN THE COMMON LAW WORLD* 122 (Alan Bogg & Tonia Novitz eds., 2014). Even when organizations are constitutive of self-employed workers, for informal workers, it cannot be concluded with certainty that there is no movement between the categories of waged work and self-employment, as indicated above. Given this characteristic of informal work, a self-employed workers' organization might, even if occasionally, also allow waged workers into its fold.

## **B. Self-Employed Traders' Guilds and Self-Employed Informal Workers' Organizations**

As described above, the organizations of informal workers, in both their manner of organizing and *modus operandi*, also differ from the medieval guilds or guild-like structures. Even though the term is variously defined, guilds were roughly independent, local, permanent professional organizations of people in the same profession or craft, whose primary aim was the maintenance of a trade monopoly.<sup>134</sup> Additionally, guilds and guild-like structures have also been characterized as furthering their members' political, social, cultural, and religious interests, apart from their economic agenda.<sup>135</sup> From a functional point of view, if we take into account the range of activities undertaken by the organizations of informal workers, guild-like structures come close to informal workers' organizations only insofar as guilds were concerned with the comprehensive betterment of the lives of their members (including, for example, by imparting training, and offering them insurance and social welfare).<sup>136</sup>

However, the delegation of state power to the guilds, an important characteristic of theirs,<sup>137</sup> is completely absent from the informal workers' organizations. Guilds were not only an extension of the state; they were representatives of the producers, the consumers, and the community at large.<sup>138</sup> A significant difference between the guilds and the informal workers' organizations described in this Article is that whereas guilds used to be powerful organizations and an extension of the state,<sup>139</sup> informal workers' organizations are still only marginal players, if at all, with regard to state policy; neither are they, in any way, linked to the state as apparatuses. Moreover, the primary orientation of the guilds was economic.<sup>140</sup> In distinction, even though organizations of informal workers promote the economic interests of their members, they are primarily concerned with the overall wellbeing of their worker-members. Again, guilds were organizations of traders, manufacturers and artisans, who, in the production and distribution cycle, used to possess a substantial amount of power and influence. Even though some informal workers produce goods to be distributed, it would be a stretch of the imagination to categorize them as traders or manufacturers. Thus, the idea of a guild fails to articulate the vulnerability, marginalization, and powerlessness of informal

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<sup>134</sup> Jan Lucassen et al., *Introduction: The Return of the Guilds: Towards a Global History of the Guilds in Pre-industrial Times*, 53 INT'L REV. SOC. HIST. SUPPLEMENTS 5, 6 (2008); Tirthankar Roy, *The Guild in Modern South Asia*, 53 INT'L REV. SOC. HIST. SUPPLEMENTS 95 (2008).

<sup>135</sup> Lucassen et al., *supra* note 134, at 9, 14, 16.

<sup>136</sup> *Id.* at 16, 18; Roy, *supra* note 134, at 96, 100.

<sup>137</sup> Lucassen et al., *supra* note 134, at 12.

<sup>138</sup> SYDNEY WEBB & BEATRICE WEBB, *THE HISTORY OF TRADE UNIONISM* 17 (1911).

<sup>139</sup> Lucassen et al., *supra* note 134, at 17-18; Roy, *supra* note 134, at 95.

<sup>140</sup> Roy, *supra* note 134, at 96-97.

workers and their countermovement by means of their organization. Definitely, then, organizations of informal workers cannot be characterized as guilds or guild-like structures.

If the concept of trade union falls short of explaining the nature of organization of informal workers and the idea of guild is far removed from their organizational initiative, how can the organization of informal workers be conceptualized? My attempt at an answer is as follows.

### **C. An Idea of Informal Workers' Aggregation**

As the examples in Part II indicate, informal workers' organizational initiatives are based on functional necessities rather than on strict adherence to a specific form. Because of the nature of their work, informal workers need to bargain mainly with the state (primarily the government) and not with employers. Accordingly, their priority is to enhance their bargaining power *vis-à-vis* the government rather than an employer (i.e., when one exists). Due to their marginalization, illiteracy, lack of awareness, and informational deficiency, by themselves they are unable to generate enough political power to influence the government (or the state) mechanism. This is evident from the exclusion of informal workers from government planning and policies in India, as noted by the NCEUS.<sup>141</sup> It is therefore important for informal workers to involve as many institutions and individuals as might help them enhance their bargaining power against the state.

In this respect, specific categories of informal workers need to ascertain which institutions and individuals might be important for their specific circumstances. As is evident from the experiences of informal workers' organizations, the choice of integrating outside entities is not always in the hands of the informal workers — much of that choice depends on chance factors and priorities of these other entities. Thus, even though the choice of integrating outside entities does not always rest with the workers, what they must ensure is that the integration ultimately generates social and political power for their organizations.

However, the organizational model I discuss in this Article sees the state not only as an adversary, but also has to involve the instrumentalities of the state as partner. A state consists of the government, the legislature, the judiciary, members of parliament, opposition parties, local administrators, and local elected representatives. In the envisaged organizational model, some of these constitutive entities of the state could be integrated in the organization process of informal workers. Additionally, non-state entities such as NGOs, social activists, and even universities or research institutions could also become coalition partners in the organizational initiative of informal workers.

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<sup>141</sup> NCEUS, UNORGANISED SECTOR 2007, *supra* note 13.

Further, under the existing circumstances of impoverishment and marginalization of informal workers in India, workers need not concern themselves with the long-term goals and consequences of their organizational initiatives. They need to think primarily about availing themselves of short-term benefits and advantages. In order to make use of (limited) available opportunities for their more immediate concerns, informal workers' organizations need to decide their agendas and operate locally. Such localized determination of agendas and priorities for organizations of informal workers also mandates that they should be decentralized (rather than a centrally controlled union structure) and based on the local social fabric. Such decentralized organization is helpful because locally based organizations need not conform to any centrally adopted ideology, policy, or strategy and may be informal activity-specific.

This model of organization of informal workers could be seen as a *flux*, or as a *transient* ever-evolving framework, which lacks specific form and characteristics at a single point in time.<sup>142</sup> I propose that we term this model of organization of informal workers as workers' aggregation. The term aggregation suggests a "more loosely integrated collection,"<sup>143</sup> which is a more appropriate concept for the nature of organizations of informal workers. One could possibly use several alternative terms in order to convey the idea of a broadly-based organization that I hope to convey. The several closely connected possible terms would be: association, organization, collection, or group. There are, however, two problems in using any of these terms. The first is that all of them are very generic and, accordingly, could indicate *all* (i.e., any) kinds of organizations including a trade union.<sup>144</sup> The second problem with these terms is that they roughly indicate a well-formed and structured homogeneous group.

Homogeneity is something that eludes organizations of informal workers. The idea that I want to convey, instead, is that the organizational model of informal workers is not one of close-knit association with identical *trade* (worker) members; the informal workers' organizations described above are loosely formed organizations that integrate a range of workers engaged in several informal activities. It is also possible that each individual worker might work in different activities at the same time. Moreover, in the organizational model I describe, outsiders and non-worker members play a significant role in shaping and developing the organizations. Due to these unorthodox characteristics of informal workers' organizations, I propose that *aggregation* is a better term to convey the idea of a loosely formed group by (not identical but similarly situated) individuals for mutual benefits. While still a generic

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<sup>142</sup> Graham Crow, *Social Solidarities*, 4 SOC. COMPASS 52, 54 (2010).

<sup>143</sup> W.C. ALLEE, ANIMAL AGGREGATIONS — A STUDY IN GENERAL SOCIOLOGY vii (1931).

<sup>144</sup> *Id.* at 6-9.

term, at the same time the idea of aggregation also suggests some kind of specificity or peculiarity. Since the principal constituent of this aggregation is informal workers, it is a *workers' aggregation*.

While an informal workers' aggregation needs to be primarily concerned with the interests of its worker-members, its approach towards the institutions of the state and non-state entities ought to be collaborative rather than confrontational. A class-based confrontational agenda need not be a priority for a workers' aggregation. This ambivalence regarding class identity does not, however, mean that a workers' aggregation need not be concerned about the larger political process. Indeed, one of the fundamental objectives in the development of the strategic aggregation of workers involving a range of individuals and institutions is to raise the workers' political negotiating power.

The possibility of such enhancement of negotiating power is more likely to be the result of strategic cooperation rather than class-based (or identity-based) division and conflict. Links with the institutions of the state and civil society are a must for a workers' aggregation, but it should remain a central feature of aggregation that it may successfully operate even without any conscious class-based identity formation and activism. Accordingly, the idea of informal workers' aggregation eschews the distinction between the different kinds of unionism as business unionism, social partner unionism, or class struggle unionism.<sup>145</sup> For an informal workers' aggregation to be effective, even though there should be a definite emphasis on collaboration with the different institutions of the state, these collaborations should not end up in making the aggregation subservient to the interest of the state, as has been the experience of either corporatist trade unionism or one-party unionism of former socialist states.<sup>146</sup> I discuss the relation between workers' aggregation and law in the next Part.

#### IV. WORKERS' AGGREGATION AND LAW

In this Part, I analyze the role of law in the context of informal workers' aggregations in India. Before I engage with specific legislative strategies adopted by informal workers' aggregations, it is worthwhile to briefly consider the juridical bias against informal workers despite the constitutional enumeration of labor rights — including the right to unionization — mentioned above. The Constitution of India conflates the concept of *work* with the notion of

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<sup>145</sup> Hyman, *supra* note 123, at 1-5; UPCHURCH ET AL., *supra* note 125, at 5.

<sup>146</sup> Geoffrey Bergen, *Labor, Democracy, and Development in Senegal*, in TRADE UNIONS AND THE COMING OF DEMOCRACY IN AFRICA 35, 39-40 (Jon Kraus ed., 2007). *See also generally* TIM PRINGLE & SIMON CLARKE, THE CHALLENGE OF TRANSITION — TRADE UNIONS IN RUSSIA, CHINA AND VIETNAM 2-3, 145-46, 202-03 (2010); UPCHURCH ET AL., *supra* note 124, at 10; Jon Kraus, *Trade Unions in Africa's Democratic Renewal and Transitions: An Introduction*, in TRADE UNIONS AND THE COMING OF DEMOCRACY IN AFRICA, *supra*, at 1.

*employment*. In its Part III, in the Fundamental Rights chapter, explicating the significance of *employment*, the Constitution delineates elaborate provisions on nondiscrimination and preferential treatment in matters of public employment.<sup>147</sup> It also prohibits “forced labour” and the engagement of children in “hazardous employment.”<sup>148</sup> In the Directive Principles of State Policy in Part IV, prescribing policy priorities for the government(s), the Constitution safeguards a living wage,<sup>149</sup> equal pay for equal work,<sup>150</sup> health and strength of workers,<sup>151</sup> unemployment and old age assistance,<sup>152</sup> maternity relief and appropriate conditions of work,<sup>153</sup> and workers’ participation in management.<sup>154</sup>

The nature of these guarantees suggests that the constitutional understanding of work is limited to the contexts where workers are employed by management in an industrial facility. Ample indications in this respect are the references to public employment, unemployment allowance, and workers’ participation in management. This understanding of work as employment reduces workers to employees. The second problematic issue in the constitutional understanding of work is that the idea of work pertains to wage, as evidenced by the constitutional provisions on securing a living wage and equal pay. This conflation of work with waged employment in an industry has the effect of excluding informal workers from the purview of constitutionally safeguarded labor rights. A significant percentage of informal workers, as discussed above, are self-employed and unwaged workers; even when they are waged employees, the majority of them are not part of a formal industry.<sup>155</sup>

As one might expect, the constitutional understanding of the idea of work and workers permeates labor law in India. Labor laws in India generally understand work as an employment relationship and the worker as an employee. The Industrial Disputes Act, 1947,<sup>156</sup> the Factories Act, 1948,<sup>157</sup> the Industrial Employment (Standing Orders) Act, 1946,<sup>158</sup> the Contract Labour (Regulation and Abolition) Act, 1970,<sup>159</sup> and the Trade Unions Act, 1926<sup>160</sup> are some of the major pieces of labor legislation in India. In all of them work is

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<sup>147</sup> See INDIA CONST. , art. 16.

<sup>148</sup> *Id.* arts. 23 & 24.

<sup>149</sup> *Id.* art. 43.

<sup>150</sup> *Id.* art. 39(d).

<sup>151</sup> *Id.* art. 39(e)(f).

<sup>152</sup> *Id.* art. 41.

<sup>153</sup> *Id.* art. 42.

<sup>154</sup> *Id.* art. 43A.

<sup>155</sup> For a worldwide overview of the nature, extent and significance of informal work and workers, see generally, WOMEN IN INFORMAL EMPLOYMENT: GLOBALIZING AND ORGANIZING (WIEGO), <http://wiego.org> (last visited 17 June 2015).

<sup>156</sup> The Industrial Disputes Act, 1947, No. 14, Acts of Parliament, 1947.

<sup>157</sup> Factories Act, 1948, No. 63, Acts of Parliament, 1948 (India).

<sup>158</sup> Industrial Employment (Standing Orders) Act, 1946, No. 20 Acts of Parliament, 1946 (India).

<sup>159</sup> Contract Labour (Regulation and Abolition) Act, 1970, No. 37, Acts of Parliament, 1970 (India).

<sup>160</sup> Trade Unions Act, 1926, No. 16, Acts of Parliament, 1926 (India).

conceptualized as an employment relationship and workers as employees. The legislative strategies adopted by informal workers in developing their aggregations therefore need to be contextualized against the above background.

Organizations of informal workers in India have made use of a range of statutes in order to constitute themselves as legitimate and authentic organizations of workers. Unsurprisingly, one of the primary legislative instruments used by the workers' organizations is the Trade Unions Act, 1926.<sup>161</sup> According to the Act, a trade union is an association "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."<sup>162</sup> Any seven members of a trade union can register a trade union under the 1926 law.<sup>163</sup> Once registered, the trade union members are exempt from criminal conspiracy (otherwise statutorily penal) and civil action for anything done in furtherance of the objectives of the trade union.<sup>164</sup>

The sole concern of the Trade Unions Act is to facilitate the unionization of employees and employers. The Act was devised to cater to the needs of an industry-based, employment relationship-centered pool of employees, but not workers generally. For reasons mentioned above, however, such a model of industrial relations is unsuited to the conditions of informal workers in India. Because of this mismatch between the trade union law and the *modus operandi* of informal workers, the Trade Unions Act sometimes poses a challenge to informal workers' organizations. A prominent instance was the initial refusal by authorities to register the SEWA under the Trade Unions Act, because the self-employed workers did not have an employer to bargain with.<sup>165</sup> However, after much persuasion and negotiation, the SEWA was allowed to register as a trade union under the Act of 1926, as I have discussed elsewhere.<sup>166</sup> Even though it is sometimes difficult for informal workers to organize under the Trade Unions Act – because their primary bargaining partner, contrary to the orientation of the Act, is the state rather than an employer – registering as a trade union still brings certain advantages to the informal workers.

Registration under the Act has both legal as well as political consequences. As Bhatt notes, trade unions enhance the visibility of informal workers, who otherwise remain excluded from the policy purview. Another fundamentally important role that trade unionism plays in the lives of informal workers is to promote the recognition of such workers as

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<sup>161</sup> *Id.*

<sup>162</sup> *Id.* § 2(h).

<sup>163</sup> *Id.* § 4.

<sup>164</sup> *Id.* §§ 17, 18.

<sup>165</sup> See BHATT, *supra* note 1, at 17-18.

<sup>166</sup> ROUTH, *supra* note 111, at 69-80; see also BHATT, *supra* note 1.

*workers*. People engaging in survival activities such as waste picking are barely recognized as workers. However, as the instances of the SEWA and KKPKP go to show, after forming a trade union waste-pickers are recognized as workers — legally as well as politically — because *legally* a trade union pertains to workers and government authorities feel *politically* comfortable negotiating with unionized workers.<sup>167</sup> Further, Hill notes that trade unionism helps overcome the vulnerable informal workers' insecurities, fear, exclusion, and oppression.<sup>168</sup> This sense of empowerment emanates from the collective identity shaped by trade unionism.<sup>169</sup> The consciousness of belonging — that there are others like me; that we make a valuable contribution to the society; that we have rights; that we have claims to state resources; that we are poor but many; and that we have our own organization — enhances every worker's perception of self-worth.

Apart from these various advantages, the fundamental practical function of trade unionism remains bargaining, and in furtherance of such bargaining, trade unions can impose restrictions on trade or business. For bargaining purposes, trade unions may undertake with immunity actions such as strike, picketing, and determining minimum wages and working times, which might otherwise be considered as restrictions on trade. It is only trade unions that are exempt from being held in violation of trade when undertaking such actions, thereby making the trade union a sought-after legal status.

However, in the context of informal workers, the majority of whom are self-employed, the immunities generally available to trade unions can sometimes become problematic. The legal recognition of trade unions absolves them of liabilities arising out of conspiracies in furtherance of valid trade union objectives.<sup>170</sup> Such legal recognition also shields trade unions from the purview of the competition law (for example, when bargaining for minimum wages).<sup>171</sup> However, if self-employed informal workers, who can also be seen as businesspersons running tiny businesses, engage in trade union activities in determining the (minimum) exchange rates for their goods and services, thereby influencing market outcomes, their trade unionism could fall foul of the competition law regime,<sup>172</sup> and could perhaps be construed as conspiracy.<sup>173</sup>

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<sup>167</sup> BHATT, *supra* note 1; *see also* ROUTH, *supra* note 111, at 222-35.

<sup>168</sup> HILL, *supra* note 65, at 98.

<sup>169</sup> *Id.*; *see also* BHATT, *supra* note 1.

<sup>170</sup> K.D. Ewing, *The Importance of Trade Union Political Voice*, in VOICES AT WORK, *supra* note 133, at 277, 277-78, 285; *see also* The Trade Unions Act, 1926 §§ 17-19, Acts of Parliament, 1926 (India).

<sup>171</sup> Ewing, *supra* note 171, at 285; Davies, *supra* note 133, at 130; *see also* Trade Unions Act, 1926, No. 16, Acts of Parliament, 1926, § 19 (India).

<sup>172</sup> Davies, *supra* note 133.

<sup>173</sup> According to The Competition Act, 2002, No. 12., Acts of Parliament, 2002, §§ 2(h), 2(1) (India), an *enterprise* includes an individual “engaged in any [profession or occupation].” Section 2(c) of the Act defines a *cartel* as an “association of producers, sellers, distributors, traders or service providers”

If trade unionism amongst informal workers is to become influential, self-employed informal workers such as street vendors, waste-pickers and subsistence agriculturists need to be considered as *workers* rather than *entrepreneurs*. We need to conceptualize the entire range of informal workers through a workers lens. Law and policy should attune itself in such a manner that some of the lowest-rung informal workers — waste-pickers and street vendors — are not treated as entrepreneurs. Legal recognition of informal work and workers is therefore significant for promoting trade unionism and collective action amongst informal workers.

While legal recognition of the entire range of informal workers as workers might promote trade unionism amongst them, trade unionism *per se* has only limited potential to ameliorate the conditions of informal workers. As the earlier Parts have suggested, trade unionism of informal workers in India has been able to bargain for beneficial contracts, policies, and statutes from the state. However, such bargaining successes are few and far between when seen against the backdrop of the enormous number of informal workers in India.

Informal workers are some of the most vulnerable workers in India, who are deprived of even the minimum securities in their lives and work. Accordingly, informal workers' collective action needs to devise ways to address the inherent insecurities and exclusion of informal workers, in both the shorter and longer term. It is in this context that informal workers' collective action makes judicious use of the legal framework in India.

Apart from registering as trade unions, informal workers' organizations are also registered under the Co-operative Societies Act, 1912,<sup>174</sup> the Societies Registration Act, 1860,<sup>175</sup> and the Companies Act, 1956 (repealed in 2013).<sup>176</sup> According to the Co-operative Societies Act, 1912, any group that has the "promotion of the economic interests of its members in accordance with co-operative principles" as its objective can be registered as a society.<sup>177</sup> A society registered under the 1912 Act must have at least ten adult members of

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who by an agreement control the trade or the price in the market. Thus, according to the Act, informal workers such as street vendors or rickshaw pullers could constitute an enterprise, and accordingly, cannot establish an association in furtherance of their collective interests either through bargaining with the government (which might be considered an intervention in trade) or by collective agreement amongst themselves (i.e., a purported cartel) deciding the minimum terms of their work. Any such association and their collective decision might be deemed an anticompetitive practice, and hence in violation of the competition law of the country. *Id.* § 3.

<sup>174</sup> Co-operative Societies Act, 1912, No. 2, Acts of Parliament, 1912 (India).

<sup>175</sup> Societies Registration Act, 1860, No. 21, Acts of Parliament, 1860 (India).

<sup>176</sup> Companies Act, 1956, No. , 1 Acts of Parliament, 1956 (India); repealed by Act No. 18, Acts of Parliament, 2013 (India).

<sup>177</sup> Co-operative Societies Act, 1912, § 4. Societies registered under the law are corporate bodies with perpetual succession, a common seal, and powers to enter into contracts, to hold property, and to sue. *Id.* § 18. Moreover, except in certain situations, shares and interests of members of a cooperative society in the capital of the society cannot be attached or sold under a decree of a court, even if such

the same *tribe, class, caste, occupation, or locality* on its rolls.<sup>178</sup> This kind of membership requirement works very well with organizations of informal workers. It is possible that informal workers could organize on the basis of their occupation, but since they often change their occupation or are engaged in multiple occupations, organizing on the basis of locality, class, tribe, or caste allows them the flexibility of organizing as cooperative societies and holding their diverse membership together under one organizational umbrella.

Promoting the economic interests (of members of a cooperative society) is a broadly conceived objective. This objective encompasses a range of economic activities — from business ventures to credit groups. As the examples of the SEWA, the KKP KP, and other organizations suggest,<sup>179</sup> aggregations of informal workers have established business ventures, including credit and self-help groups, in the form of cooperative societies. These business ventures or credit societies are established with a view to promoting the different economic activities that informal workers are engaged in. The cooperative societies also offer their members easy credit to be used in furtherance of their specific economic activities. Accordingly, informal workers' cooperative societies address the economic insecurities of their members.

However, as is the case with their trade unions, registering their cooperative societies is not easy for informal workers. Irrespective of the formal guarantees offered by the 1912 Act, it is the Registrar of Co-operative Societies who ultimately decides whether or not members of a cooperative society belong to the same tribe, class, caste, occupation, or locality, and whether or not to register a society.<sup>180</sup> There are indications that registrars often are not satisfied with the worker status of informal workers and doubtful of their capacities to carry on cooperative activities.<sup>181</sup>

The other legal avenue used by the aggregations of informal workers is the Societies Registration Act, 1860. The Societies Registration Act seeks to improve the legal conditions of societies established for the purpose of promoting literature, science, and fine arts, as well as scientific knowledge, political education, and *charitable initiatives*.<sup>182</sup> Any seven or more persons can, by means of a memorandum of association, form a society for the abovementioned purposes and register it under the Act.<sup>183</sup>

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members owe debt or liability. *Id.* § 21. Cooperative societies may also be exempt from paying registration fees, stamp duties, and income tax on profits. *Id.* § 21.

<sup>178</sup> *Id.* § 6. This is unless a registered society is also one of the members of a (i.e., another) society. *Id.*

<sup>179</sup> Antony, *supra* note 98; Routh, *supra* note 111, at 69-80.

<sup>180</sup> Co-operative Societies Act, 1912, §§ 7, 9.

<sup>181</sup> BHATT, *supra* note 1.

<sup>182</sup> Societies Registration Act, 1860, preamble, § 20.

<sup>183</sup> *Id.* § 1.

Although these societies, unlike trade unions, may not integrate informal workers as fee-paying equal members, they do work towards furthering their welfare. The registered societies undertake a range of charitable initiatives in furtherance of the overall development of informal workers. These initiatives include group insurance for their beneficiaries (i.e., informal workers), facilities for medical provisioning, vocational training, functional literacy for informal workers, education for the children of informal workers, legal aid, and a range of other welfare provisioning depending on the orientation of specific societies. These societies, then, secure welfare provisioning and social protection for informal workers. Oftentimes they also negotiate with the government for the benefit of the informal workers through government contracts and government-developed welfare schemes, as noted above. Accordingly, these societies employ a dual strategy of negotiation with the government and welfare provisioning in furtherance of multidimensional improvement of the conditions of informal workers.

Some aggregations of informal workers in India have also registered their organizations under the Companies Act, 1956.<sup>184</sup> According to this Act, a group of people, through a memorandum of association and articles of association (when necessary), can form and register a private or public, limited or unlimited company in furtherance of any lawful purpose.<sup>185</sup> If more than twenty people (more than ten for the purpose of banking) wish to undertake any *profitable business*, it is necessary for them to register as a company.<sup>186</sup> According to the Act, profitable businesses may be undertaken in furtherance of “promoting commerce, art, science, religion, charity or any other useful object.”<sup>187</sup> If a company intends to register itself with the aim of promoting the abovementioned objectives, including charity, and intends to use its *profit* for the same purposes, the government can specifically license such a company as a limited liability company without mandating the use of the word *limited* in its name.<sup>188</sup>

Thus, under the Act, companies can be registered for charitable purposes. By registering themselves under the Act, workers can undertake a profitable venture collectively and use their profit in furtherance of their collective needs. The advantage of organizing as a limited liability company is that the workers (i.e., promoters of the company) are not

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<sup>184</sup> Companies Act, 1956, No. 1 Acts of Parliament, 1956 (India); repealed by Act No. 18, Acts of Parliament, 2013 (India). See, for example, organizations such as NIDAN SWACHDHARA PRIVATE LIMITED (NSPL), [http://www.nidan.in/otherpage.php?page\\_code\\_no=14](http://www.nidan.in/otherpage.php?page_code_no=14) (last visited Dec. 10, 2014); NIDAN MICRO FINANCE FOUNDATION (NMMF), [http://www.nidan.in/otherpage.php?page\\_code\\_no=13](http://www.nidan.in/otherpage.php?page_code_no=13) (last visited Dec. 10, 2014); and ANNAPURNA PARIWAR VIKAS SAMVARDHAN, <http://www.annapurnapariwar.org> (last visited Dec. 10, 2014).

<sup>185</sup> Companies Act, 1956, §§ 3, 12, 26, 36.

<sup>186</sup> *Id.* § 11.

<sup>187</sup> *Id.* § 25.

<sup>188</sup> *Id.*

personally or collectively liable in case the company falters. The liability rests with the corporate entity (i.e., the company) and only to the extent limited by its memorandum and articles of association. A company, therefore, opens up several business possibilities for informal workers with only one condition, namely that their profit need be channeled to charitable purposes. It is no surprise, then, that some informal workers' aggregations in India register their profitable activities under section 25, so that they can use their profits in furtherance of their members' requirements.

As we have seen, informal workers' aggregations use a range of legislative instruments in furtherance of their overall development. The different legislative instruments discussed above are all centrally important in promoting collective initiative amongst informal workers. Considering the unique working experience, marginalization, and vulnerability of informal workers, trade unionism alone is not sufficient in consolidating their collective action. Aspects such as guaranteed work and basic security are centrally important to informal workers' aggregations. Under these circumstances, instead of offering specific welfare guarantees, the *law* needs to enable workers to promote their overall development through collective agency. As the experiences of workers' aggregations in India show, with a little sensitivity on the part of legal policy, organizations are capable of successfully addressing the multidimensional vulnerabilities of informal workers.

Thus, while the appropriate legislative framework for facilitating informal workers' aggregation exists in India, the juridical understandings of work and *workers* are biased against informal workers and their activities. The juridical conflation of work with *employment* permeates through the Constitution of India and the range of specific legislation concerning workers. The juridical recognition of unwaged and non-income workers who are not part of an employment relationship is largely absent from the legal imagination. This situation has changed slightly with the enactment of the Unorganised Workers' Social Security Act, 2008,<sup>189</sup> and certain other pieces of state (i.e., provincial) legislation, which recognize certain unwaged workers as *workers*. Law still needs to recognize informal work as work and the varieties of informal workers as workers if informal workers' collective action is to ameliorate the conditions of the workers. The Trade Unions Act, in particular, needs to be pioneering in this respect.

## CONCLUSION

In this Article I have conceptualized a form of organization that is evolving amongst self-employed informal workers in India. I term this organizational form workers' aggregation. I

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<sup>189</sup> Unorganised Workers' Social Security Act, 2008, No. 33, Acts of Parliament, 2008 (India).

use this terminology with a view to distinguishing the informal workers' organizational model both from trade unions and from guild-like structures (or employers' or business associations). A workers' aggregation is a loose collection of several individuals all of whom are interested in ameliorating the conditions of informal workers. However, a workers' aggregation is not constituted solely of informal worker-members. Several individuals and entities are involved in such an aggregation. Moreover, unlike the traditional trade union movement, informal workers' aggregations undertake a diversified range of initiatives, in which they negotiate with the government (and employers), use the market to their advantage, and develop their own social protection framework. Additionally, these organizations network with other non-state entities including the civil society in order to enhance their bargaining power and visibility. This functional integration and organizational novelty is what constitutes an informal workers' aggregation. I have noted that while the appropriate legislative framework for facilitating informal workers' collective action exists in India, the juridical bias of conceptualizing work through the lens of an employment relationship needs to be overcome. Unless the diverse range of informal workers are recognized as such, their collective action will remain a distant possibility for the majority of them. In view of this juridical bias, it is not surprising that around eighty percent of informal workers are unorganized in India.<sup>190</sup>

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<sup>190</sup> See NAT'L SAMPLE SURVEY OFFICE, *supra* note 24.