

Legal SEWA : Safeguarding and Struggling for our rights

The focus of the legal cell at SEWA is to:

Impart legal training to members, leaders and organizers.

Serve as a centre where members file their work-related problems.

Co-ordinate with the State and Central Government for formation of legislation, policy for unorganized sector workers and for better implementation of existing laws.

Policy action with other unions working with the unorganized sector for the formation of legislation for unorganized sector workers.

Many of the problems faced by our members involve legal issues. Therefore, creating awareness amongst the women workers members on legal issues and especially on their rights, is of utmost importance. Creating this awareness through legal trainings has been effective and useful to our members over the years.

Members are also interested in learning about the past and present struggles of SEWA relating to the implementation of the existing legislation and for enacting new policies and legislation. In order to make the legal trainings more interesting, different media like audio-visuals, and role-play are used. Also, officials from the Labour and employment department, of the Government of Gujarat are called to explain practical aspects like filing complaints, keeping records and collecting evidence.

Our legal cell conducted **85** legal training session in the year 2005 as shown in the table below.

Table 5.2
Legal Training Conducted

Sr. No.	Workers who participated	No. of Classes Conducted	No of Membes
1.	Vendors	7	177
2.	Labour and Service	33	860
3.	Paper Pickers	13	297
4.	Home based workers	32	856
	Total	85	2,190

Some of the legal issues of different occupation groups of our members are outlined here.

Vendors

Vendors are constantly harassed and evicted from their vending space. The Police issues summons and forcibly evicts them from their vending places and also confiscates their wares. The vendors need to know about the Bombay Police Act and The Municipality Act and National Policy for Vendors. They also should know about the Manechowk Case initiated by SEWA and SEWA's Struggle for the enactment of a state policy for Vendors.

Hiraben and Gangaben are vendor leaders. They also undertook the legal trainings. They learned about the police act. They say that earlier police used abuse and kick them and snatch their goods. Now they do not tolerate this type of behavior from the police and tell the police officers that they have no right to behave with them in this manner.

Labour and Service providers

Labour and Service providers mainly work for the contractors and employers. They are mostly daily wagers. Therefore, they primarily learn about the Minimum Wages Act, Factories Act, Workers Compensation Act, Industrial Disputes Act and Construction Workers Act.

In this training we explain SEWA's role in forming the rules under the Building and Other Construction Workers' (Regulation of Employment and conditions of services) Act, 1996 and Building and Other Construction Workers' Welfare Cess Act, 1996. We also inform them about the benefits they will get under this Act.

SEWA made much representation to the Labour and Employment department, State Government to frame rules at the state level. After much representation Government agreed to frame the rules at the state level. SEWA along with the Labour department of Gujarat drafted the rules. But the rules though drafted were not enacted at the State Level. Several meeting were held with Labour department of Gujarat for enacting the rules and notifying the same in the official Gazette. After repeated representations the rules were notified on 18th August 2003.

The rules are called "The Gujarat Building and other Construction Workers (Regulation of employment and Condition of Service) Rules, 2003" Due to the enactment of these rules nearly 1,00,000 construction workers of Gujarat will benefit.

Benefits of the Construction Workers Rules

The main aim of this act is to regulate the employment and to provide health and safety measures.

This act will be applicable to all establishments where 10 or more workers are employed.

To provide social security, 1% cess will be collected on total construction expenditure from the builder/contractor.

A board will be constituted under this act to provide social security benefits to the construction workers.

To get the social security benefits the worker will have to get herself registered with the board.

The board will give identity card containing the details of the workers, dates of renewals, details of the family members, the details of the work done by the worker and the benefits obtained by her.

A worker who has completed 90 days in the earlier year will be registered as the worker in the board.

Maniben Tulsibhai Rathod, a construction worker member, staying in the Gomtipur area came to know in the legal trainings that to be registered as a beneficiary of the board, is has to produce the certificate stating her age. She did not have the birth certificate or schools leaving certificate or any other proof of her age. She was very worried. In the legal training learned that she could get the proof of age from the Surgeon of Civil Hospital.

The very next day she went to the superintendent of the civil hospital. She was surprised to know that age can be determined from the physical examination. She underwent the physical examination. The doctor examined her physically and gave her the age proof. She was very happy. She came in the next training and explained other members about the whole procedure. Other members were also able to benefit from Maniben's experience.

Home based Workers

They learn about the Minimum Wages Act, Constitution of India and Bidi Act and the problems faced in the bidi trade in spite of the legislation.

SEWA has also worked hard to fix the minimum wages for the agarbatti trade in the tripartite manner i.e. Officials of Labour and Employment Department, Gujarat State, Employers and SEWA representatives sat at one table to fix the minimum wages. The minimum wages were fixed at Rs. 7.00 for 1,000 water based incense stick and Rs. 7.50 for 1000 oil based Incense stick. Now a tripartite trust to provide social security to workers is also being formed. The process of fixing the minimum wages were explained in detail to the women members.

Raziabanu Pathan, Jubedabanu, Shaidabanu, leaders of home-based workers and a agarbatti roller themselves, under took a legal training and came to know that by a tripartite agreement between Labour and employment department, Representatives of Employers/contractors and SEWA minimum wages of rolling 1000 Incense sticks are Rs. 7.00 of water based and Rs. 7.50 for oil-based. They also came to know that legally the employers/contractors are bound to pay the minimum wages and if they do not get the minimum wages they can complain to the labour department. The employer/contractor in their area did not pay the minimum wages. They organized all the women workers of their area and approached the employer/contractor and asked him to pay the minimum wages. The employer/contractor refused. The women said that they will file complain to this effect in Labour department. The employer/contractor relented and agreed to pay the minimum wages.

1. Work-related - Complaints Centre

16 complaints involving 1251 members were registered with our work-related complaints centre.

Complaints mainly involved Vendor members and Labour and Service members.

Labour and Service members mainly face the problem of unfair retrenchment, payment of lower wages, non- payment of compensation.

Legal cell mainly solves this problem through negotiations with employer and contractors. Legal cell insist on the participations of leaders and members in such negotiations. This type of negotiations builds up the capacity of the members and leaders.

Below are the example of complaints for which we managed to a solution in 2005

Nayanaben and 100 other vendors are vending near Bhavir Tower near CTM Area. The road leads to the national Highway. The vendors were vending their wares since decades. The road remains crowded. Since it is a prime road new development come up, The petrol pump also started coming up. The owner of the petrol pump started to stock bricks, sand and cement on the vendors' place. Due to this vendors could not vend there. They filed the case with the Complaint Center. SEWA leaders and organizers tried to explain to the owner to vacate the vendors' place as it affects their livelihood. The owner refused to co-operate therefore SEWA organizers and leaders went to the Municipal Council. After much convincing the owner took away his goods and the vendors vend there peacefully.

2. Issue of Complaints and Vending Space of Vendor members of Manekchok, Danapith, Vithalnagar, Meghanigar Girdharnagar Shardaben Hospital and other areas



SEWA and its vendor members faced numerous problems in the Metropolitan Court. SEWA has obtained the order from the Supreme Court and High Court for vendor members of five areas of Ahmedabad city stating that vendors of that area have a right to vend in this areas. The Metropolitan Judge refused to consider this order and charged a fine amounting to Rs.100/- per complaint. It was a burden for the vendors to pay such fines. Summons issued to the vendors are done so in a mechanical manner. The police knows the name of the vendor and then issues summons from the police station. The police authorities do not even bother to go to the vending space to see whether the vendor is causing any obstruction.

15 individual cases have been filed for vendors of Vithalnagar area in the metropolitan court stating that they are not causing traffic obstruction, nor have committed any offence and also that they have the right to vend as per the order of the High Court also.

3. Policy Action for Umbrella Legislation for Unorganised Sector Workers

The Government of India through its resolution dated 15, October 1999 constituted the Second National Commission on Labour, with the twin objective of suggesting rationalization of existing Labour laws in the Organized Sector and to suggest “umbrella legislation” for ensuring a minimum level of protection to the workers in the unorganised Sector. Shri Elaben Bhatt founder of SEWA, was member in this commission.

This Commission then set up a task force, which thoroughly examined the issues of unorganised sector workers and gave its report. Based on this report the Commission suggested a draft bill, which was part of the Commission's report. On the recommendations of the Commission, the ministry of Labour prepared a bill which was known as “Unorganised Sector Workers Bill, 2003 and the same was discussed in an open meeting. The main objective of the bill is to regulate the employment and conditions of service of unorganised sector workers and to provide for their safety, social security, health and welfare and matters connected therewith or incidental thereto.

The Bill was full of discrepancies and therefore invited a lot of comment and criticism. SEWA also suggested changes in the bill through a Memorandum and submitted the same to the Minister of Labour. The legal cell organizers and leaders took active participation in suggesting the suitable changes. The bill was then discussed in the Indian Labour Conference and other fora where SEWA participated. The Bill was circulated to the Government Ministries and the State Governments for the Comments.

SEWA also requested other unions to send in the changes to “The Unorganised Sector Workers Bill, 2004 to the Ministry of Labour and Employment, Government of India.

The Government asked SEWA to prepare the bill. SEWA focused on Social security and prepared “The Unorganised Sector Social Security Bill, 2005 and submitted it to the Government.

Different drafts of Umbrella legislation are prepared. SEWA also sent the suggestions to the Ministry of Labour on these drafts.

4. Bidi Workers Provident Fund Trust

For several years now, SEWA is trying to ensure that Provident Fund benefits actually reach Bidi workers. After winning the case in the high court on the issue, SEWA is continuously negotiating with the representatives of the employers and government officials to find a practical method by which the bidi workers can get provident fund benefits. It was agreed that a Non-Trading Corporation will be formed to avail P.F benefits but the suggestion was ruled out by government registration office as it involved the accounting entry of purchase and sale of bidis and Non Trading Corporation cannot sell and purchase. So again the negotiations between government officials, representatives of the employers and “SEWA” organizers and leaders started to find a method to avail provident fund benefits for beedi rollers. One idea was given that a trust can be formed for this purpose. Labour Commissioner, Welfare Commissioner, three representatives of the employers and three representatives of the workers would be the trustee of the trust. This trust will be formed only for the purpose of collecting provident fund amount.

But Regional Provident Fund refused to register this trust as employer-employee relationship was not established. We then approached the Central provident Office in Delhi to grant for the permission for the registration of the trust. Both the Central Provident Fund Commissioner and Addl. Provident Fund

Commissioner were positive towards the formation of the trust. In fact, Addl. Provident Fund Commissioner was very co-operative and extended all his help to solve the problem. He suggested forming, a man power agency (i.e. a type of trust) that will supply bidi workers to the Employers/contractors and provide social security benefits like Provident Fund. Employer/contractor will now be called brand holders and workers registered with the trust will be called Worker members and all the liability of complying with the provisions of the provident fund will lie with the trustees of the trust. A draft proposal incorporating all the points was immediately prepared and submitted to Central provident Fund Commissioner. Commissioner gave the order to other officials to discuss the proposal in the positive manner. Finally, order to set a tripartite trust for availing the provident fund benefit of the workers was passed.

But again there was a problem. There is a sale and purchase system in the Bidi trade. The trust cannot involve itself in the sale and purchase of bidis. If it does so, the Provisions of Income Tax Act, Sales Tax Act and other laws will be applicable which would be very cumbersome.

Again the meetings with officers of the Labour commissioner, Employers, Workers and legal consultants of SEWA were held to find out a way. Negotiations for this are going with the employers and contractors for setting up a firm or company.

After much deliberations and continuous persuasion it was decided that the employers would form a section 25 company. Section 25 company is a non-profitable company and the liabilities attached are limited in the nature. To convince the employers/contractors the meetings were held with Taxation experts. Taxation experts also tried to convince the employers/contractors that no extra liability would fall on them if they form a section 25 company. Even the officials of the labour department present in the meeting convinced the employers/contractor to form the section 25 company and offered to expedite the process of registration. Taxation Expert also gave the draft of section 25 company to the employers/contractors. Employers/contractors are negotiating between themselves regarding pros and cons of forming section 25 company.

It is very difficult to form a Section 25 Company. The case is for hearing and Judge is a practical who can bring an amicable settlement. It has been a very long process and we have explored several forms of organization. Negotiations are still taking place with the main Bidi employer regarding the amount of provident fund. The case came up for hearing at the initiation of the Regional Provident Fund and the court ordered the bidi employer to deposit Rs 2,50,000 in the office of one regional provident fund. The amount was duly deposited by the bidi employer in Regional Provident Fund.

5. Minimum Wages of Agarbatti workers

Leaders of the agarbatti trade like Shakuntalaben of Saraspur area, Shashikalaben of Rakiyal area said that it is very good that the minimum wages are fixed for us. But members of Bapunagar area, who are working under Asharam Bapu Ashram and making the oil based agarbattis are getting only Rs. 7.00 and not Rs. 7.50 per thousand as decided by us. They tried to meet the manager over there, but he refused to listen to them.

After discussion it was decided to take on this issue as the campaign. They met the manager again and he agreed to raise the rates, but he did not do so. They have made the representation regarding this in the Labour department. Now the Labour department will hold a joint meeting with workers and the manager of the Asharam Bapu Ashram and solve this problem.

A representation was made to the Government for including agarbatti workers in the Minimum Wages Act, and to fix the rates of minimum wages for them and to constitute a welfare fund on the basis of Bidi workers through which they can avail the benefits of social security. After many representations and years of struggle the Government was ready to acknowledge the existence of the Incense stick Workers and agreed to conduct a time motion study on Incense stick Workers.

On the basis of this study for the very first time the representatives of the workers, Government official and employers sat on the same platform to discuss the wages of the Incense stick rollers and there was a substantial increase in the wages of the Incense stick workers.

A proposal for social security for agarbatti workers has also been submitted to the government. Similarly after tripartite deliberations and negotiations it was decided to form a tripartite trust that would provide social security and welfare measures such as eye care and maternity benefits to its members.

After many deliberations it was decided to form a one man board to implement which Act. One man board was formed under Sec 37 of The Building and Other Construction Workers (Regulation of Employment and Condition of Service) Act under the Chairmanship of Shri Vinod Babbar, Principal Secretary, Labour and Employment Department, State of Gujarat. SEWA is also the members of the board.

The Board has met with the labour department twice to discuss mechanism of the board and methodology by through which the Benefits under this Act can reach the workers. The Board has also constituted an ad hoc committee so decisions can be taken faster and the working can be simplified.

SEWA with Bandhkam Majdoor Sanghan held a workshop in MGLI on 4/3/05 to find out solutions to the hindrances in the implementation of the Act and submitted the outcomes in form of memorandum to the Principal Secretary, Labour and Employment Department, Gujarat State.

Memorandum contained the alternative proofs to show that the worker has worked 90 days, the contribution of the workers, and the welfare workers.

The issues that proved hindrance to the implementation of the Act are as follows:

1. Cess collection
2. Provision that the worker to be registered as a beneficiary of the welfare board has to furnish a certificate showing that he has worked for 90 days in the prior year.

Now the Board is formed and the place of the board has been finalized, the account head for collection of fees has also been finalized And the Identity Card has also been prepared and given to the workers.

SEWA along with other unions and the Commissioner of Welfare Board drafted following welfare schemes.

1. **Tools and Equipments benefit:** Every worker registered with the board will get tools and equipments worth Rs. 1000/- to 1500/-
2. **Health Benefit:** Board will coordinate with hospitals and health centers to provide health benefits to its workers

Maternity Benefit: A women construction worker will get the benefit worth Rs. 5000/-

Education Benefit: Construction workers children will get the benefit till post graduation.

Child Care Centers: There will be a child care centers were 20 of more workers are employed.

But these schemes are yet to be finalized by the board. Procedure for finalization of the schemes is going on.

6. Verification of SEWA's membership

In 2002, the Government of India issued a public notification inviting applications all the unions who wanted to be verified as the Central Trade Union. Rule for recognition a central trade union is that, the trade union should be working in at least four states, should have a membership of more than five lacs and working in the for four industries including agriculture. In year 2002, SEWA had a membership of 6,89,551 in 7 States Gujarat, Bihar, Rajasthan, Delhi, Uttar Pradesh, Madhya Pardesh and Kerala and was working in 14 industries including agriculture. Out of our total membership 2/3 belongs to agriculture industry. As we were fulfilling all the conditions, SEWA applied for verification in Central Labour and Employment Ministry.

SEWA had to file a case in the Delhi High Court on October 13th, 2004 at the Chief Labour Commissioner rejected our application. Ms. Indira Jaising reputed Supreme Court lawyer, was senior counsel who appeared for SEWA. She explained the case to the Justice and showed that we fulfill all the conditions to become CTUO and read the order of the CLC. The Justice issued the show cause notice to the respondents. The case was kept for hearing on 18/1/05. The respondents did not file the reply therefore the case was kept on hearing on 10/2/05. In that hearing Ms. Jaising started to describe SEWA. She referred to the merits of the case, read the prior order and said that SEWA fulfills all the conditions to become CTUO. She also showed the Certificate of the Deputy Registrar of Trade Unions Gujarat State that showing SEWA is working in 7 states and has a membership of 6,89,551. The Judge gave the judgment in our favor saying that the verification should be complete in four weeks.

It was decided that the verification process would be finished by October 2007. They said that they would complete the verification of SEWA by Dec 2006. We agreed to this and the verification is underway.