

The Unorganised Sector Workers' Social Security Act, 2008 – An Appraisal

Isha Kalwant Singh¹

Abstract

A large segment of the socially and economically underprivileged section of the Indian society is concentrated in informal economic activities. The unorganised sector, constituting more than 90% of the workforce of India is a pivotal part of the Indian economy. Sustaining high economic growth is intertwined with improving domestic demand of those engaged in the unorganised sector, and addressing the requirements of the sector in terms of credit, skills, technology, infrastructure and marketing. However, unorganised workers suffer from cycles of excessive seasonality of employment, lack of formal employer-employee relationship and absence of social security protection. This paper attempts to study the Unorganised Sector Workers' Social Security Act, 2008 and analyse whether the provisions of the Act and implementation of the same satisfy the social security needs of unorganised workers in reality.

¹5th Year, B.B.A.,LL.B. (Hons.), NMIMS Kirit P. Mehta School of Law, Mumbai.

Introduction

Over 92% of India's working population is engaged in the unorganised sector, making informal employment as one of the central features of the Indian labour market since as early as the 1980's. There are over 43 crore individuals engaged in labour in the unorganised sector, contributing to about 60-65% of the gross domestic product (GDP) of the country. However, despite their high level of contribution to the GDP of the country, the unorganised sector receives the least social security, not even entitled to minimum wages.

Social security has been defined as "collective measures or activities designed to ensure that members of the society meet their basic needs, as well as being protected from contingencies to enable them to maintain a standard of living consistent with social norms". It implies that the Government, a representative of the society, is responsible for fixing minimum standards of living for all its citizens. The aim of social security is to provide protection to citizens who contribute to the country's welfare, and thereby enhance their capabilities to be adequately nourished, comfortably clothed and to avoid escapable morbidity and preventable mortality.

History of Social Security for Unorganised Workers

The non-institutional agencies of social security have existed since time immemorial, forming the foundation for the social security programmes as they exist today. In the ancient times, India had its own social security system of self-sufficient village economy, caste system, joint family system and organisation of charity.

Social security legislation in India has its origin in the British period. The Apprentices Act was the first legislation enacted in India that provided social security to labour, including provisions for betterment of the unorganised sector by enabling children to learn trades and crafts, as a result of which they would be employable and could earn livelihood. Subsequently, the British era witnessed the enactment of a number of laws to provide social security to workers, such as the Indian Merchant Shipping Act 1859, that provided for better health conditions of workers at sea, the Employers and Workmen (Disputes) Act, 1860 for providing speedy and summary settlement of disputes between workers and employers, the Island Emigration Act, 1892 and the Indian Mines Act, 1901 to improve the conditions of plantation workers and workers working in mines, etc.

With the formation of the International Labour Organisation (ILO) in 1919, the need for social security of workers was addressed at an international level for the first time. Subsequently, in furtherance of social security rights of workers, the Provident Fund Act was

enacted in 1925, and a Standing Labour Committee was appointed in 1943 for formulating health insurance schemes of individual workers.

The post-independence era witnessed the widespread efforts to provide social security. The Employee's State Insurance Act was passed in 1948 to provide for compulsory health insurance and benefits to workmen; the Committee on Labour Welfare and National Commission on Labour was set up in 1966 was set up to examine the efficacy of various welfare schemes in operation at establishments; a number of legislations were enacted to provide security to the labour class, such as the Minimum Wages Act, the Employees Provident Fund and Miscellaneous Provisions Act, 1952, the Contract Labour Act, 1970, the Payment of Gratuity Act, 1972, etc. However, a bare minimum of the development was focused on providing social security to unorganised workers, though they contributed the maximum to the GDP of the country.

In the late 1980's, liberalisation, privatisation and globalisation changed the structure of business processes and the nature of employment and economic activities, leading to an increase in employment in unorganised sector workers, and making it necessary to provide for their social security needs. Over the course of the last two decades, the Government has emphasised on measures towards ensuring effective social security protection to those employed in the unorganised sector. The National Commission for Enterprises in the Unorganised Sector (NCEUS) was set up in September 2004 consistent with the commitment made by the United Progressive Alliance (UPA) Government in the National Common Minimum Programme, with the purpose of examining problems of the unorganised sector and suggesting measures to overcome the same. Pursuant to discussion with trade unions and stakeholders, and investigation, the Commission found that separate laws were necessary for protection of agricultural workers and non-agricultural sector, for which it proposed the Unorganised Agricultural Sector Workers (Conditions of Work and Livelihood Promotion) Bill, 2007 and the Unorganised Non-Agricultural Sector Workers (Conditions of Work and Livelihood Promotion) Bill, 2007. However, neither of the Bills was accepted, and in 2007, the Ministry of Labour and Employment (MoEL) introduced its own Bill, the Unorganised Sector Workers' Social Security Bill before the Rajya Sabha. The Bill was referred to the Parliamentary Standing Committee on Labour, which extensively discussed the various aspects relating to the unorganised workers in the country and feasible measures to ensure social security coverage of such workers. After much debate and discussion, the Committee was of the opinion that the Bill failed to satisfy the needs of millions of workers in the

unorganised sector; thus, certain amendments were proposed to be carried out.² Finally, the Parliament passed the Unorganised Workers' Social Security Act in 2008.

Social Security As A Human Right

Social security was first established as a basic human right internationally in the Declaration of Philadelphia of the International Labour Organisation (ILO) and its Income Security Recommendation. The ILO conventions and recommendations relevant to social security include the Social Security (Minimum Standards) Convention, the Equality of Treatment (Social Security) Convention, the Employment Injury Benefits Convention, the Invalidity, Old-Age and Survivors' Benefits Convention, the Medical Care and Sickness Benefits Convention, the Maintenance of Social Security Rights Convention, the Employment Promotion and Protection against Unemployment Convention, the Job Creation in Small and Medium Enterprises Recommendation, and the Maternity Protection Convention.

The right to social security is further protected by the Universal Declaration on Human Rights (UDHR),³ the International Covenant on Economic, Social and Cultural Rights,⁴ the Convention on the Rights of Child,⁵ the Convention on Elimination of All Forms of Racial Discrimination,⁶ the Convention on the Elimination of all Forms of Discrimination Against Women,⁷ and the American Declaration on the Rights and Duties of Man.⁸

Constitutional Framework of Social Security

Social security laws in India derive their foundation from the Directive Principles of State Policy under Part IV of the Constitution of India. Social security and Labour Welfare is a matter falling under the concurrent list, thus both, the Central and the State Governments are authorised to make laws on social security. Under the Constitution, it is the duty of the State to make provisions for securing just and humane conditions of work and for maternity relief.⁹ Thus, the Indian Constitution endeavours to provide social security, not only to organised, but also unorganised workers.

²Dr. I. SharathBabu, *Social Security Protection for the Unorganised Workers in India - a myth or reality?* 1 LABOUR LAW JOURNAL 50, 50-51 (2010).

³Universal Declaration of Human Rights art.22, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948).

⁴International Covenant on Economic, Social and Cultural Rights art. 9, Dec. 16, 1966, S. Treaty Doc. No. 95-19, 6 I.L.M. 360 (1967), 993 U.N.T.S. 3

⁵Convention on the Rights of Child art. 26, 1577 UNTS 3; 28 ILM 1456 (1989)

⁶International Convention on Elimination of all forms of Racial Discrimination art. 5, 660 UNTS 195; G.A. res. 2106 (XX).

⁷Convention on the Elimination of all Forms of Discrimination against Women art.11 and art.14, A/RES/34/180.

⁸American Declaration on the Rights and Duties of Man art.16, OEA/Ser. L./V./II.23.

⁹INDIAN CONST. Art. 42.

Objectives of The Act

The Act has been enacted to provide for social security and welfare of unorganised workers. As pointed out by the Jharkhand High Court in the case of *National Domestic Workers Welf. v. State of Jharkhand &Ors.*,¹⁰ the primary purpose for enacting the Unorganised Workers' Social Security Act is that most labour laws enacted by the Parliament, such as the Industrial Disputes Act, the Workmen's Compensation Act, Factories Act, etc. are applicable to a limited number of workers, while a majority of the workers remain beyond the scope of these laws.

Definitions under The Act

The Act defines 'unorganised worker' as a home-based worker, self-employed worker or wage worker in the unorganised sector, and includes a worker in the organised sector not covered by the Workmen's Compensation Act, 1923, the Industrial Disputes Act, 1947, the Employee's State Insurance Act, 1948, the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the Maternity Benefit Act, 1961, and the Payment of Gratuity Act, 1972. Thus, casual and contract workers in the organised sector are excluded from the Act, as they are covered by certain Acts specified in the Schedule.

Further, 'home-based worker' means a person engaged in the production of goods and services for an employer in his own home or other premises, other than the workplace of the employer, for remuneration, irrespective of whether or not the employer provides the equipment, materials or other inputs.

'Self-employed worker' means any person not employed by an employer, but engaged in an occupation in the unorganised sector subject to a monthly earning of an amount notified by the Central or the State Government from time to time, or holds cultivable land subject to a ceiling notified by the State Government.

'Wage worker' means a person engaged in the unorganised sector for remuneration, directly by an employer or through a contractor, irrespective of the place of work, whether exclusively for one employer or one or more employers, whether as a home-based worker, or as a temporary or casual worker, or as a migrant worker, or workers employed by households including domestic workers, with a monthly wage.

'Unorganised sector' means an enterprise owned by individuals or self-employed workers and engaged in the production or sale of goods or providing service of any kind whatsoever, and where the enterprise employs workers, the number of such workers is less than ten,

¹⁰W.P.(PIL) No. 2810 of 2012.

implying that workers employed in an entity employing ten or more workers are not entitled to benefits available under the Act.

Mechanisms under The Act

The Act provides for the establishment of various bodies at national, State and local levels in order to implement the schemes established under the Act.

National Social Security Board

The Central Government constitutes the National Social Security Board, with the Union Minister for Labour and Employment as Chairperson, and members nominated by the Central Government consisting of workers and employers from the unorganised sector, eminent persons from civil society, two members from the Lok Sabha, one member from the Rajya Sabha, and five members representing Ministries from the Central and the State Government. The Board's functions are to recommend suitable schemes for unorganised workers, monitor the schemes, review the registration, expenditure from funds under various schemes, and monitor record keeping functions performed at State level, among other functions.

State Social Security Board

The State Governments are empowered to constitute State Social Security Boards at State-level, consisting of composition and functions similar to that of the National Social Security Board.

In the case of *Rajan Kudumbathil v. Union of India*,¹¹ the Kerala High Court had explicitly directed the Kerala Government to expeditiously constitute State Boards under the Act, where the same had not been constituted even a year after the implementation of the Act.

District Administration

The District Administration is responsible for performing record-keeping functions under the Act.

Workers' Facilitation Centres

The Act empowers the State Government to set up Workers' Facilitation Centres to disseminate information on available social security schemes, facilitate filing, processing and forwarding application forms for registration of unorganised workers, assistance in obtaining registration, and facilitating the enrolment of registered unorganised workers in social security schemes.

Registration of Unorganised Sector Workers

¹¹WP(C).No. 15393 of 2009(S).

Every unorganised worker is eligible for registration under the Act upon attaining the age of 14 years, and after making a self-declaration confirming that he or she is an unorganised worker. The unorganised worker is required to make an application for registration to the District Administration, which will then issue a portable identity (ID) card with a unique identification number.

In the case of *Bruhad v. State*,¹² where the Gujarat High Court found that no State Board had been constituted under the Act, it directed the Government to expeditiously provide for the establishment of the State Board and register the unorganised workers in Gujarat.

Social Security Benefits under The Act

The Act has been passed with the purpose of providing for the social security and welfare of the unorganised workers and for other connected and incident matters. It is the responsibility of the Central and the State Governments to formulate and notify schemes, covering life and disability, health and maternity benefits, old age protection, and any other benefit that the Central Government may determine.

Though, the Act does not define the term ‘social security’, Schedule I provides for a list of social security schemes, namely, the Indira Gandhi National Old Age Pension Scheme, National Family Benefit Scheme, JananiSurakshaYojana, Handloom Weavers’ Comprehensive Welfare Scheme, Handicraft Artisans’ Comprehensive Welfare Scheme, Pension to Master Craft Persons, National Scheme for Welfare of Fishermen, JanshreeBimaYojana, AamAdmiBimaYojana, and RashtriyaSwasthyaBimaYojana.

Indira Gandhi National Old Age Pension Scheme

This scheme provides for monthly pension of Rs. 400 to any person who is over the age of 60 years, belonging to a family below poverty line. The number of beneficiaries of the scheme are 2,08,33,637 people, as of March 31, 2015.

National Family Benefit Scheme

This scheme provides for a lump-sum amount of Rs. 10,000 to households below poverty line in the event of death of the primary earning member of the family, aged between 18 to 64 years, irrespective of the cause of death. The number of beneficiaries of the scheme are 1,75,592 people, as of March 31, 2015.

JananiSurakshaYojana

This scheme provides for cash benefits to pregnant women above 19 years of age, for institutional delivery, if such pregnant woman belongs to a family below poverty line.

¹²SCA/14565/2008.

The number of beneficiaries of the scheme are 1,04,16,164 people, as of March 31, 2016.

Handloom Weavers' Comprehensive Welfare Scheme

This scheme aims at providing for health care facilities to handloom weavers and life insurance to them, at times of natural or accidental death, or total or partial disability due to accident. The numbers of beneficiaries of the scheme are 69,475 people, as of September 30, 2016.

Handicraft Artisans' Comprehensive Welfare Scheme

This scheme provides for life insurance protection to handicraft artisans and their family members.

Pension to Master Craft Persons

This scheme provides for pension benefits to craftsmen above 60 years of age who are recipients of national and State wards in handicrafts, in order to enable them for disseminating their knowledge to younger generations.

National Scheme for Welfare of Fishermen and Training and Extension

The objective of the scheme is to provide basic civic amenities and socio-economic security to fishermen, including development of village fishermen, group accident insurance, and savings and training schemes. The number of beneficiaries of the scheme are 52,34,799 people, as of March 31, 2015.

JanashreeBimaYojana

This scheme provides life insurance cover to rural and urban poor aged between 18 to 60 years of age. It provides for a payment of Rs. 30,000 in the event of death due to natural causes, Rs. 75,000 in case of accidental death or permanent disability, and Rs. 37,500 in case of partial disability.

AamAdmiBimaYojana

The objective of this scheme is to provide death and disability cover to rural landless households. In addition to a payment of Rs. 30,000 in the event of death due to natural causes, Rs. 75,000 in case of accidental death or permanent disability, and Rs. 37,500 in case of partial disability, the scheme also provides scholarship to up to two children of the household. The number of beneficiaries of the scheme are 4,51,07,984 people, as of March 31, 2016.

RashtriyaSwasthyaBimaYojana

The aim of the scheme is to provide financial support to families below poverty line in case of hospitalisation. Each family of five is provided benefits up to Rs. 30,000. The number of beneficiaries of the scheme are 3,59,28,048 people, as of March 31, 2015.

Funding of Schemes

Schemes notified by the Central Government may be wholly funded by the Central Government, partly funded by the Central Government and partly by the State Government, and partly funded by the Central Government, partly by the State Government, and partly through contributions collected from beneficiaries of the scheme or employers prescribed in the scheme by the Central Government.

Schemes notified by the State Government may be wholly funded by the State Government, or partly by the State Government and partly through contributions collected from the beneficiaries of the scheme or the employers prescribed by the State Government. The State Government may also seek financial assistance from the Central Government for the schemes formulated by it.

Critical Analysis

The Act is one of the pioneering initiatives of the Government in providing social security benefits to workers in the unorganised sector. However, the purpose of the Act is rendered ineffective due to numerous implementation issues and lacunae inherent under the text of the Act. The same will be analysed by the researcher under separate headings.

Lacunae under the Act

Under the Act, there exist certain inherent defects that not only create issues in the implementation of the Act, but also affect the substantive rights of the unorganised workers.

1. Exclusion of Numerous Unorganised Workers

It is pertinent to note that the definitions exclude workers dependent on livelihood systems such as forest workers and fish workers as they cannot be brought within the ambit of home-based workers, self-employed workers or wage workers. It does not even cover unorganised cross-border temporary workers engaged in construction, cleaning, domestic work, paramedical work, etc. unpaid family workers and care workers, such as anganwadi workers are also not included under the definitions of the Act. These workers are a vulnerable group exposed to violently offensive situations and require social security protection.

Moreover, the numerical limitation of ten workers is violative of Article 14 of the Constitution of India as there cannot be a reasonable distinction between workers employed by an employer having ten workers and workers employed by an employer having more than ten workers.

2. Low Standards of 'Below Poverty Line'

The application of the scheme is subject to the condition that the family must be below poverty line, while most of the urban unorganised workers may not fall below poverty line, which excludes them from the benefits of the scheme. However, a person earning a meagre amount of Rs. 32 per day in rural areas and Rs. 47 per day in urban areas is considered to be above poverty lines.

3. No Definition of ‘Social Security’

In order to make a right justiciable, it is necessary that such right be defined. The Act itself does not provide for social security, except registration, to workers, as the term ‘social security’ itself has not been defined under the Act. The social security schemes are not included in the body of the Act, and are appended in the Schedule, implying that the schemes can be altered by mere notification, without amendment to the Act, thereby denying workers the right of consistency and justifiability. This is the primary reason for implementation issues of the Act.

4. No Provision for Assured Minimum Social Security

The Convention on Social Security (Minimum Standards) adopted by the ILO in 1952 provides that any social security benefit scheme needs to make provisions for at least certain minimum benefits, providing medical care, benefit for sickness, unemployment, old age, employment injury, maternity and survivor’s benefit. However, the Act does not provide any minimum social security to the workers.

5. No Provision for Social Security Fund

The Act does not establish a structured Social Security Fund, the absence of which casts scepticism about the Government’s implementation of creating social security rights for unorganised workers in India.

6. Disentitlement From Benefits

The Act provides that if a registered unorganised worker required to make contributions to the scheme fails to do so, he shall not be entitled to the benefits under the schemes unless he makes such contribution, thus placing unorganised workers at a disadvantageous position, without taking into consideration, extrinsic factors rendering it challenging for them to make such contribution.

7. Lack of Provisions on Security of Employment

Though the Act requires the worker to make contributions, it does not provide for security of employment, nor does it address issues relating to conditions of work. It is important to consider that work and employment are the foundation of social security benefit schemes for workers. A legislation proceeding to deal with social security alone, without dealing with

issues of employment, its regulation, wages and conditions of work would be incomplete and dysfunctional.

8. Lack of Time-Bound Framework

The mechanism under the law renders registration of workers and entitlement to benefits contingent upon the formulation of a specific social security scheme; however, there is no time-bound framework for the Central and State Governments to formulate the schemes.

9. Lack of Grievance Redressal Mechanism

The Act fails to provide for a grievance redressal mechanism through which workers would be enabled to voice their complaints and grievances regarding violation of the Act and other concerns affecting them. This is a structural gap making the Act ineffective.

10. No Guarantee of Minimum Social Floor

ILO foresees the universal coverage of workers for social security as human right, and lists nine benefits that constitute social security; namely, medical care, family benefits, sickness benefits, unemployment benefits, old age benefits, employment injury benefits, maternity benefits and death benefits. However, these aspects are not covered under the Act.

Issues Connected With Implementation of the Act

Due to the inherent defects under law, the lack of awareness and seriousness about protecting the rights of unorganised workers, and the weak enforcement mechanisms, there are a number of issues relating to the implementation of the Act.

1. Lack of Awareness about Schemes

The issue most heinously plaguing the implementation of the Act, and causing a hindrance in providing benefits under the Act to the workers is the lack of awareness among them about the existence of the schemes. Most unorganised workers are uneducated and economically backwards. They are unaware about their rights, and thus, are not able to utilise them, even to the meagre extent provided for under the law.

2. Inadequate Representation of Unorganised Workers

The National and State Social Security Boards provide meagre representation of seven representatives of the unorganised workers, while the sector comprises over 400 million workers. The Act fails to provide for any role to trade unions or other organisations of unorganised workers.

3. Lack of Uniformity in Registration Requirements

Though the only requirement under the Act, for registration with State Boards, is filing of a self-affidavit, certain State Boards, such as the Karnataka State Board insist that NGO's,

trade unions, etc. should certify that the worker is working in a specific sector, which is not required under the Act.

4. Lack of Uniformity in Schemes

The researcher has observed that each of the schemes provided for under the Act have varying amounts of benefits for the same contingencies. For example, accidental death benefits under the National Family Benefit Scheme amounts to Rs. 20,000, while under the JanashreeBimaYojana it is Rs. 50,000 and is Rs. 75,000 under the AamAadmiBimaYojana. The law has made no attempt to reconcile these schemes and establish uniformity.

5. Multiplicity Of Registration

Registering with the State Board under the Act does not make the worker eligible to the benefits under any scheme; he is required to individually register for each scheme, which is a time consuming and uneconomical process.

6. Inefficiency of State-Level Nodal Agencies

Most of the schemes under the Act rely on State-level nodal agencies for distribution of the schemes. However, it has been found that most of the State Government departments suffer from weak institutional and staff capacity, hindering the implementation of the programmes.¹³ It has often been found that the State Boards, entrusted with the responsibility of monitoring the welfare schemes, are not monitoring the implementation of the schemes.¹⁴

Conclusion and Recommendations

Social security is an integral part of the process of development, having a powerful impact at all levels of societies. It contributes to social cohesion and the overall growth and development of the country, and provides a more positive approach towards globalisation.

At this juncture, the main question that arises is whether India, as a nation, has realised the importance of its unorganised sector? The answer to this is, no. An endeavour has been made to clear the concept of social security, implement social security schemes, create rights and establish mechanisms for the same; however, most of this remains on paper. The figures through which we can measure the effectiveness and implementation of the initiatives of the Government to provide protection to the unorganised workers remains poor, with lack of strict standard checks. The Unorganised Workers' Social Security Act attempts to provide an opportunity to reduce the struggles of the working class; however, the statistics on the achievements of the Act are dissatisfactory.

¹³ KathyayiniChamaraj, *An endless wait for social security*, INDIA TOGETHER (September 17, 2016), <http://www.indiatogether.org/an-endless-wait-for-social-security-human-rights>.

¹⁴*Id.*

In light of the above findings, the researcher concludes that the Government has been unable to effectively implement the provisions of the Act. Moreover, the provisions of the Act do not satisfy the objectives of the Act and India's constitutional and international obligations.

Thus, the researcher would make the following recommendations in order to provide enhanced security to workers in the unorganised sector.

1. Application of the Act to All Unorganised Workers

The current system of extending the application of the Act only to unorganised workers below poverty line is not consistent with the purpose of the Act. The Act should remove the numerical limits required in order to constitute unorganised sector. Thus, the provisions and the benefits of the schemes implemented under the Act should be extended to all unorganised workers.

2. Provisions for Assured Minimum Social Security

The Act needs to be amended to include provisions for assured minimum social security, i.e. the minimum social security benefits that each unorganised worker would be entitled to.

3. Definition of Social Security

It is essential that to make the right of social security enforceable, the same needs to be defined. It should be defined as "the protection that a society provides to individuals and households to ensure access to health care and to guarantee income security, particularly in cases of old age, unemployment, sickness, invalidity, work injury, maternity or loss of a breadwinner".

4. Dispute Settlement Mechanism

The effect implementation of the law essentially depends on the availability of a functional institution of a grievance redressal mechanism, through which workers would have a method for registering their complaints about violations. Thus, a new Chapter regarding dispute settlement needs to be added to the Act, which requires the Government to formulate a model Dispute Settlement Mechanism for unorganised workers of each occupation involving local authorities, employers, police and other administrative bodies for resolving disputes and grievances. The mechanism should be empowered for arbitrating and also for punishing faulty employers.

5. Social Security Fund

The Act ought to be amended in order to provide for the creation and maintenance of a social security fund, and a financial memorandum for the budgetary allocation for the fund.

6. Role of Non-Government Entities

In order to provide adequate representation to the large mass of unorganised workers, the law needs to start recognising the role and importance of their participation in the development of social security schemes through individual as well as trade union recognition.

7. Creation of Awareness

In order to enable unorganised workers to benefit from the schemes to the maximum extent possible, it is essential that efforts be made to make them aware about their rights, at a governmental as well as a private level. The Government should set up camps, and create advertisements through mediums such as text messages, television and radio in order to enable workers to be made aware of their rights under such schemes. The duty could also be cast upon the employer of unorganised workers to render information about schemes under the Act.