



## The unorganized workers' Social Security Act, 2008

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### Abstract

Social security is an important component of any social security development agenda and is as relevant as physical security in the evolving concept of human security. It is a major aspect of public policy and the extent of its prevalence is a measure of the progress made by a country towards the ideal of a welfare state. The unorganised sector of the economy in India is the largest sector in terms of employment of the workforce. It consists of agriculture and such related activities as forestry, livestock and fishing as well as non-agriculture. The bill is intended to provide a measure of social security to the workers in the unorganised sector. This bill propose a model that will be inclusive in nature and provide for a clearly demarcated division of responsibilities between the central and state governments. It mandates the central/state government to implement national social security scheme. The unorganised Workers' Social Security Act, 2008 was passed with the objective of providing appropriate and sufficient social security to the workers engaged in the unorganized sector of the country. It would be pertinent to mention that ninety-four per cent workers of the country are engaged in the unorganised sector. So, it is the moral responsibility of the Government to provide social security to the workers working on such a large scale.

**Keywords:** social security, the unorganised workers, *Aam Admi Bima Yojna*, *Rashtriya Swasthya Bima Yojna*

### Introduction

Social security is an important component of any social security development agenda and is as relevant as physical security in the evolving concept of human security<sup>[1]</sup>. The creation of the welfare state is to execute instrumentalities which are enshrined in the directive principles of state policy, serve as fundamental guides for the state's action towards social, economic, welfare programmes with a view to ameliorate the conditions of labour<sup>[2]</sup>.

### Scope

It is a major aspect of public policy and the extent of its prevalence is a measure of the progress made by a country towards the ideal of a welfare state<sup>[3]</sup>. There are nine components<sup>[4]</sup> of the social security which configure its scope<sup>[5]</sup>. It covers through an appropriate organizations, certain risks are such than an individual of small means cannot effectively provide for them by his own ability or foresight alone or even in private combination with his colleagues<sup>[6]</sup>.

### Statement of objects and reasons

The unorganised sector of the economy in India is the largest

sector in terms of employment of the workforce. It consists of agriculture and such related activities as forestry, livestock and fishing as well as non-agriculture. The bill is intended to provide a measure of social security to the workers in the unorganised sector. This bill propose a model that will be inclusive in nature and provide for a clearly demarcated division of responsibilities between the central and state governments.

It mandates the central/state government to implement national social security scheme<sup>[7]</sup>.

The unorganised Workers' Social Security Act, 2008 was passed with the objective of providing appropriate and sufficient social security to the workers engaged in the unorganized sector of the country. It would be pertinent to mention that ninety-four per cent workers of the country are engaged in the unorganised sector. So, it is the moral responsibility of the Government to provide social security to the workers working on such a large scale. The Unorganised Workers' Social Security Act, 2008, is certainly a commendable step in this direction but this Act cannot be considered to be sufficient because its provisions appear more as a formality. It is not surprising that a large number of workers engaged in the unorganised sector are dissatisfied with the provisions of the Unorganised Workers' Social Security Act, 2008. The most important issue is that 'social security' has not been defined legally in this Act. Besides, the

<sup>1</sup> Article 22 and 25 of Universal Declaration of Human Rights, 1948.

<sup>2</sup> Article 38, 39, 41, 42, 47 of the Constitution of India

<sup>3</sup> Report of the national commission on labour(1969)

<sup>4</sup> Medical care, old age benefit, unemployment benefit, family benefit, sickness benefit, invalidity benefit, maternity benefit, survivors benefit and employment injury benefit.

<sup>5</sup> Social security (minimum standards) convention (No:102)adopted by ILO in 1952.

<sup>6</sup> Report of the national commission on labour, 1969.

<sup>7</sup> By the "unorganised workers social security act-2008" the central government shall formulate a scheme to be called national social security scheme to be called national social security scheme for the unorganised workers consisting of the national minimum social security benefits.

provisions of the Act are either in many ways insufficient or do not reflect the main objective of providing social security to the work force. Therefore, it is expedient to amend the Unorganised Workers' Social Security Act, 2008. It is the moral responsibility of the Government because the workers engaged in the unorganised sector make two-third contribution in national productivity. In view of the above, the Unorganised Workers' Social Security (Amendment) Bill, 2010 is being proposed.

### **What is social security?**

Social Security means any kind of collective measures or activities designed to ensure that members of society meet their basic needs and are protected from the contingencies to enable them maintain a standard of living consistent with social norms. The negative impact of industrialisation and urbanisation attracted the attention of policy-makers to formalise social security system that addressed the emerged social issues.

Social security is defined in its broadest meaning by the International Labour Organisation (ILO) as:- "The protection measures, which society provides for its members, through a series of public measures against economic and social distress that would otherwise be caused by the stoppages or substantial reduction of earnings resulting from sickness, maternity, employment injury, unemployment, disability, old age, death, the provision of medical care subsidies for families with children."

### **Organized sector**

Social Security benefits for workers in the organised sector are provided through the following five Central Acts, namely: the ESI Act; the Employees Provident Fund and Miscellaneous Provisions Act (EPF and MP); The Workmen's Compensation Act; The Maternity Benefit Act; and The Payment of Gratuity Act.

### **Unorganised sector**

In order to protect the interests of workers of the unorganised sector, the unorganised sector workers' Social Security Bill 2007 has been tabled in Parliament. In anticipation of the Bill being made into law the Government has introduced three schemes to provide social security to workers in the unorganised sector.

### **These are**

#### **1. Aam Admi Bima Yojna**

This scheme will provide insurance cover to poor households. It is expected that in the first year of the Yojna, LIC will cover one crore landless households by September 30, 2008.

#### **2. Rashtriya Swasthya Bima Yojna**

This scheme will be implemented with effect from April 1, 2008.

#### **3. Indira Gandhi National Old Age Pension Scheme:**

This scheme was enlarged with effect from November 19, 2007 to include all persons over 65 years falling under the BPL category.

### **Meaning**

#### **Unorganised Sector**

The so called unorganised sector hasn't been defined anywhere scientifically. Nor was there any serious attempts to define this word or phrase. However, it was used to speak of availability or non-availability of certain benefits or rights to the working class outside the unorganised sector. It was also termed as informal sector. "It was defined as "the group of workers, who cannot be defined by definition but could be described as those who haven't been able to organize in pursuit of a common objective because of constraints. This definition of analogy of the first national labour commission will help us understand what the organised sector is. Therefore based on this the national commission on labour listed and identified the following categories of unorganised labour workforce with the above attribution.

1. Contract labour including construction workers.
2. Labour employed in small scale industries.
3. Employees in shop and establishments.
4. Child labour.
5. Agriculture and rural workers.
6. Casual labour.
7. Bonded labour.
8. Female labour.
9. Handloom and power loom workers.
10. Bidi and cigar workers.
11. Sweepers and scavengers.
12. Workers in tanneries.
13. Tribal labour.

These are the less privileged and whose economic and social needs call for special attention. The questionnaire circulated by the national commission on rural labour spells out the following mentioned categories as the generally recognised categories of unorganised rural labour.

The initiatives of the centre, state and NGO's for social security, implemented during the past indicated that the needs are much more than the supports provided. The efforts must be targeted vast enough to cover the growing unorganised workers<sup>[8]</sup>.

### **Major characteristics of the unorganised workers**

The major characteristics of unorganised workers are:

- The unorganised labour is overwhelming in terms of its number range and therefore, they are omnipresent through India.
- There is no formal employer employee relationship between small and marginal farmers, share croppers and agricultural labourers as they work together in marginally favourable situation.
- The workplace is scattered and fragmented.
- In rural areas, the unorganised labour force is highly satisfied on caste and community considerations. In urban areas while such considerations are much less, it can't be said that it is altogether absent as the bulk of the unorganized workers in urban areas are basically from rural areas.

<sup>8</sup> Dhas A.C., & Helen M., social security for unorganised workers in India

- The unorganised workers do not receive sufficient attention from the trade unions. In general, lack of attention from the trade unions.

### Indian constitution and social security

The directive principles of our constitution reflect the concern of the state to protect and promote the interests of weaker sections of our population. The constitution of India was enshrined with the provisions in a way to ensure social security to the human beings, in particular the workmen.

The constitution guarantees the promotion of welfare of the people<sup>[9]</sup> and eradication of the inequalities<sup>[10]</sup> and it provides for the state to direct its policy towards securing livelihood, common hood<sup>[11]</sup> etc., By the constitution the operation of a legal system shall be secured<sup>[12]</sup> and effective provisions<sup>[13]</sup> were made by the state for the participation of workers in undertakings<sup>[14]</sup> and for securing just and humane conditions of work<sup>[15]</sup> and a decent standard of life<sup>[16]</sup>.

The provision of the constitution was incorporated as a remedial measure to deal with the inconsistency between laws made by the parliament and legislatures of the state<sup>[17]</sup>. The matters relating to the labour class are enumerated in the concurrent list<sup>[18]</sup>. If any provisions were made inconsistent

with that list, it will be void<sup>[19]</sup>. The state legislatures has full power to legislate regarding these subjects, subject to the provisions of article 254(2)<sup>[20]</sup>, that is, provided the provisions of state act do not conflict with those of any contract act on the subject. The constitution also prohibits trafficking<sup>[21]</sup> and child labour<sup>[22]</sup>.

### Statutory provision

#### Preamble

An Act to provide for the social security and welfare of unorganised workers and for other matters connected therewith or incidental thereto. BE it enacted by Parliament in the Fifty-ninth Year of the Republic of India as follows:-

#### Chapter I: Preliminary

##### 1. Short title, extent and commencement.

- a. This Act may be called the Unorganised Workers' Social Security Act, 2008.
- b. It extends to the whole of India.
- c. It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

##### 2. Definitions

In this Act, unless the context otherwise requires,-

- a. "employer" means a person or an association of persons, who has engaged or employed an unorganised worker either directly or otherwise for remuneration;
- b. "home-based worker" means a person engaged in the production of goods or services for an employer in his or her home or other premises of his or her choice other than the workplace of the employer, for remuneration, irrespective of whether or not the employer provides the equipment, materials or other inputs;
- c. "identity card" means a card, document or certificate issued to an unorganised worker by the District Administration under sub-section (3) of section 10;
- d. "National Board" means the National Social Security Board for unorganised workers constituted under sub-section (1) of section 5;
- e. "notification" means a notification published in the Official Gazette;
- f. "organised sector" means an enterprise which is not an unorganised sector;
- g. "prescribed" means prescribed by rules made under this Act by the Central Government or the State Government,

<sup>9</sup> Article 38: the state shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social, economic and political shall inform all the institutions of the national life.

<sup>10</sup> Article 38(2): the state shall in particular, strive to minimise the inequalities in income facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different avocations

<sup>11</sup> Article 39: a) that the citizens, men and women equally, have the right to an adequate means of livelihood.

b) That the ownership and control of the material resources of the community also distributed as best to sub serve the common good.

c) That the operation of the economic system does not result in the concentration of wealth and means of production in the common detriment.

d) That there is equal pay for equal work for both men and women.

e) That the health and strength of workers, men and women, and tender age of children are not forced by economic necessity to enter avocations unsuited to their age or strength.

<sup>12</sup> Article 39-A: The operation of a legal system shall be secured by the state which promotes justice, on a basis of equal opportunity and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are denied to any citizen by reason of economic or other disabilities

<sup>13</sup> Article 41: shall make effective provisions for securing the right to work, to education and to public assistance in case of employment, old age, sickness ad disablement and in other cases of undeserved want, within the limits of its economic capacity and development

<sup>14</sup> Article 43-A: The state shall take steps, by suitable legislation or in any other way, to secure the participation of workers in the management of undertakings, establishments or other organisations engaged in any industry

<sup>15</sup> Article 42: the state shall make provisions for securing just and humane conditions of work and for maternity relief.

<sup>16</sup> Article 43: The state shall endeavour to secure, by suitable legislation or economic organization or in any other way to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social opportunities and in particular, the state shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas.

<sup>17</sup> Article 254 of the constitution of India.

<sup>18</sup> Entry 22:- trade unions; industrial and labour disputes; Entry 23:-social security and social insurance; employment and unemployment; Entry 24:-welfare of labour including conditions of work, provident funds employer's liability, workmen's' compensation, invalidity and old age pensions and maternity benefits.

<sup>19</sup> Article 254(1): It was provided that, if any provision of law made by parliament which is competent to enact or to any provision of an existing law with respect to one of the matters enumerated in the concurrent list, then subject to the provisions of clause (2), the law made by parliament, whether passed before or after the law made by the legislature of such state, or, as the case may be, the existing law, shall prevail and the law made by the legislature of the state shall, to the extent of the repugnancy, be void

<sup>20</sup> Article 254(2): Where the law made by the legislature of the state with respect to one of the matters enumerated in the concurrent list contains any provision repugnant to the provisions of an earlier law made by parliament or an existing law with respect to that matter, then the law so made by the legislature of the state shall, if it has been reserved for the consideration of the president and has received his assent, prevail in that state.

<sup>21</sup> Article 23: prohibition of traffic in human beings and forced labour.

<sup>22</sup> Article 24: prohibition of employment of children in factories, mine or any other hazardous employment.

as the case may be;

- h. "registered worker" means an unorganised worker registered under sub-section (3) of section 10;
- i. "Schedule" means the Schedule annexed to the Act;
- j. "State Board" means the (name of the State) State Social Security Board for unorganised workers constituted under sub-section (1) of section 6;
- k. "self-employed worker" means any person who is not employed by an employer, but engages himself or herself in any occupation in the unorganised sector subject to a monthly earning of an amount as may be notified by the Central Government or the State Government from time to time or holds cultivable land subject to such ceiling as may be notified by the State Government;
- l. "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;
- m. "unorganised worker" means a home-based worker, self-employed worker or a wage worker in the unorganised sector and includes a worker in the organised sector who is not covered by any of the Acts mentioned in Schedule II to this Act; and
- n. "wage worker" means a person employed for remuneration in the unorganised sector, directly by an employer or through any contractor, irrespective of place of work, whether exclusively for one employer or for one or more employers, whether in cash or in kind, whether as a home-based worker, or as a temporary or casual worker, or as a migrant worker, or workers employed by households including domestic workers, with a monthly wage of an amount as may be notified by the Central Government and State Government, as the case may be.

## **Chapter II: Social Security Benefits**

### **3. Framing of scheme**

1. The Central Government shall formulate and notify, from time to time, suitable welfare schemes for unorganised workers on matters relating to-
  - a. life and disability cover;
  - b. health and maternity benefits;
  - c. Old age protection; and
  - d. any other benefit as may be determined by the Central Government.
2. The schemes included in the Schedule 1 to this Act shall be deemed to be the welfare schemes under sub-section (1).
3. The Central Government may, by notification, amend the Schedules annexed to this Act.
4. The State Government may formulate and notify, from time to time, suitable welfare schemes for unorganised workers, including schemes relating to-
  - a. provident fund;
  - b. employment injury benefit;
  - c. housing;
  - d. educational schemes for children;
  - e. skill upgradation of workers;
  - f. funeral assistance; and
  - g. old age homes.

## **4. Funding of Central Government Schemes**

1. Any scheme notified by the Central Government may be-
  - a. Wholly funded by the Central Government; or
  - b. Partly funded by the Central Government and partly funded by the State Government; or
  - c. Partly funded by the Central Government, partly funded by the State Government and partly funded through contributions collected from the beneficiaries of the scheme or the employers as may be prescribed in the scheme by the Central Government.
2. Every scheme notified by the Central Government shall provide for such matters that are necessary for the efficient implementation of the scheme including the matters relating to,-
  - a. Scope of the scheme;
  - b. Beneficiaries of the scheme;
  - c. Resources of the scheme;
  - d. Agency or agencies that will implement the scheme;
  - e. Redressal of grievances; and
  - f. Any other relevant matter.

## **Chapter III: National Social Security Board for Unorganized Workers**

### **5. National Social Security Board**

1. The Central Government shall, by notification, constitute a National Board to be known as the National Social Security Board to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.
2. The National Board shall consist of the following members, namely: -
  - a. Union Minister for Labour and Employment-Chairperson, ex officio;
  - b. the Director General (Labour Welfare)-Member-Secretary, ex officio; and(c) thirty-four members to be nominated by the Central Government, out of whom-
    - i) Seven representing unorganised sector workers;
    - ii) Seven representing employers of unorganised sector;
    - iii) Seven representing eminent persons from civil society;
    - iv) Two representing members from Lok Sabha and one from Rajya Sabha;
    - v) Five representing Central Government Ministries and Departments concerned; and
    - vi) Five representing State Governments.
3. The Chairperson and other members of the Board shall be from amongst persons of eminence in the fields of labour welfare, management, finance, law and administration.
4. The number of persons to be nominated as members from each of the categories specified in clause (c) of sub-section (2), the term of office and other conditions of service of members, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among the members of, the National Board shall be such as may be prescribed: Provided that adequate representation shall be given to persons belonging to the Scheduled Castes, the Scheduled Tribes, the Minorities and Women.
5. The term of the National Board shall be three years.
6. The National Board shall meet at least thrice a year, at

such time and place and shall observe such rules of procedure relating to the transaction of business at its meetings, as may be prescribed.

7. The members may receive such allowances as may be prescribed for attending the meetings of the National Board.
8. The National Board shall perform the following functions, namely:-
  - a. Recommend to the Central Government suitable schemes for different sections of unorganised workers;
  - b. Advise the Central Government on such matters arising out of the administration of this Act as may be referred to it;
  - c. Monitor such social welfare schemes for unorganised workers as are administered by the Central Government;
  - d. Review the progress of registration and issue of identity cards to the unorganised workers;
  - e. Review the record keeping functions performed at the State level;
  - f. Review the expenditure from the funds under various schemes; and
  - g. Undertake such other functions as are assigned to it by the Central Government from time to time.

#### **Chapter IV: State Social Security Board for Unorganized Workers**

##### **6. State Social Security Board**

1. Every State Government shall, by notification, constitute a State Board to be known as (name of the State) State Social Security Board to exercise the powers conferred on, and to perform the functions assigned to it, under this Act.
2. The State Board shall consist of the following members, namely:-
  - a. Minister of Labour and Employment of the concerned State-Chairperson, ex officio;
  - b. the Principal Secretary or Secretary (Labour)-Member-Secretary, ex officio; and
  - c. twenty-eight members to be nominated by the State Government, out of whom-
    - i) Seven representing the unorganised workers;
    - ii) Seven representing employers of unorganised workers;
    - iii) Two representing members of Legislative Assembly of the concerned State;
    - iv) Five representing eminent persons from civil society; and
    - v) Seven representing State Government Departments concerned.
3. The Chairperson and other members of the Board shall be from amongst persons of eminence in the fields of labour welfare, management, finance, law and administration.
4. The number of persons to be nominated as members from each of the categories specified in clause (c) of sub-section (2), the term of office and other conditions of service of members, the procedure to be followed in the discharge of their functions by, and the manner of filling vacancies among the members of, the State Board shall be such as may be prescribed: Provided that adequate representation shall be given to persons belonging to the Scheduled

Castes, the Scheduled Tribes, the Minorities and Women.

5. The term of the State Board shall be three years.
6. The State Board shall meet atleast once in a quarter at such time and place and shall observe such rules of procedure relating to the transaction of business at its meetings, as may be prescribed.
7. The members may receive such allowances as may be prescribed for attending the meetings of the State Board.
8. The State Board shall perform the following functions, namely:-
  - a. recommend the State Government in formulating suitable schemes for different sections of the unorganised sector workers;
  - b. advise the State Government on such matters arising out of the administration of this Act as may be referred to it;(c) monitor such social welfare schemes for unorganised workers as are administered by the State Government;
  - c. review the record keeping functions performed at the District level;
  - d. review the progress of registration and issue of cards to unorganised sector workers;
  - e. review the expenditure from the funds under various schemes; and
  - f. Undertake such other functions as are assigned to it by the State Government from time to time.

##### **7. Funding of State Government Schemes**

1. Any scheme notified by the State Government may be-
  - i) Wholly funded by the State Government; or
  - ii) Partly funded by the State Government, partly funded through contributions collected from the beneficiaries of the scheme or the employers as may be prescribed in the scheme by the State Government.
2. The State Government may seek financial assistance from
3. The Central Government for the schemes formulated by it. The Central Government may provide such financial assistance to the State Governments for the purpose of schemes for such period and on such terms and conditions as it may deem fit.

##### **8. Record keeping by District Administration**

The record keeping functions for the purpose of this Act shall be performed by the District Administration: Provided that the State Government may direct that the record keeping function shall be performed by-

- a. The District Panchayat in rural areas; and
- b. The Urban Local Bodies in urban areas.

##### **9. Workers facilitation centres**

The State Government may set up such Workers' facilitation centres as may be considered necessary from time to time to perform the following functions, namely:-

- a. Disseminate information on available social security schemes for the unorganised workers;
- b. Facilitate the filling, processing and forwarding of application forms for registration of unorganised workers;
- c. Assist unorganised worker to obtain registration from the District Administration;
- d. Facilitate the enrollment of the registered unorganised

workers in social security schemes.

## **Chapter V: Registration**

### **10. Eligibility for registration and social security benefits.**

1. Every unorganised worker shall be eligible for registration subject to the fulfilment of the following conditions, namely.
  - a. He or she shall have completed fourteen years of age; and
  - b. A self-declaration by him or her confirming that he or she is an unorganised worker.
2. Every eligible unorganised worker shall make an application in the prescribed form to the District Administration for registration.
3. Every unorganised worker shall be registered and issued an identity card by the District Administration which shall be a smart card carrying a unique identification number and shall be portable.
4. If a scheme requires a registered unorganised worker to make a contribution, he or she shall be eligible for social security benefits under the scheme only upon payment of such contribution.
5. Where a scheme requires the Central or State Government to make a contribution, the Central or State Government, as the case may be, shall make the contribution regularly in terms of the scheme.

## **Chapter VI: Miscellaneous**

### **11. Power of Central Government to give directions**

The Central Government may give directions to- the National Board; or The Government of a State or the State Board of that State, in respect of matters relating to the implementation of the provisions of this Act.

### **12. Vacancies, etc., not to invalidate proceedings**

No proceedings of the National Board or any State Board shall be invalid on the ground merely of the existence of any vacancy or defect in the constitution of the National Board or, as the case may be, the State Board.

### **13. Power to make rules by Central Government**

1. The Central Government may, by notification, make rules to carry out the provisions of this Act.
2. In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
  - a. the contributions to be collected from the beneficiaries of the scheme or the employers under sub-section (1) of section 4;
  - b. the number of persons to be nominated, the term of office and other conditions of service of members, the procedure to be followed in the discharge of functions by, and the manner of filling vacancies of, the National Board under sub-section (4) of section 5;
  - c. the rules of procedure relating to the transaction of the business at the meeting of the National Board under sub-section (6) of section 5;
  - d. the allowances for attending the meetings of the National Board under sub-section (7) of section 5;
  - e. the form for making an application for registration

under sub-section (2) of section 10; and(f) any other matter which is required to be, or may be, prescribed.

### **14. Power to make rules by State Government**

1. The State Government may, by notification, make rules to carry out the provisions of this Act.
2. In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
  - a. The number of persons to be nominated, the term of office and other conditions of service of members, the procedure to be followed in the discharge of functions by, and the manner of filling vacancies of, the State Board under sub-section (4) of section 6;
  - b. The rules of procedure relating to the transaction of business at the meetings of the State Board under sub-section (6) of section 6;
  - c. The allowances for attending the meetings of the State Board under sub-section (7) of section 6;
  - d. The contributions to be collected from the beneficiaries of the scheme or the employers under sub-section (1) of section 7;
  - e. The form in which the application for registration shall be made under sub-section (2) of section 10; and
  - f. Any other matter which is required to be, or may be, prescribed.

### **15. Laying of rules**

1. Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.
2. Every rule made under this Act by State Government shall be laid, as soon as may be after it is notified, before the State Legislature.

### **16. Saving of certain laws**

Nothing contained in this Act shall affect the operation of any corresponding law in a State providing welfare schemes which are more beneficial to the unorganised workers than those provided for them by or under this Act.

### **17. Power to remove difficulties**

1. If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions, not inconsistent with the provisions of this Act, as may appear to it to be necessary for removing the difficulty: Provided that no such order shall be made under this section after the expiry of a period of two years from the commencement of this Act.

- Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

**Schedule I:** [See Sections 2(I) and (3)] Social Security Schemes for the Unorganised Workers

**Table 1**

S. No.	Name of the Scheme
1.	Indira Gandhi National Old Age Pension Scheme.
2.	National Family Benefit Scheme.
3.	Janani Suraksha Yojana.
4.	Handloom Weavers' Comprehensive Welfare Scheme.
5.	Handicraft Artisans' Comprehensive Welfare Scheme.
6.	Pension to Master craft persons.
7.	National Scheme for Welfare of Fishermen and raining and Extension.
8.	Janshree Bima Yojana.
9.	Aam Admi Bima Yojana.
10.	Rashtriya Swasthya Bima Yojana.

**Schedule II**

**Table 2**

S. No.	Name of the Act
1.	The Workmen's Compensation Act 1923 (8 of 1923).
2.	The Industrial Disputes Act 1947 (14 of 1947).
3.	The Employees' State Insurance Act 1948 (34 of 1948).
4.	The Employees' Provident Funds and Miscellaneous Provisions Act 1952 (19 of 1952).
5.	The Maternity Benefit Act 1961 (53 of 1961).
6.	The Payment of Gratuity Act 1972 (39 of 1972)

**The unorganised workers' social security (Amendment) Bill, 2010**

A Bill to amend the Unorganised Workers' Social Security Act, 2008.

**Short title and commencement**

- This Act may be called the Unorganised Workers' Social Security (Amendment) Act, 2010.
- It extends to the whole of India.
- It shall come into force on such date, as the Central Government may, by notification in the Official Gazette, appoint.

**Amendment of section 2**

In section 2 of the Unorganised Workers' Social Security Act, 2008, (hereinafter referred to as the Principal Act),—

(i) for clause (l), the following clause shall be substituted, namely:—

“(l) “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 said enterprise is not covered under the definition of factory in the Factories Act, 1948;”

(ii) after clause (l), the following clause shall be inserted, namely:—

“(la) “social security” means measures, framed by the Central or the State Government in collaboration with the employment providers for welfare of workers engaged in unorganised

sector, such as, old age pension, unemployment allowances, maternity benefits, life insurance cover, accident and medical Facility, provident fund, etc.;

**Amendment of section 3**

In section 3 of the Principal Act,—

(i) for sub-section (1), the following sub-sections shall be substituted, namely:

“(1) The Central Government shall, by notification in the Official Gazette, establish the Unorganised Workers' Social Security Fund for the welfare of unorganised sector workers.

(1A) The Central Government shall as soon as may be, by notification in the Official Gazette, establish a Welfare Fund known as the Unorganised Workers' Social Security Fund for the purpose of this Act to which there shall be credited such moneys as may be received from donations, grants, contributions, and other aids etc.

(1B) All moneys received in the Welfare Fund shall be utilised for the welfare of the Unorganised Sectors, Workers in such manner as the Central Government may prescribe from time to time.

(1C) The Central Government shall, after due appropriation made by Parliament, by law in this behalf, credit to the fund such sums as may be necessary for the purpose of this Act.

(ii) In sub-section (2) after the words “welfare schemes” the words “for all the workers of unorganised sectors”, shall be inserted.

(iii) After sub-section (4), the following sub-section shall be inserted, namely:— (4A) Safeguards and benefits framed under the Unorganised Workers' Social Security Schemes shall be operated by the Central Government with the assistance of any nationalised financial institutions.”

**Amendment of section 5**

In section 5 of the Principal Act, after sub-section (8), the following sub-section shall be inserted, namely:— "(9) The National Board shall be assisted by a Secretariat which shall comprise such officers and employees as may be prescribed."

**Amendment of section 6**

In section 6 of the Principal Act, after sub-section (8), the following sub-section shall be inserted, namely:—

"(9) The State Board shall be assisted by a Secretariat which shall comprise such officers and employees as may be prescribed."

**Insertion of new Chapter VA**

After Chapter V of the Principal Act, the following chapter shall be inserted, namely:—

**'Chapter VA: Redressal Mechanism**

10A.(1) The Central Government shall establish a redressal mechanism model for the unorganised workers engaged in every profession, which shall include local administration, employer or employment provider, police or any other authority.

(2) The disputes and grievances relating to employment, livelihood, rehabilitation, etc., shall be resolved in an amicable atmosphere and in a just manner."

### **Social security in India**

In India, the modern social security measures were planned and implemented after independence. They were too meagre and limited to the organized sector workers only, which constituted about 8 per cent of the total workforce, despite a majority of the workforce (about 93% in 2004-05) comes in the unorganized sector (self-employed or casual workers).

Importantly, the need to ensure social security for all, especially those in the unorganized sector, is an overarching concern recognized in the Eleventh Five-Year Plan (2007-12). The Constitution of India provides strength and spirit to the social security for organized and unorganized workers through its Directive Principles of the State Policy.

### **The important social legislations and social security measures relating to industrial workers may be cited as under**

1. The Workmen's Compensation Act, 1923
2. Provident Funds and Miscellaneous Provisions Act, 1952
3. The Employees State Insurance (ESI) Act, 1948
4. The Maturity Benefit Act, 1961 (amended in 1976)
5. The Payment of Gratuity Act, 1972
6. Universal Contributory Health Insurance Act, 2004
7. The Aam Admi Bima Yojana, 2008
8. The National Health Insurance Scheme, 2007
9. The Indira Gandhi National Old Age Pension Scheme

### **To mention a few, followings are the ameliorative programmes and schemes for the tribals, rural and urban poor**

1. Five-Year Plans and Community Development Projects (CDPs)
2. Food for Work and Antyodaya Yojana, 1977
3. Integrated Rural Development Programme (IRDP), 1976
4. National Rural Employment Programme (NREP), 1977
5. Jawahar Rojgar Yojana (JRY), 1980
6. Mahatma Gandhi National Rural Employment Guarantee Scheme (MNREGS), 2006
7. Integrated Tribal Development Plan
8. Swarna Jayanti Gram Swrozgar Yojana, 1999
9. Swarna Jayanti Shahri Swarozgar Yojana
10. Sarva Shiksha Abhiyan, 2001
11. Indira Awas Yojana
12. Rajiv Awas Yojana, 2009
13. Pradhan Mantri Gram Sadak Yojana
14. Bharat Nirman, 2005
15. Jnanani Suraksha Yojana, 2011
16. Pradhan Mantri Swastha Surksha Yojana
17. Total Sanitation Programme or Nirmal Bharat Abhiyan, 2012

Thus, while a large proportion of the organized sector workers have been benefiting from legally mandated and budget-provided social security benefits since independence, but most of the workers in the unorganized sector have been left out (only less than 10% of the total unorganized were benefited).

According to the World Labour Report, 2000, the public sector expenditure on social security in India was as meagre as 1.8 per cent of the GDP, whereas it was 4.7 per cent in Sri Lanka and 3.6 per cent in China. The eligibility criterion is also too tight as the exclude many a vulnerable persons.

The below poverty line (BPL) criterion is a minimalist and

inappropriate approach to extend social security to the unorganized workers. About 55 per cent of the population though not comes in the category of the poor in India but is vulnerable. Not only this, most of the unorganized workers suffer from the lack of awareness about social security and social welfare measures.

### **Unorganised sectors in India**

The working force in industries is considered as a weaker section. But the growth and economy has led to two contradictory demands for labour, on one hand organised labour seem to have grown into strong and to impeding the progress of liberalization. This has led to moves to curb labour such as through amendments to the industrial disputes act and trade unions act, or through some sort of exist policy.

On the other hand, manual labour is seen as weak and exploited and there are demands for protection of such organised labour, such as child labour, garment workers, construction workers, agricultural labour and even home workers. This anomalous situation has arisen because, labour is now divided into two classes-(a) organised labour which is strongly protected by law and has their owns auriferous trade unions and (b) unorganised labour which is unprotected and more often than not, exploited before liberalization in economy, unorganised sector workers constituted 89 percent of the work force. Now they constitute 93 percent and yet they remain uncovered by protective legislations.

This is a dangerous situation where a large section of population doesn't receive the benefits of liberalization and consequently social inequality widens <sup>[23]</sup>.

### **Method of funding welfare scheme by central government**

The Act does not provide for the creation of a structured Social Security Fund. Even though Parliamentary Standing Committee strongly recommended that social security schemes cannot just work without any statutory backing and assured resource allocation, which was not taken into consideration by the Government and the Act was brought into force without making provision for funds. The absence of Social Security Fund in the Act, casts doubts on the genuineness of Government's intentions in delivering social security rights to the unorganised workers in India. The Act should have contained a definite provision for the creation of a Social Security Fund, and a financial memorandum for budgetary allocation for the Fund.

Most of the Schemes are available only for below poverty line family. A person earning more than Rs.26 per day in village and Rs. 32 per day in urban area is not considered below poverty line population as per the current below poverty line norms.<sup>22</sup> This estimation is made by the 11<sup>th</sup> Planning Commission on the basis of 2011 prices. Economic experts have criticised this estimation because spending below this will lead to starvation.

By this restrictive clause in the schemes, most of the unorganized workers, denied the benefits of the schemes provided under the Act. Moreover, section 10 (4) of the Act, provides that nonpayment of the contribution disentitles the

<sup>23</sup> Dr. Bassavaraj C.S: welfare of special categories of labour and social security



worker from getting any benefits. At the same time the Act does not contain any provisions with regard to security of employment. In case of unorganised workers, because of non availability of regular employment, making regular contribution is difficult. Work and employment are the starting point for any scheme for the benefit of workers. Therefore, any law which does not deal with the issue of employment, its regulation, wages, conditions of work, and so on will be not merely incomplete but dysfunctional if it proceeds to deal with social security on a stand alone basis. As the Act is only for BPL workers, identification of beneficiary is a challenge and there are also issues relating to 'leakage'.

Another aspect is that if BPL estimates by the State government exceeds that of Planning Commission estimate of number of poor (as is the case in many States at present), then State Government and other agencies (and not the Central Government) have to fund the differences of excess beneficiaries under any particular scheme. Taking in to account the financial positions of the State Governments, it will be very difficult for them to finance the excess beneficiaries leading to exclusion of some of the deserving beneficiaries from getting benefits from various schemes.

Moreover, the very implementation of welfare and social security schemes for the millions of exploited working class would depend upon the sweet will of the Central and State Governments. There is no time bound frame work for die Central and State Governments to formulate various social security schemes as specified in the Act. The mechanism pertaining to the registration of a worker and entitlement to the benefits would depend upon the formulation of a specific social security scheme which is a contingent aspect under the legislation. Even the basic issue of delivery of the social security benefits to the deserving worker is vaguely designed. The Act does not provide for a grievance redressal mechanism.

The fairness and effectiveness of the implementation of the Act greatly depends on the availability of a well-designed and functional grievance redress mechanism through which workers have recourse to a method for voicing their complaints about violations. This inherent structural gap and inadequacy make the Act ineffective in providing social security benefits.

Notwithstanding the perceived shortcomings of the Act, it is widely acknowledged that the enactment of such an Act can be seen as one of the pioneering initiatives from the Government in the direction of providing social security benefits to the unorganised sector workers. It is hoped that the Act will also enable the unorganised workers to organise around the Act, which will give them voice and will help them enhancing their bargaining power.

The new legislation can, be taken as a beginning - an opportunity to raise working class struggles to newer heights by involving crores of unorganized workers. It is for the working class and trade union movement to take up the challenge to create waves of bigger and bigger struggles for a really meaningful and comprehensive legislation for unorganized workers that can cover not only social security but also wages, rights, job security and the conditions of employment.

## What are the welfare scheme under unorganised workers social security act 2008?

### Welfare Schemes for Workers

Reliable estimates of employment and unemployment are obtained through labour force surveys conducted by National Sample Survey Office (NSSO). As per the NSSO survey results for 2011-12, the estimated employment in organized sector and unorganized sector was 8.16 crore persons and 39.14 crore persons respectively. The estimated number of persons working in various sectors during 2009-10 and 2011-12 are –

Table 3

Workforce by Major Sector	2009-10	2011-12
Agriculture & Allied	24.74	23.18
Industry	9.99	11.50
Services	11.81	12.73
Total Workforce	46.54	47.41

To provide social security to unorganized workers the Government enacted the "Unorganised Workers' Social Security Act, 2008".

As per the act, Central Government is mandated to formulate and notify, from time to time, suitable welfare schemes for unorganised workers on matters relating to (a) life and disability cover, (b) health and maternity benefits, (c) old age protection and (d) any other benefit as may be determined by the Government for unorganized workers. Unorganised Workers' Social Security Act, schedule I lists the following schemes as welfare schemes for unorganised workers and beneficiaries thereof are –

Table 4

Social Security Schemes	Beneficiaries (No.)
Indira Gandhi National Old Age Pension Scheme (as on 31.12.2014)	20833673
National Family Benefit Scheme (2014-15)	175592
Janani Suraksha Yojana (2013-14)	10648487
Handloom Weavers' Comprehensive Welfare Scheme (2013-14)	2348688
Handicraft Artisans' Comprehensive Welfare Scheme (2013-14)	16089
National Scheme for Welfare of Fishermen and Training and Extension (2013-14)	4325692
Janshree Bima Yojana and Aam Admi Bima Yojana (2013-14)	50307950
Rashtriya Swasthya Bima Yojana (2013-14)	38515411

Government has taken various steps to improve status of women workers, to provide training and employment exclusively to women under Skill Development, one National Vocational Training Institute (NVTI) at Noida, Uttar Pradesh and ten Regional Vocational Training Institutes (RVTIs) have been set up across the Country, the sanctioned seating capacity of these institutes, the targets fixed for providing skill training for the year 2014-15 were fixed at 3260 seats. The Government has approved 8 new Regional Vocational Training Institutes for Women in the states where there is no existing RVTI.

Government has enacted the Equal Remuneration Act, 1976 that provides for payment of equal remuneration to men and women workers for same work or work of similar nature in the matter of employment and also prohibits any discrimination against women in recruitment or any condition of service.

The Act is being enforced by the Central and State Governments in their respective spheres to ensure compliance of provisions of the Act. Officers of appropriate Government notified as inspectors make inspections and prosecute those found violating the provision of the Act. The Act extends to the whole of India.

### Issues and challenges for unorganized labour

The working condition OF labour at work place is not satisfactory in India. Workers are always in frustration and motivation level of workers is not good. As we know that man is by nature an organic system not a mechanical one. The input of energy such as food, water etc. are converted by him into outputs of behavior. His behavior is determined by relationship between his characteristics as organic system and the environment in which he moves. The unorganized labour faces following issues and challenges:

- 6.1 Insufficient labour laws
- 6.2 No social security
- 6.3 Guaranteed minimum wages
- 6.4 Bonded labour (they don't complain about this because if they do their master may remove them) considering their ignorance)
- 6.5 Child Labour (they are the most exploited among them)
- 6.6 Working Women – issue of harassment at work place
- 6.7 Low literacy among them
- 6.8 Low incomes which they don't complain about
- 6.9 Vulnerable to diseases
- 6.10 Pain or injury from physical overexertion, repetitive manual tasks, or working in awkward positions.
- 6.11 Exposure to moulds, fungi and bird or rodent droppings.
- 6.12 Exposure to lead, wood dust, asbestos, paints, solvents, and other toxic chemicals or materials.
- 6.13 Working in extreme temperatures and UV radiation.
- 6.14 Working with hand tools, powered tools and heavy powered equipment.
- 6.15 Excess vibration in the hands, arms or body from powered tools or equipment.
- 6.16 Confined spaces.
- 6.17 Noise. 6.18 Working at heights.
- 6.19 Electrical hazards.
- 6.20 Working with cranes, hoists, and other material handling equipment.
- 6.21 Slips, trips and falls. 6.22 Respiratory and fire hazards from wood dust.
- 6.23 Stress.
- 6.24 Shift work or extended work days.

### Limitations of the act

Neither agricultural labourers have been brought under the purview of the act nor a separate bill for agricultural labourers tabled.

- a. Two bills were prepared by the NCEUS. The social security has been dumped and it confines itself only to

social security in its most diluted form.

- b. The 2008 act appears to have excluded vast sections of unorganized workers. This exclusion reveals the true colours of the “politics of inclusiveness”.
- c. The act is applicable only to a small section of unorganized labourers.
- d. For the establishment of a central welfare fund, the passage of the act is not accompanied by any legally stipulated guarantee.
- e. There is no provision for penalties in the act to punish those employers who violates it.
- f. As a result of dropping the bill on conditions of work prepared by the Arjun sengupta commission, working conditions of unorganized workers would remain unregulated and unenforced.
- g. The special problem of women unorganized workers do not figure in the bill. Their problems have been totally neglected.

### Conclusion and suggestions

The main objective of this paper is to discuss the scope of social security and to provide an overview of the unorganised workers social security-2008 and its working. The national sample survey revealed that the unorganised workers account for about 93 percent of the total workforce and there is a steady growth in it over years. Thus the 2008 act should be amended to widen its scope and application towards every unorganised sectors by ensuring the minimum standard of life and assuring every benefits to the unorganised workers and BPL families.

In order to overcome the drawbacks which are evident in the unorganised sectors various requirements to curb such as a situation are enumerated in the enforced acts and also by our government.

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