

## **Protection of Unorganised Workers in India: A Critical Analysis**

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### **I. Introduction:**

The concept of an unorganised sector began to receive worldwide attention in the early 1970s, when International Labour Organisation (ILO) initiated serious efforts to identify and study the area through its World Employment Programme Missions in Africa. Since then, the unorganised sector has been the subject of several studies and seminars covering various aspects like its size, employment potential, its relationship with the formal sector, technological levels etc. Since then many legislative measures have also been taken at both National and International level, for e.g. Convention Concerning Home Work, 1996, the Unorganised Workers' Social Security Act, 2008 etc.

This article is an attempt by the author to critically analyze the conditions of unorganised workers in India, and also to critically analyse the Unorganised Workers' Social Security Act, 2008. Author has also given suggestions for improved protection of workers in unorganized sector and for removing lacunas in the Unorganised Workers' Social Security Act, 2008.

### **II. Problems of an Un-Organised Sector in India:**

- The unorganized workers do not receive sufficient attention from the trade unions.
- little awareness of workplace hazards, living areas close to work areas, extended work hours, exploitation, no concept of occupational safety/services, lack of implementation of Health & Safety legislation, no concept of Trade/Labour Union.
- Lack of Skill and adequate training
- Application of traditional left over technologies and less exposure to new technology.

### **III. Suggestions:**

- Proper and improved legal and institutional safeguards for the protection and improvement of unorganised sector.
- Creation and protection of property rights, making provisions for equitable resources to the unorganised sector.
- Create an incentive to development and facilitate growth of SHG.
- Provide raw materials to smaller entities and individuals at lower rates and lesser taxes.

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- Provide marketing training to those involved in unorganised sector.
- Creation and promotion of sustainable livelihood and the provisions for the same in financial planning of the country.
- Equitable distribution of land, which is in surplus to the ceiling, among the poor unorganized sector (land reforms).

#### **IV. The Unorganised Workers' Social Security Act, 2008:**

This Act is the only legislation that has been enacted specifically for the betterment and protection of unorganized sector. The Act however, contains many demerits. Demerits in the Act and suggestion over the same are as follows;

##### **IV. I. Defects in Section (2)**

The long title of the Act is that it is an Act "to provide for social security and welfare of the unorganised workers and for other matters connected therewith or incidental thereto." The term "social security" has not been defined in the law and what is even more strange, the term does not occur in the body of the law in any substantive sense.

Though, the expressions "social security" and "welfare" are used interchangeably, the emphasis seems to be only on schemes of welfare.<sup>2</sup> No doubt, the phrase "social security" occurs in a few places, as for example in the heading of Chapter II, designating the National and State level Boards as "social security" Boards, in section 9(a), in section 10(4) and finally in the heading of Schedule I

The Act is premised on a clear distinction between 'organised' and 'unorganised' sectors, despite the contrary argument that such firm distinctions cannot be drawn and both the terms are inter-linked. Contrary to the usual practice of defining unorganised as a residue of the organised, the Act defines organised as a residue of the unorganised. This has been done by defining 'unorganised sector'<sup>3</sup> as establishments that employ less than 10 workers.

The definitions exclude majority of workers like forest workers and fisherman's, who could not be brought within the ambit of 'home-based worker', 'self-employed worker', and 'wage worker'. Since these people are not working in an establishment, they are also excluded from the per view of definition of Unorganised sector. For instance, most of the traditional

<sup>2</sup> See sections 3(1),3(2), 3(4),5(3), 5(8)(c), 6(3),6(8)(c)and 16

<sup>3</sup> Section 2 (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;

fishworkers in India follows a sharing system, in which the catch is shared among the boat owner and the crew.

In this Act, the unpaid women workers are not covered as they do not fall within the definitions of 'home-based worker', 'self-employed worker', or 'wage worker'. In all these definitions, wage or monthly earnings are a precondition for being considered as 'unorganised worker'. Many workers in rural India, especially in agricultural sector, work on consideration other than money. Therefore, the definition of 'self-employed worker' should include unpaid women workers, unpaid family members engaged in the work done by the family for livelihood, and workers paid in kind.

The expression "District Administration" occurring in section 2(c) has not been defined. With the spread of administrative hierarchies of various developmental and regulatory departments of government, there is considerable presence of almost all departments at the District Level, Labour Department also being one such. Therefore there is need to define the term "District Administration" in order to avoid confusion at the time of implementation of the schemes.

#### **IV. II. Absence of Social Security Rights**

Although the stated objective of the Act is to provide social security and welfare to the unorganised workers,<sup>4</sup> the Act does not confer any defined right to social security for them. In the Act, social security schemes are not included as part of the body of the Act and are given in a schedule. This essentially means that schemes can be changed at any point of time by a notification, and not after discussion in the Parliament, thereby denying the workers the benefit of consistency and justiciability.

#### **IV. III. Absence of Livelihood Rights**

Livelihood rights are not mentioned in the list of schemes under Section 3(1).<sup>5</sup> There is no provision for Tribals and for protection of their right to water, land and forest, and for dalit workers to ensure their right to land and against discrimination; for women to ensure social security protections as independent beneficiaries, against violence, harassment and discrimination,

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<sup>4</sup> Long title, The Unorganised Workers' Social Security Act, 2008.

<sup>5</sup> Section 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.

and for other excluded categories like sex workers, eunuch, handicap, abandoned old people/sick people.

#### **IV. IV. Application of schemes limited to BPL workers**

Most of the schemes are available only for BPL (Billow Poverty Line) workers.<sup>6</sup> The definition of the term "self employed worker" in section 2(k), and of the term "wage worker," in section 2(m) of the Act provide for limits to be prescribed by the government for monthly earnings or of extent of land holdings or of monthly wage, paves way for the suspicion that, the act is essentially designed to cover BPL workers.

A person earning more than Rs.12 per day in a village is not considered BPL as per the current BPL norms<sup>7</sup>, which leave a large proportion of the deserving poor outside the safety net. The Central Vigilance Commissioner (CVC) has, therefore, recommended enhancing the number of BPL families<sup>8</sup>. By this restrictive clause in the schemes, more than 90 per cent of the unorganised workers, the contingencies of whose lives have pushed them into poverty and increased vulnerabilities, are, in effect, denied the benefits of the schemes mentioned in the schedule of the Act.

This generalised exclusion is constitutionally invalid. It is in violation of Article 14 of the Constitution, which does not permit generalised discrimination.

#### **IV. V. Problems in Implementation**

Section 8 of the Act provides that,

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 Bodied in urban areas.

For effective implementation of any Act, a nodal ministry is essential, to bring coherence, monitoring and consistency to the delivery of social security rights and a well-defined administrative mechanism. The national

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<sup>6</sup> In the Schemes given in the Schedule I of the Act, unorganised workers, except the BPL workers, have been generally excluded from enjoying the benefits of the schemes, and, therefore, from the benefits of the Act.

<sup>7</sup> Available at, <http://www.labourfile.org/ArticleMore.aspx?id=490>, accessed on 5<sup>th</sup> Nov. 2013.

<sup>8</sup> Available at

[http://www.righttofoodindia.org/data/commissioner%27s\\_response\\_to\\_the\\_report\\_of\\_the\\_central\\_vigilance\\_commission.pdf](http://www.righttofoodindia.org/data/commissioner%27s_response_to_the_report_of_the_central_vigilance_commission.pdf), accessed on 5<sup>th</sup> Nov. 2013

and the state Social Security Boards are not vested with enough powers to administer the social security schemes.

Section 8 of the Act entrusts to it the record keeping function but the proviso to this section seems to equate District Administration with District Panchayats in rural areas and urban local bodies in urban areas. If the intention is to entrust the record keeping functions including the work of registration of workers as per section 10(2) and section 10(3) of the Act to elected urban and rural bodies, it could have been explicitly stated in the law. The entire dilemma could have been avoided if the workers were taken into confidence and the entire administration of the funds and the schemes entrusted to Tripartite Bodies at various levels, with a certain degree of linkage between the levels.

The term "Unorganised Worker" has been, inter-alia, defined in section 2(m) as "a home based worker, self employed worker, or a wage worker in the unorganised sector.....". The term "Unorganised Sector" restricts the coverage to those enterprises employing workers who number less than 10. This numerical limit may raise problems. For example, in the case of brick kilns not using power in the manufacturing process, the number of persons employed, even if it be for only a portion of the year, will be well above 9, this definition will make the workers ineligible for coverage. If the argument is that such enterprises will get covered under, say the Factories Act, 1948, what happens to those enterprises where the employment is between 10 and 19? Also enterprises employing 9 or less number of workers may include cyber cafes, beauty parlors, real estate agencies and so on but their employees may not even like to be referred to as unorganized workers. It is perhaps in this context, section 2(n) defining "Wage Worker" prescribes a monthly wage limit. Be that as it may, the employment limit of 9 in defining an enterprise as unorganised sector may need a relook.

This law has ignored the demand for a separate law for agricultural labour given its size and variety.<sup>9</sup> The law has failed to indicate clearly the extent of funds that must be earmarked for providing social security and welfare. This could have been done by prescribing a minimum percentage of Central and State's revenue budgets or of their GNPs to be earmarked for this purpose.

#### **IV. VI. Suggestions to the The Unorganised Workers' Social Security Act, 2008**

- "Social Security" and "Family" must be defined so that the benefits that are covered by the ILO Convention on minimum standards of social security accrue to the worker and his family.

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<sup>9</sup> According to the Economic Survey 2007-08 agricultural workers constitute the largest segment of workers in the unorganized sector (i.e. 52% of the total workers).

- Those social security benefits referred to in section 3(1) of Chapter II should include unemployment and others indicated in the ILO Convention. The scale of these benefits should also be spelt out in the law instead of leaving it to the Central Government to be notified through schemes.
- Trade unions, who have been totally ignored in the scheme of things in the Act should be encouraged to play their legitimate role including the registration of workers and espousing their causes. There is no need for setting up workers felicitation centers as indicated in Section 9. The functions suggested for these centers can and should be done by trade unions; this will not merely help the trade unions to work closely with the workers but also, enable them to grow in strength.
- Following definition of the term “unorganized sector” may be replaced with the present definition in the Act.  
Section 2 (l)- “unorganized 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 does not fall under the definition of factories in Factories Act, 1948.
- Following definition of the term “social security” may be included in section 2 of the Act.  
“Social security” means measures by the government in collaboration with employer, worker or otherwise, designed to meet the contingencies in life of a worker, namely old age pension, unemployment benefits, maternity benefits, livelihood loss compensation, accident and medical care, provident fund etc.
- Section 2 (k) read as “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 (following words should be added here) and also includes unpaid women worker and unpaid family member engaged in household or other family occupations.
- The government may extend the ESIC schemes to all workers rather than inviting private sector firms to manage health schemes for unorganised workers, in which the contribution by government of India will be a transfer of public funds to private agencies. The medical care, maternity benefit and accident compensation schemes may not be private insurance based.

- Section 3(1) may be amended in following manner for achieving the goal of social security, as contemplated in long title of the Act. The Central Government may, by notification in the Official Gazette, frame schemes to be called the Unorganised Workers Social Security Fund Schemes for the establishment of Social Security fund under this Act for unorganized workers as defined in this Act, to whom the said Schemes shall apply and there shall be established, as soon as may be after the framing of the Schemes, a Fund in accordance with the provisions of this Act and the Schemes on matters relating to-
  - a) Life and disability cover;
  - b) Health and maternity benefits;
  - c) Old age protection;
  - d) Livelihood protection
  - e) Additional protection to Dalits, women, adivasi, other excluded groups like sex workers, eunuch, handicap, abandoned old people/sick people and
  - f) Any other benefit as may be determined by the Central Government.
- The social security schemes made under this Act<sup>10</sup> shall provide medical, maternity and accident care with hospitalization as per the medical needs without any cost ceiling; the compensation shall be as per Workman Compensation Act
- Provisions for adequate representation on The National Social Security Board and State Social Security Board shall be having secretariat in the to representatives of the ministry of labour of the government of India or the governments of the states, as the case may be and the secretary of respective ministry may be made and they shall be made responsible for the overall administration, finance, annual report, enforcement, RTI and to the parliament or state legislature as the case may be.
- The Act should provide for the creation of a Social Security Fund, and a financial memorandum for budgetary allocation for the Fund for benefit of unorganised sector.
- The fairness and effectiveness of the implementation of the Act greatly depends on the availability of a functional institution of grievance redressal mechanism, through which workers have recourse to a method for voicing their complaints about violations. The government should formulate a model Dispute Settlement Mechanism for unorganised workers of each occupations involving local administration, employers, police and other authorities for

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<sup>10</sup> Section 3(1)A, *The Unorganised Workers' Social Security Act, 2008*

resolving disputes and grievances relating to employment, livelihood, encroachment, displacement, land rights, discrimination, state actions etc with powers to grievance redressal authority to enforce attendance, take evidence, inspections and investigations, seize records and such other powers as necessary to resolve dispute or differences amicably between parties and if necessary to refer the dispute for arbitration.

#### **V. Conclusion:**

The Indian Economy is characterized by the existence of a vast majority of informal or unorganized labour employment. As per the Economic Survey 2007-08, 93% of India's workforce include the self employed and employed in unorganized sector. However till today this large portion of Indian population has remained neglected. The laws and machinery to implementing them, in respect of unorganised sector, needs an upgradation. Especial budgetary provisions and awareness about rights among unorganised sector is need of an hour.