

SOCIAL SECURITY OF UNORGANISED WORKERS IN INDIA

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Abstract

International commitments and constitutional obligations bind the government to provide social security benefits to all citizens. Social security may be protective or promotional. The former seeks to give protection against the contingencies of life (such as sickness and old age), which may reduce the earning capacity of an individual; whereas the latter demands pro-active action for raising the standard of living. In India, only about 7% of all the workers are entitled for most of the benefits of the social security laws and the rest belonging to the unorganised category are not provided adequate coverage and if covered, the laws and schemes are often not implemented. Besides, ambiguities in policies, flaws in the laws and relatively low investment in the social security schemes add insults to injury. This prima facie contravenes the constitutional goals in general and equality clause in particular. Unorganised workers are compelled to spend out of their meagre incomes for all contingencies and remain helpless in their old age. We must not view ill-health or malnutrition as a contingency, but a continuing certainty of life for which protection must be arranged. The aim of this paper is to highlight the existing social security policies and schemes available to the unorganised workforce of India. An attempt has been made to dwell upon the concepts of social security and unorganised worker. In this regard, several legislations and judicial decisions, along with schemes at the Central and State Levels have been analysed.

Introduction

At all times and in every society, at every stage of development, there have been sick people requiring medical aid and care, handicapped and old people unable to work for a living.¹ “There are five giants on the road of reconstruction”. These are want, disease, ignorance, squalor and idleness.”²

Every person is exposed to some kind of risk or danger. As per World Development Report, 1997, social security should be viewed as an investment for the human development.³ United Nation Development Programme (UNDP) stated that for most people, a feeling of insecurity arises more from worries about daily life (like will they and their families have enough to eat or will they lose their job?) than from the dread of a cataclysmic world event.⁴ The concept of social security has been transformed from charity-based to rights-based approach. It is well established and recognised in the national constitutions⁵ and international instruments⁶ that access to social security is the

¹ Government of India, Report of Committee on Labour Welfare, 1969, p. 255

² Beveridge, William: “Report of Social Insurance and Allied Services” in S.C. Srivastava, *Social Security and Labour Laws* (Eastern Book Co.)

³ Sharma, A.M. (2006), *Aspects of Labour Welfare and Social Security* (Himalaya Publishing House).

⁴ India: Economic Reforms and Labour Policy

⁵ For instance, the Directives Principles of the State Policy under the Constitution of India provide for adequate means of livelihood, ensure that the health and strength of workers and the tender age of children is not abused. The state is also enjoined to make effective provisions for securing the right to work, education and public assistance in case of unemployment, old age, sickness and disablement and other cases of undeserved want, securing just and humane

fundamental human rights. Besides, various policies and schemes have been launched.⁷ It is desirable that each and every person, irrespective of caste, creed, sex etc. could be protected by social security. However, even the single nation cannot claim that all the individuals have adequate coverage. The term “social security” is a dynamic concept and hence there is no commonly accepted definition. According to Weber and Cohen, “Social Security is a controversial and dynamic subject with various facets – philosophical, theoretical, humanitarian, financial, administrative, social, economic, political, statistical, actuarial, medical and legal”.⁸

Social security has been viewed from protective and promotional aspects. In the present context of unorganised sector, the protective form of social security has been explained by International Labour Organisation (Hereinafter I.L.O.) in its Convention No. 102, which enumerates nine risks or core contingencies from which unorganised or informal workers need to be protected that lead to the stoppage or substantial reduction of earnings namely; 1) Sickness⁹ 2) Maternity¹⁰ 3) Employment Injury¹¹ 4) Unemployment¹² 5) Invalidity¹³ 6) Old Age¹⁴ 7) Death¹⁵ 8) Need for long term medical care¹⁶ and 9) Need to support families with children.¹⁷ This view of I.L.O. has been described as the protective form of social security as it limits the scope of social security to maintenance of one’s income against loss or diminution. On the other hand, Dreze and Sen¹⁸ articulated the broader concept of social security as ‘...social means to prevent deprivation and vulnerability to deprivation’, known as the promotional aspect of social security. This concept has the objective of enhancing the normal living conditions and dealing with regular and often persistent deprivation. In India, the National Commission on Labour has observed that “social security envisages that the members of a community shall be protected by collective action against social risks causing undue hardship and privation to individuals whose prime resources can seldom be adequate to meet them”.¹⁹

conditions of work and maternity relief, living wage, decent standard of life, full enjoyment of leisure, raising the level of nutrition and the standard of living of its people, and improvement of public health (Articles 39, 41, 42, 43 & 47).

⁶ See E.g; Articles 22 and 25 of the *Universal Declaration of Human Rights* adopted by the United Nations General Assembly in 1948.

⁷ Introduction to Social Security, ILO, Geneva, 1984

⁸ Supra note 3

⁹ See The Medical Care & Sickness Benefits Convention, 1969 (No. 130)

¹⁰ See The Maternity Protection Convention, 1919 (No. 3)

¹¹ The term “Employment Injury” is used in the Social Security (Minimum Standards) Convention, 1952 (No. 102)

¹² Only involuntary unemployment is covered by social security.

¹³ From the review of various national laws, ILO recognises three concepts of invalidity as a social security contingency namely; 1) Physical Invalidity – This means the total or partial loss of any part of the body, or of any physical or mental faculty, irrespective of the economic or occupational consequences of that loss. 2) Occupational Invalidity – This means the loss of earning capacity resulting from the inability to follow the occupation previously exercised by the person concerned. 3) General Invalidity – This means the loss of earning capacity resulting from the inability to take up any of the possibilities open to the person concerned in the general labour market, even those which might involve a change in occupation and possibly some sacrifice of professional or social status.

¹⁴ The most useful old-age benefit in social security terms is a life pension.

¹⁵ A single-payment lump-sum benefit to assist in meeting the cost of burial and associated expenses on the death of an insured person.

¹⁶ Convention No. 102 establishes that medical care benefit is provided to maintain, restore or improve the health of the persons protected and their ability to work and to attend to their personal needs. The minimum content of the benefit covers general practitioner care, including home visits; specialists care in hospitals and similar institutions for in-patients and out-patients and such specialist care as may be available outside hospitals; essential pharmaceutical supplies; pre-natal confinement and post-natal care by medical practitioners or qualified midwives; and hospitalisation where necessary. To this the Medical Care and Sickness Benefits Convention, 1969 (No. 130), adds dental care and medical rehabilitation including necessary appliances.

¹⁷ The 1st ILO instrument to deal directly with family benefit was the Income Security Recommendation, 1944 (No. 67). In 1952, the Recommendation was codified in the Social Security (Minimum Standards) Convention (No. 102), which simply states “responsibility for the maintenance of children”

¹⁸ Dreze J. and A. Sen (1989) *Hunger and Public Action* (Oxford Clarendon Press)

¹⁹ Report of National Commission on Labour, 1969

The aim of this paper is to highlight the existing social security policies and schemes available to the unorganised workforce of India. An attempt has been made to dwell upon the concept of unorganised worker in the Indian context. In this regard, several legislations and judicial decisions, along with schemes at the Central and State Levels have been analysed.

Social Security of Unorganised Worker in India

“Unorganised Worker” Defined – According to 1st National Commission on Labour; unorganised labour are those who have not been able to organise themselves in pursuit of common objectives on account of constraints like casual nature of employment,²⁰ ignorance and illiteracy,²¹ small and scattered size of establishments and position of power enjoyed by employers because of the nature of industry.²² To this, poverty,²³ indebtedness,²⁴ working for below minimum wages,²⁵ lack of bargaining power, using indigenous technology, compelled migration etc. may also be added.

Ministry of Labour has categorised the unorganised labour force under four groups in terms of occupation, nature of employment, especially distressed categories and service categories. In terms of occupation, it included small and marginal farmers, landless agricultural labourers, share croppers, fishermen and those engaged in animal husbandry, beedi rolling, labelling and packing, building and construction workers, leather workers, weavers, artisans, salt workers, workers in brick kilns and stone quarries, workers in saw mills, oil mills etc. In terms of nature of employment, they are attached agricultural labourers, bonded labourers, migrant workers, contract and casual labourers. Toddy tappers, scavengers, carriers of head loads, drivers of animal driven vehicles, loaders and unloaders, belong to the especially distressed category while midwives, domestic workers, fishermen and women, barbers, vegetable and fruit vendors, newspaper vendors etc. come under the service category.²⁶ In addition to the above categories, there exists a large section of unorganised labour force such as cobblers, hamals, handicraft artisans, handloom weavers, lady tailors, physically handicapped self-employed persons, rikshaw pullers/ auto drivers, sericulture workers, carpenters, leather and tannery workers, power loom workers and urban poor.²⁷

Extent – In India, 93% - around 400 million – work in the unorganized sector.²⁸ The number of unorganised workers was about 279 million in 1983, which increased to about 359 million by 2005-2006 compared to organised workforce of 24 million in 1983, which increased only to about 26.5 million during the same period. One of the reason laid down by Ravi Srivastava (NCEUS member) for the growth of unorganised worker is that the “large firms (are) reducing risks and wage costs by outsourcing to the informal sector, and the organised sector (is) not creating enough jobs,”

²⁰ It signifies lack of employer-employee relationship.

²¹ See Ratnam, C.S.Venkata ed., (2006) *Social Security in the Organised Sector in India: Social Development Report*, (Oxford University Press, New Delhi, Govt. of India, Economic Survey 2007-2008). (A high illiteracy rate is the most striking feature of workers in this sector -- 47% of rural migrants are illiterate. Even male workers have an average of only 1.7 years of formal education)

²² Government of India, Report of National Commission on Labour, 1969

²³ Around 394.9 million workers (86% of the working population) are in the unorganised sector; 79% of them live on less than Rs 20 a day. This section of the poor and vulnerable includes 88% scheduled tribes and castes, 80% other backward classes, and 85% Muslims. Ninety per cent of agricultural labour households are landless or have holdings of less than 1 hectare. (NCEUS Report, 2006)

²⁴ A poor worker on account of low wages incurs debt to fulfil social obligations like marriage, child's birth, funeral, festivals etc.

²⁵ See Second Labour Commission (2002)

²⁶ Supra note 19

²⁷ Ibid.

²⁸ As per National Sample Survey Organisation (NSSO) estimates for the year 2004-05, India had population of 1093 million, with a workforce of about 385 million. Of these, about 7 per cent belong to organised and the rest 93 per cent of the workforce include those self employed and employed in unorganised sector)

Trends in Employment in Organised and Unorganised Sectors in India (in million)²⁹

<i>Year</i>	<i>Organised</i>	<i>Unorganised</i>	<i>Total Workforce</i>
1983	24.01 (7.93)	278.74 (92.07)	302.75
1987-1988	25.71 (7.93)	298.58 (92.07)	324.27
1993-1994	27.37 (7.31)	347.08 (92.69)	374.45
1999-2000	28.11 (7.08)	368.89 (92.91)	397.00
2005-2006	26.46 (7.54)	358.45 (92.46)	384.91

Note: Figures in brackets are percentages to the respective totals.

Legislative Protections – India has enacted several social security legislations. The law which could facilitate the cause of the unorganised sector may be divided under the general and special class. The former enactments cover both the organised and unorganised and the latter covers the special laws applicable for certain class of the unorganised workers.

General Legislations – Although prima facie it does not cover the unorganised sector, but these laws should be considered; as the unorganised workers comes within their purview on the basis of the enacted provisions, supported by judicial interpretation. The table³⁰ given below are the summary of some of the legislations which provide social security.

Laws	Objectives	Coverage	Eligibility	Benefits
<i>Workmen's Compensation Act, 1923</i>	To provide compensation for workmen in cases of industrial accidents/occupational diseases resulting in disablement or death.	Persons employed in factories, mines, plantations, railways and other establishments mentioned in Schedule II of the Act.	The benefits are payable in respect of work-related injuries to the workers dependents not covered by the ESI Act.	Compensation for death, disablement, and occupational disease.
<i>Employees State Insurance Act, 1948 (Hereinafter ESI)</i>	To provide for health care and cash benefits in the case of sickness, maternity and employment injury.	Factories/establishments to which the law is made applicable by the Govt.	Employees drawing pay not exceeding Rs. 5000 per month.	Benefits to sickness, maternity, disability dependents, and death.

²⁹ Ministry of Labour and Employment, Director General of Employment and Training and Economic Survey (various years) in A.C Dhas & M. Helen, *Social Security for Unorganised Workers in India*, viewed on 5 May 2010 (<http://mpr.ub.uni-muenchen.de/9247/>)

³⁰ Supra Note 3

<i>Employees' Provident Fund & Miscellaneous Provisions Act, 1952</i>	To provide compulsory provident fund, pension, deposit-linked insurance.	Factories /Establishments employing 20 or more employees (in Scheduled industries); other establishments notified by the central Govt.	There is no wage limit for coverage provided the workman is not covered by the ESI Act.	Provident fund, pension, and refundable withdrawals.
<i>Maternity Benefit Act, 1961</i>	To provide for maternity protection before and after child birth.	Factories, mines, plantations, commercial and other establishments to which the law is extended.	There is no wage limit for coverage provided the woman is not covered by the ESI Act	Payment for actual absence upto 12 weeks on average daily wages, minimum wage or Rs. 10.
<i>Payment of Gratuity Act, 1972</i>	To provide for payment of gratuity on ceasing to hold office.	Factories, mines, oil-fields, plantations, railway companies, shops and establishments also to other establishments to which the law is extended.	Five years continuous service is required for entitlement of gratuity.	15 days wages for every completed year of service or part thereof in excess of 6 month subject to maximum of Rs. 3,50,000. The seasonal employees are entitled to gratuity at a rate of 7 days wages for each season.

Special Legislations – There are some special laws designed only for the unorganised class. Some of those are:

1. Contract Labour (Regulation & Abolition) Act, 1970 – It aims to regulate the employment of the contract labour in every establishments employing twenty or more workmen and also to provide for its abolition in certain circumstances
2. Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 – An act to provide the employment of inter-State migrant workmen and to provide for their conditions of service.
3. Cine-workers welfare Fund Act, 1981 – An Act to provide for the financing of activities to promote the welfare of certain cine-workers. "cine-worker" means an individual who has been employed in connection with the production of not less than five feature films to work as an artiste (including actor, musician or dancer) or to do any work, skilled, unskilled, manual, supervisory, technical, artistic or otherwise; and whose remuneration with respect of each of any five feature films, has not exceeded 1600/- per month in case of monthly payment and Rs. 8000/- where such remuneration has been by way of a lump sum.
4. Iron Ore Mines, Manganese Ore Mines and Chrome Ore Mines Labour Welfare Fund Act, 1976 – An Act to provide for the financing of activities to promote the welfare of persons employed in the iron ore mines, manganese ore mines and chrome ore mines.
5. Limestone and Dolomite Mines Labour Welfare Fund Act, 1972 – An Act to provide for the levy and collection of a cess on limestone and dolomite for the financing of activities to promote the welfare of persons employed in the limestone and dolomite mines.
6. Mica Mines Labour Welfare Fund Act, 1946 – An Act to constitute a fund for the financing of activities to promote the welfare of labour employed in the mica mining industry.

7. Beedi Workers welfare Fund Act 1976³¹ - An Act to provide for the financing of measures to promote the welfare of persons engaged in beedi establishments.
8. Building and other Construction Workers (Regulation of Employment and conditions of service) Act, 1996³² - An Act to regulate the employment and condition of service of buildings and other construction workers and to provide for their safety, health and welfare measures and for other matters connected therewith or incidental thereto.
9. Unorganised Workers' Social Security Act, 2008 - Finally, India has enacted an Unorganised Workers' Social Security Act, 2008 for providing social security to the Unorganised Sector. The government has passed the bill on social security of unorganised workers in the Lok Sabha on December 17, 2008 despite opposition from trade unions, organisations of workers and civil society.³³ It provides for framing of schemes by the Central as well as State Governments and funding of central government schemes. To achieve its objective, there is a provision for the constitution of the Board at the State level and also the funding of State Government Schemes for record keeping by district administration and for the setup of the workers facilitation centre. Finally it empowers the Governments at Central and State levels for framing the rules. All unorganized sector workers above 14 years are entitled to register themselves and receive a 'smart' identity card.

Judicial Response – The Supreme Court of India and several High Courts have played a vital role in the socio-economic reconstruction of the society as the Constitution of India guarantees fundamental right to every citizen that include right to life and the Supreme Court also point out that the right to livelihood is inherent in the right to life. Article 21 of the Indian Constitution guarantees right to life and the Supreme Court has laid down in the cases like *Olga Tellis vs. Bombay Municipal Corporation*,³⁴ that the right to livelihood is inherent in the right to life under Article 21. The ultimate object of social security is to ensure that everyone has the means of livelihood. It follows, therefore, that the right to social security is also inherent right in the right to life. In *Gammon India Ltd. vs. Union of India*,³⁵ the Supreme Court while dealing with the object for which the Contract Labour (Regulation and Abolition) Act, 1970 was enacted observed that the Act was passed to prevent the exploitation of contract labour and also to introduce better conditions of work. The Act provides for regulation and abolition of contract labour. The underlying policy of the Act is to abolish contract labour, whenever possible and practicable, and where it cannot be abolished, the policy of the Act is that the working conditions of the contract labour should be so regulated as to ensure payment of wages and provisions of essential amenities. In *Royal Talkies, Hyderabad vs. Employees State Insurance Corporation*,³⁶ the Supreme Court held that the employees of cycle stand and canteen run in a cinema theatre by contractors were to be covered by the definition of the employee under the Employee's State Insurance Act, 1948. In *Siddheswar, Hubli vs. ESI*,³⁷ the Court while interpreting ESI Act held that "the definition appears to be of wider connotation. It does not appear to exclude a casual labourer or casual employee. Even the person whose services are lent to the principal employers, is included in the definition of employee".

³¹ It is implemented in most of the States.

³² It is implemented only in 12 states properly namely; Kerala, T.N., Karnataka, A.P., Pondichery, Haryana, Punjab, West Bengal, Tripura, Assam, M.P. and Maharashtra

³³ See E.g; National Working Group Meeting of "Social Security Now", 17 January, 2009, viewed on 17 May 2010 (http://www.cec-india.org/index.php?view=details&id=7%3Aational-working-group-meeting-of-social-security-nowq&option=com_eventlist&Itemid=83) (The amendments suggested by CPI (M) and CPI members and suggestions by other members were rejected. The government even ignored concerns on main infirmities of the bills raised by many MPs in the house. Amendments suggested by SSN to the government were also ignored).

³⁴ AIR 1983 SC 180

³⁵ 1974-I-LLJ-489.

³⁶ (1978) 4 SCC 204.

³⁷ 1998 Lab. IC 212 (Orissa).

Likewise, in *Regional Director, Employees State Insurance Corporation vs. Suvarna Saw Mills*,³⁸ the Full Bench of Karnataka High Court held that “the definition of the word ‘Employees’ contained in Section 2(9) of the ESI Act does not make any difference between a casual or a temporary or permanent employee. It is wide enough to include even a casual employee for a day for wages”

Thus, the Court has expanded the provisions of social security benefits to contract labourer by stating that the ESI scheme extend to all employees in covered establishments, whether they are directly employed by principle employer or through an immediate employer. These apart, the judiciary also attempted to protect the fundamental rights of unorganised labourers.³⁹

Schemes – Both the Central and State Governments have formulated certain specific schemes to support unorganised workers – both promotional and protective. The social security for the unorganised sector is being provided through centrally funded Social Assistance Programmes, Social Insurance Scheme, and social assistance through welfare funds of Central and State Government and public initiatives. The centrally funded Social Assistance Programmes includes a Scheme called National Social Assistance Programme (NSAP) was launched through 3 sub-schemes of - i) National Old Age Pension Schemes (NOAPS); ii) National Family Benefit Schemes and iii) National Maternity Benefit Scheme.⁴⁰ NSAP also provides opportunities for linking social assistance package to schemes for poverty alleviation and provision of basic minimum services.⁴¹ The Social Insurance Schemes available to the unorganized sector are cover through the LIC such as Social Security Group Insurance Scheme. All persons in the age group of 18 to 60 years belonging to the 24 approved occupation groups⁴² are covered. At present, to provide social security to some of the unorganised workers, welfare funds for various groups have been set up by the government without burden on the budget. These welfare funds have been developed by way of collecting cess from the persons who are selling the finished products.⁴³

In the State level, the Old Age Pension Scheme (OAPS) was introduced in all the States and Union Territories. Kerala was the First State to experiment with the pension scheme for the agricultural workers in the year 1982, followed by Tamilnadu in the same year. Andhra Pradesh introduced the OAPS to the landless agricultural workers in 1983. The Government of Maharashtra introduced a pension scheme in 1980 to support the physically handicapped and economically weaker sections of the society. The Government of West Bengal introduced State Assisted Scheme of Provident Fund for Unorganised Workers (SASPFUW).⁴⁴ Similarly, the Government of Punjab has been implementing a social security scheme for farmers and labourers in case of death or injury on duty. To extend social security cover to manual workers, auto-rickshaws, washermen, tailoring workers, handcraft workers etc., the Government of Tamil Nadu has introduced a new social security and

³⁸ 1979 Lab. IC 1335 Kant.

³⁹ See generally, *Bhartiya Dak Mazdoor Manch vs. Union of India and ors.* (1988) 1 SCC 122, *Peoples Union for Democratic Rights vs. Union of India* (AIR 1982 SC 1473), *Olga Tellis vs. Bombay Municipal Corporation* (AIR 1983 SC 180).

⁴⁰ See Planning Commission Reports on Labour and Employment in the 10th Plan (2002-2007)

⁴¹ In this direction, the important schemes being implemented by the Government are – Employment Assurance Scheme (EAS), Swaran Jayanti Gram Swarozgar Yojana (SGSY); Jawahar Gram Samriti Yojana etc. (Ibid)

⁴² Beedi workers, brick-klin workers, carpenter, cobblers, fishermen, hammals, handicraft artisans, handloom weavers, handloom and khadi weavers, lady tailors, leather and tannery workers, papad worker attached to SEWA, physically handicapped self-employed persons, primary milk producers, rickshaw pullers/auto drivers, safai karamchari, salt growers, tendu leaf collectors, urban poor, forest workers, sericulture, toddy tappers, power-loom workers, women in remote rural hilly areas. (Ibid)

⁴³ Ibid.

⁴⁴ The scheme covers all wage employed and self-employed workers between the age of 18 to 55 years in the unorganized sector having an average family income of not more than Rs. 3500 per month. Each subscriber workers contribute a sum of Rs. 20 per month and equal matching amount contributed by the State Government. (Ibid)

welfare scheme – 2001.⁴⁵ Similar such State level initiatives are carried out in Kerala, Bihar, Uttar Pradesh, Madhya Pradesh, Haryana, Gujarat and other states.

Finally, several public institutions and agencies are also providing various kinds of social security benefits to the selected groups of workers. The services provided by the Non Governmental Organisations (NGOs) include access to micro credit, housing, preventive health care and employment. The NGOs support to unorganised workers is carried out in two ways. Firstly, the NGOs use their own funds and the aids obtained from other agencies (domestic and international donors) and implement several projects and schemes to the targeted people who are basically weaker and vulnerable sections of the community. Secondly, they serve as an intermediary between the formal provider (say Government) and the community, and help in routing the services to the needy. In both the ways, it is expected that the services are reaching to the community with no delay, less cost and to the right ones. It is estimated that the NGOs could cover only 3 to 4 per cent of the total workforce in the unorganised sector. The outstanding examples are those of Self-Employed Women's Association (SEWA),⁴⁶ the Mathadi Workers Board in Maharashtra⁴⁷ and IIMPS.⁴⁸

Recent Initiatives – Firstly, to follow up the Unorganised Workers' Social Security Act, 2008, Government has set up a 'National Social Security Fund' with an initial allocation of Rs 1000 crore. The Government also announced that the benefits of the Rashtriya Swasthya Bima Yojana (RSBY) will now be extended to all Mahatma Gandhi National Rural Employment Guarantee Scheme (NREGA) beneficiaries who have worked for more than 15 days during the preceding financial year. The scheme provides health insurance cover to below poverty Line (BPL) workers and their families and so far more than one crore smart cards have been issued under this scheme.⁴⁹ Some State Governments have also taken steps for enforcing the provisions of the Act. For example, Orissa Government has started the process of formation of 'Orissa State Social Security Board' for the unorganized workers engaged in the construction sector.⁵⁰

The second major initiative of the United Progressive Alliance (UPA) government towards the unorganised sector workers which will help support schemes for self-help workers like weavers, toddy-tappers, rickshaw-pullers and bidi workers and especially to Construction labourers, who were left out in the first scheme government; is the scheme namely; “*Swavalamban*” (self-reliance) which is likely to be launch in the first week of July 2010 from Rai Bareli. It will provide lifelong pension of at least Rs 1,000 per month to workers engaged in unorganised sectors. The pension could be still higher if the worker is able to voluntarily save more through higher contribution. Initially, the scheme will be available for only three years. Its continuation will depend on the response it gets from the unorganised sector. The government will pay the pension as the scheme is to be run by the state-run Life Insurance Corporation of India under the supervision of the Pension Fund Regulatory and Development Authority. Under the scheme, a worker will have to contribute Rs 100 a month for 20 years to be eligible for drawing the pension until death or completion of 60

⁴⁵ Ibid.

⁴⁶ See Pension Plans for Unorganised Sector, 7 April 2007, viewed on 15 May 2010 (http://www.moneycontrol.com/news/business/pension-plans-for-unorganised-sector_450459.html) (SEWA has 50,000 members who on an average save Rs. 78 monthly for their retirement.)

⁴⁷ Ibid.

⁴⁸ IIMPS was set up in 2006 to promote micro pension in India. There are already 40,000 workers in Rajasthan who are putting small sums away from their meagre incomes for their old age. After Rajasthan, other states have shown interest. State governments, international organisations like Asian Development Bank and KfW Bank, co-operatives and NGOs are partnering him. IIMPS is today working with 18 partners who have a member base of 3 million workers (Ibid).

⁴⁹ Social Security Fund for Unorganised Sector Workers, 26 February 2010, viewed on 17 May 2010 (<http://timesofindia.indiatimes.com/union-budget-2010/Social-Security-Fund-for-unorganised-sector-workers/articleshow/5619998.cms>)

⁵⁰ Orissa to form Social Security Board for Unorganised Workers, viewed on 17 May 2010 (http://www.ccc-india.org/index.php?option=com_content&view=article&id=1849:orissa-to-form-social-security-board-for-unorganised-workers&catid=65:labour-news&Itemid=208)

years of age. The main object of the scheme is to encourage people from the unorganised sector to voluntarily save for their retirement.⁵¹

Finally, the Union Cabinet Chaired by Prime Minister Manmohan Singh has taken a decision to amend the Employees' State Insurance Act, 1948 to cover millions of workers in the unorganised sector. The facilities of ESIC would now be extended to workers in the unorganised sector under Rashtriya Swasthya Bima Yojana by making optimum use of under-utilised hospitals and dispensaries of ESI Corporation. It would apply to all places where ten or more workers are employed.⁵²

Critical Appraisal – It is appreciable that India of late has taken several initiatives for protecting the unorganised workers, but it is just a mere beginning to say the most. The money spent for the social security is very low. According to World Labour Report of 2000, expenditure on social security in India was 1.8% of GDP in 1996 compared to the corresponding figures in the developing countries was – Sri Lanka – 4.7%, China – 3.6%, Malaysia – 2.9%, Argentina – 12.4% and Brazil – 12.2%.⁵³ So, leave apart the comparison with the developed nation spending capacity of 40%,⁵⁴ India is lagging far behind from the developing countries like Brazil and Argentina. In India only about 7% of workers get the benefits of social security laws and the rest belonging to the unorganised workers are actually not getting the benefits available under laws because either they are not eligible for coverage, or laws are just not implemented for them. The social security situation in India is characterised by ambiguity in policy.

In the area of enacted laws, Employees State Insurance (ESI) Act, 1948, for instance, covers employees of factories and other establishment having a minimum of 10 worker using power, and 20 not using power. It does not prima facie cover the unorganised sector.⁵⁵ Further, the Employees' Provident Funds, and Miscellaneous Provisions Act, 1952 covers only factories and establishments employing 20 or more employees in scheduled industries and other establishments notified by the Central Government.⁵⁶ In the State level, the situation is pretty similar. For instance, according to FIAN (international human right organisation) the Chikan Kari workers in Lucknow, Uttar Pradesh, are paid way below the minimum wage inspite of the fact that as per Uttar Pradesh legislation, a worker must be paid a minimum wage for a day's work.⁵⁷ Besides, even the latest enactment (Unorganised Workers' Social Security Act, 2008) has number of flaws. To begin with, the term "social security" has been defined on the basis of various schemes, which instead should have been articulated from the perspective of rights derived from the constitution. Unorganised sector has been defined as an establishment which employ less than 10 workers. It should be amended to include all enterprise not falling under the purview of the factories Act, 1948. Secondly, the advisory boards are supposed to monitor the working of the welfare schemes, the act does not vest them with executive powers. Thirdly, the Act missed out considerable number of things like it has not laid down its scope, targeted beneficiaries, implementation and grievance redressal mechanisms or penalties for violation, regulation of entry into jobs and exit from jobs. Further, it also fails to recognise the right to organise, to represent groups and to enter into collective bargaining.

⁵¹ Lifelong Pension Plan for Unorganised Sector Workers Soon, 5 April 2010, viewed on 17 May 2010 (<http://business.rediff.com/report/2010/apr/05/new-pension-plan-for-informal-sector-workers-soon.htm>)

⁵² Unorganised Sectors Workers to get ESIC Medicare Facilities, 22 March 2010, viewed on 17 May 2010 (http://www.aarogya.com/index.php?option=com_content&view=article&id=5102:unorganised-sector-workers-to-get-esic-medicare-facilities&catid=206:year-2010&Itemid=3547)

⁵³ Supra note 4

⁵⁴ Ibid.

⁵⁵ There are several areas with more than 1000 employees where the Act is yet to be implemented. Seasonal factories, mines, and plantations have not been covered under the Act. Out of the labour force of 393.21 (2001), about 8 million workers have been covered under the Act.

⁵⁶ By March, 1991, the Act covered only 21.2 million workers covering only 177 industries/ business

⁵⁷ India - Low wages for Chikan Kari workers deprives them of access to food, viewed on 5 May 2010 (<http://www.fian.org/cases/open-letters/india-low-wages-for-chikan-kari-workers-deprives-them-of-access-to-food>)

Additionally, it has not acknowledged the principle of unemployment allowance in the case of job losses for unorganised workers or any form of employment and wage/income guarantee.⁵⁸ Finally, the passage of the Act is not accompanied by any legally stipulated guarantee for the establishment of a Central Welfare fund.

There is variety of schemes but these have been framed at various point of time and therefore, do not conform to any overall design reflecting a comprehensive and consistent policy or direction. Indeed, till 9th Five Year Plan, Plans made no mention of social security.⁵⁹ The chairman of National Social Security Board (NSSB) and minister for labour and employment Mallikarjun Kharge admitted at its first meeting that though the government had launched schemes like the Rashtriya Swasthya Bima Yojana for unorganised workers below the poverty line and the Aam Aadmi Bima Yojana for the rural landless, this was “miniscule”.⁶⁰ These apart, schemes covering protective measures are largely available to the central and state government employees in specific and to the small number of organised workforce in India in general.⁶¹

Consequently, unorganised workers have to spend out of their meagre incomes for all contingencies such as illness and children’s education and in their old age they are helpless. These workers adopt informal strategies such as borrowings, sale of assets, etc, which are very expensive and their continued dependence on such strategies only renders them more vulnerable. According to NCEUS Report (2006),⁶² unorganised workers in India work under “deplorable conditions” with “extremely few livelihood options”. This, in spite of the fact that they contribute over 60% of the country’s GDP.

Conclusion

The idea of protective form of social security implies that the members of society have already reached an acceptable standard of living and should be guarded only against specific contingencies. This type of social security may succeed in developed countries; its applicability and adaptability to developing countries like India are found to be questionable given the large unorganized sector in these countries.⁶³ Therefore, promotional aspect of social security is the order of the day.

In India, it seems, the list of unorganised workers is never ending. The needs are pretty high and the instant measures may be considered as a first step, if some ambiguities are removed from principal law like Unorganised Workers’ Social Security Act, 2008. For improving the distribution policy, the areas of concern are lack of appropriate legislation and shoddy implementation of existing laws and schemes, along with minimal investment.⁶⁴ Moreover, various Commissions have suggested ratification of certain conventions.⁶⁵ India is constitutionally a socialist state. The principal aim of

⁵⁸ It was recognized in the case of NREGA and the State governments in West Bengal and Tamil Nadu introduced a meagre payment of Rs.500 per month for organised industrial workers in case of loss of jobs but a comprehensive unemployment/job-loss allowance is yet to take shape in India as in the West.

⁵⁹ The Working Group on Labour Policy set up by Planning Commission also pointed out that the schemes of social security, types of benefits or protection provided there under do not conform to any overall plan or design (Supra note 4)

⁶⁰ Vikas Dhoot, Industry wants cess to pay for informal sector social security, 07 January 2010, viewed on 17 May 2010 (<http://www.financialexpress.com/news/Industry-wants-cess-to-pay-for-informal-sector-social-security/564190/>)

⁶¹ Supra Note 39

⁶² The 450-page draft report, on ‘Conditions of work and promotion of livelihoods in the unorganised sector’, released on August 9, 2007 which examines studies conducted in several states and analyses data from the National Sample Survey Organisation.

⁶³ D. Rajasekhar et al, *At Times When Limbs May Fail: Social Security For Unorganized Workers In Karnataka*

⁶⁴ NCEUS Report of 2006 blames this performance on these grounds and recommends Rs 45,000 crore action plan for overall improvement of the unorganised sector.

⁶⁵ For instance, Report on National Commission on Labour, 2002 suggested that ratification of ILO Convention No. 177 of 1996 will offer substantial safeguards to millions of workers. Article 4 of Convention on home-based work calls for

socialism is to eliminate inequality of income and status and to provide a decent standard of living to the working people. International commitments⁶⁶ and constitutional obligations bind the government to its responsibility of providing social security benefits to all citizens. In fact, the welfare state demands from the government that there should be a “substantive equality” to those who are in relatively weak position and unorganised workers are definitely in bad shape compared to organised workers. The present scenario in India is that it even failed to provide “formal equality” to the unorganised worker and therefore, providing social security by way of substantive equality is a distant dream.

We must not view ill-health or malnutrition as a contingency but a continuing certainty of life and therefore we must appreciate social security as a system to provide overall security for a person in the family and work place. It must include the measures designed to ensure that all citizens meets their basic needs like an adequate nutrition, shelter, health care and clean water supply, guarantee of work and adequate and fair wages, protection during child birth, child care, illness, disability, death, unemployment, widowhood and old age benefits etc. The idea must be to create a setup where all the people could maintain an adequate standard of living consistent with social norms.

promotion of equality of treatment for home workers including right to organise, to protection against discrimination, to occupational safety and health, remuneration, social security, access to training, etc.

⁶⁶ As a member of the United Nations, India has signed the Universal Declaration of Human Rights (UDHR), It has also ratified the International Covenant on the Economic, Social and Cultural Rights (ICESCR) - This Covenant, inter alia, recognises the right of everyone to social security including social insurance. Articles 21 to 31 of the UN’s ‘International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families 1991’ provides for social security and other labour rights of migrant workers. India has also ratified the following conventions of ILO :

1. Convention No. 18 – Workmen’s Compensation (Occupational Diseases) 1925 on 30.09.1927
2. Convention No. 19 – Equality of Treatment (Accident Compensation) 1925 on 30.09.1927
3. Convention No. 42 – Workmen’s Compensation (Occupational Diseases) Convention (Revised) 1934 on 13.01.1964
4. Convention No. 118 – Equality of Treatment (Social Security) 1962 on 19.08.1964 (branches (c) and (g) and branches (a) to (c) and (i).